

RESOLUTION ADOPTING A REVISED ORDINANCE LEVYING A TAX ON GROSS RECEIPTS DERIVED FROM RETAIL SHORT-TERM LEASE OR RENTAL OF MOTOR VEHICLES

WHEREAS, the North Carolina General Assembly has ratified Senate Bill 1076, signed into law as Session Law 2000-2 (S.L. 2000-2) and effective for taxable years beginning on or after July 1, 2000; and

WHEREAS, this act repealed the property tax on certain vehicles leased or rented under retail short-term leases or rentals and authorized counties to replace the lost tax revenue through enactment of a local tax on gross receipts derived from retail short-term leases or rentals affecting certain vehicles; now, therefore, be it

RESOLVED by the Chatham County Board of Commissioners that the following Ordinance is enacted:

ORDINANCE LEVYING A TAX ON GROSS RECEIPTS DERIVED FROM RETAIL SHORT-TERM LEASE OR RENTAL OF MOTOR VEHICLES

SECTION 1. Definitions. The following definitions shall apply to this Ordinance:

"Customer" shall mean any person that leases or rents a vehicle on a short-term lease or rental basis.

"General Statutes" shall refer to the North Carolina General Statutes and any reference to a particular section thereof shall include the same as may be from time to time amended, modified, supplemented, revised or superseded.

"Finance Officer" shall refer to the Chatham County Finance Officer.

"Gross receipts" shall mean the total lease or rental price charged to a customer for the short term lease or rental at retail of vehicles, excluding sales taxes and excluding the taxes imposed by this Ordinance.

"Lease or rental" shall mean a transfer, for consideration, of the use but not the ownership of a vehicle to another for a period of time.

"Person" shall mean any individual, trustee, executor, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.

"Retail" shall mean the lease or rental of vehicles for any use or purpose other than for re-leasing or subleasing by the customer.

"Short-term lease or rental" shall mean any vehicle lease or rental, whether written or verbal, which is made to the same person for a period of less than 365 continuous days.

"Tax Collector" shall mean the Chatham County Tax Collector.

"Taxpayer" shall mean any person liable to Chatham County for the collection, reporting and payment of the taxes imposed by this Ordinance.

"Vehicle" shall mean any of the following:

- a. A motor vehicle of the private passenger type, including a passenger van, mini-van, or sport utility vehicle;
- b. A motor vehicle of the cargo type, including cargo van, pickup truck, or truck with a gross vehicle weight of 26,000 pounds or less used predominately in the transportation of property for other than commercial freight and that does not require the operator to possess a commercial drivers license; and
- c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.

SECTION 2. Levy of Tax. A tax is hereby imposed and levied in an amount equal to one and one-half percent (1.5%) of the gross receipts as defined in Section 1.

SECTION 3. Administration. The Tax Collector shall administer and collect the taxes levied herein from every person engaged in the business of short term leasing or rental of vehicles, and the Tax Collector may promulgate additional rules and regulations necessary for implementation of the taxes. In addition to the provisions herein, the levy and collection of the taxes herein imposed shall be administered in the same manner as the sales and use tax as provided in Articles 5 and 9, Subchapter 1 of Chapter 105 of the General Statutes.

SECTION 4. Collection. Every person engaged in the business of the short-term lease or rental of vehicles at retail to customers shall collect at the time of the lease or rental the tax herein levied, place the tax so collected in a segregated account, and thereafter remit such tax to the Finance Officer in accordance with the provisions of this Ordinance. The taxpayer shall include a provision in each retail short-term lease or rental agreement stating that one and one-half percent (1.5%) of the total lease or rental price, excluding sales tax, is being charged as a tax on gross receipts. The amount of the tax shall be stated separately from the lease or rental amount and shall be shown separately on the taxpayer's records. The customer shall pay the tax to the taxpayer as trustee for and on account of Chatham County. The taxpayer shall be liable for the collection thereof and for its payment to the Finance Officer, and the taxpayer's failure to charge or to collect

said tax from the customer shall not affect such liability. The taxes collected under this Ordinance are not subject to sales tax. The taxes collected under this Ordinance belong to Chatham County and are not subject to creditor liens against the taxpayer.

SECTION 5. Report and Payment of Tax. The taxes levied hereby are due and payable when a return is required to be filed. Every taxpayer shall, within the time specified, submit a return to the Finance Officer on the form prescribed by the Tax Collector. The taxpayer or the taxpayer's agent must sign the return. Returns of taxpayers are due to the Finance Officer each month on or before the fifteenth (15th) day of the month following the month in which the tax accrues. A return filed for this purpose is not a public record as defined by Section 132-1 of the General Statutes and information contained in a return may not be disclosed except as required by law.

The return may be filed by personal delivery to the Finance Officer or by United States mail. Returns submitted by mail shall be deemed to be filed as of the date shown on the postmark affixed by the United States Postal Service. If no date is shown on the postmark, or if the postmark is not affixed by the United States Postal Service, the return shall be deemed to be filed when received in the office of the Finance Officer. The burden of proof shall be on the taxpayer to show that the return was timely filed.

SECTION 6. Taxpayer to Keep Records. The taxpayer shall keep and preserve suitable records of the gross receipts received by such taxpayer in the conduct of business and such other books or accounts as may be necessary to determine the amount of the tax for which such taxpayer is liable under the provisions of this Ordinance. It shall be the duty of the taxpayer to keep and preserve for a period of three years all such records of gross receipts and other books and accounts described. All records, books and accounts herein described shall be for examination at all reasonable hours during the day by the Tax Collector or his duly authorized agent.

SECTION 7. Tax Collector to Provide Forms. The Tax Collector shall design, prepare, print and make available to all taxpayers operating within Chatham County forms and instructions for filing returns to insure a full collection of and an accounting for taxes due. The failure of any taxpayer to obtain or receive forms shall not relieve such taxpayer from the payment of the tax at the time and in the manner provided.

SECTION 8. Situs. The transaction giving rise to the tax herein levied shall be deemed to have occurred at the location of the person from whom the customer takes delivery of the vehicle.

SECTION 9. Assessment Procedure. If the Tax Collector discovers that any return or tax is due from a taxpayer, the taxpayer shall be notified in writing of the failure to file and of the proposed assessment, if known by the Tax Collector. The assessment may be made on the best information of the Tax Collector. A proposed assessment is presumed to be correct. The notice shall be delivered either in person or by United States mail sent to the taxpayer's last known address. The notice is presumed to have been received by the taxpayer unless the taxpayer makes an affidavit to the contrary within 90

days after the notice was mailed. If the taxpayer makes this affidavit, the time limitations for a request for hearing as hereafter provided apply as if the notice had been delivered on the date the taxpayer makes the affidavit.

A taxpayer who objects to the proposed assessment or to the requirement to file a return is entitled to a hearing upon written request within 30 days after the date the notice was mailed, or within 30 days after the date of personal delivery. If no request for a hearing is timely made, the proposed assessment becomes final without further notice.

If a taxpayer files a timely request for hearing, the Tax Collector shall set a hearing date within 90 days, and notify the taxpayer at least 10 days prior to the hearing date. Within 90 days after the hearing, the Tax Collector shall notify the taxpayer of the final decision. The taxpayer may then appeal the decision as set forth in Section 11 of this Ordinance. The Tax Collector shall have no authority to waive or compromise any interest or penalty imposed by this Ordinance.

SECTION 10. Penalties, Interest and Remedies. The provisions with respect to penalties, interest and remedies applicable to Subchapter VIII (Local Government Sales and Use Tax) of Chapter 105 of the General Statutes, as contained in Article 5 and Article 9, Subchapter 1, Chapter 105 thereof, and the provisions applicable to remedies provided by the Machinery Act (Chapter 105, Subchapter II of the General Statutes), shall be applicable in like manner to the tax levied and collected under this Ordinance, to the extent that the same are not inconsistent with the provisions hereof.

Without limiting the foregoing, and subject to any changes in the General Statutes with respect to penalties, interest and remedies, the following shall be applicable with respect to the levy and collection of the taxes imposed herein:

- a. Any taxpayer who fails to file a return on the date it is due, determined with regard to any extension of time for filing, shall pay a penalty equal to five percent (5%) of the amount of the tax if the failure to file is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or \$5.00, whichever is greater.
- b. Any taxpayer who fails to pay the tax levied herein when due, without intent to evade the tax, shall pay a penalty equal to ten percent (10%) of the tax, except that the penalty shall in no event be less than \$5.00
- c. When the bank upon which any uncertified check tendered to the Finance Officer in payment of taxes, penalties or interest returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Taxpayer shall be assessed a penalty equal to ten per cent (10%) of the check, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000.00).

- d. Any taxpayer who willfully attempts, or any person who aids or abets any taxpayer to attempt in any manner to evade or defeat a tax imposed herein or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.
- e. Any taxpayer required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor.
- f. Any taxpayer required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times as required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor.
- g. If a corporation or a limited liability company fails to file any return or pay the tax required for 90 days after it is due, the Tax Collector shall inform the Secretary of State of this failure pursuant to the provisions of Section 230 of Chapter 105 of the General Statutes.
- h. The Tax Collector shall have the rights of attachment and garnishment as set forth in Sections 242 or 368 of Chapter 105 of the General Statutes in enforcing the collection of taxes imposed herein, and any other remedies authorized by law.

SECTION 11. Appeals. The Chatham County Board of Commissioners, exercising the powers of the Secretary of Revenue in collecting sales and use taxes, designates the Chatham County Manager, or his designee, to act as deputy for the purpose of compromising or forgiving for good cause shown any penalty or additional tax imposed herein, and for conducting any hearings and making decisions to determine the validity of a tax imposed by the Tax Collector. If a taxpayer claims that a tax, additional tax, penalty or interest is excessive, a notice of appeal must be filed by the taxpayer within 30 days after the final notice of the Tax Collector is mailed or personally delivered to the taxpayer as provided in Section 9 of this Ordinance. The final decision of the deputy shall be made and mailed or delivered to the taxpayer within 30 days after the hearing. The taxpayer shall pay the tax, additional tax, penalty or interest without prejudice to any defense the taxpayer has. The taxpayer may file suit for a refund in the Superior Court of Chatham County pursuant to the provisions of Section 267 of Chapter 105 of the General Statutes.

SECTION 12. Severability. If any section, clause, or provision of this Ordinance shall be found to be invalid, the validity of the remaining sections, clauses or provisions shall not be affected thereby.

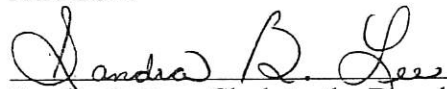
SECTION 13. Authority. This Ordinance is enacted pursuant to the provisions of G.S. §153A-156.

SECTION 14. Effective Date. This Ordinance and the taxes thereby levied and imposed shall become effective July 1, 2000.

ADOPTED the 10th day of July, 2000.


Rick Givens, Chair

ATTEST:


Sandra B. Lee, Clerk to the Board
Chatham County Board of Commissioners