

ORDINANCE NO. 2007- 837

CITY OF OSCEOLA, ARKANSAS

**AN ORDINANCE ESTABLISHING A TWO AND ONE-HALF
PERCENT (2.5%) TAX UPON THE GROSS RECEIPTS OF HOTEL
AND/OR MOTEL ACCOMODATIONS FOR PROFIT
IN THE CITY LIMITS OF OSCEOLA, ARKANSAS,
AND FOR OTHER PURPOSES**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OSCEOLA,
ARKANSAS:

SECTION 1. DEFINITIONS

For the purpose of this ordinance, the following terms are defined:

“Hotel, motel, or short-term condominium rental accommodations” shall mean the renting, leasing or otherwise furnishing of accommodations for sleeping, meeting, or party room facilities for profit in the City of Osceola, Arkansas, but such accommodations shall not include the rental or lease of such accommodations for periods of thirty (30) days or more.

SECTION 2. TAX IMPOSED

There is levied upon every firm, person, or corporation a tax of two and one-half percent (2.5%) upon the gross receipts or gross proceeds from renting, leasing, or otherwise furnishing hotel, motel or short-term condominium rental accommodations for sleeping, meeting, or party room facilities for profit in the City of Osceola, Arkansas, but such accommodations shall not include the rental or lease of such accommodations for periods of thirty days or more.

SECTION 3. COLLECTION OF TAX

- (a) From the effective date of the levying ordinance, the tax so levied shall be paid by the persons, firms, and corporations liable therefore and shall be collected by the advertising and promotion commission of the City of Osceola, Arkansas or by a designated agent of the commission in the same manner and at the same time as the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.
- (b) The person paying the tax shall report and remit it upon forms provided by the commission, and as directed by the commission. The rules, regulations,

forms of notice, assessment procedures, and the enforcement and collection of the tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq. and the Arkansas Tax Procedure Act, § 26-18-101, et seq., shall, so far as practicable, be applicable with respect to the practicable, be applicable with respect to the enforcement and collection of the tax levied pursuant to the authority of this subchapter. However, the administration and enforcement, and all actions, shall be by, and in the name of, the commission through the proper commission officials or agents. The commission shall have the authority to sue and be sued in its name. The Department of Finance and Administration shall have no authority to enforce or collect the tax levied pursuant to this subchapter.

- (c) The City of Osceola, Arkansas authorizes and enables the commission or its agent to enforce the tax through examination of records, notices of proposed and final assessment, and administrative hearings on proposed assessments. The City of Osceola, Arkansas also authorizes and enables the commission to:
- (1) Assess penalties and interest against taxpayers who fail to timely report or pay the tax. The penalty is equal to five percent (5%) of the unpaid tax amount per month not to exceed a total assessment of thirty-five percent (35%) of the unpaid tax. Simple interest on unpaid taxes shall be assessed at the rate of ten percent (10%) per annum.
 - (2) Assess unpaid or unreported tax within three (3) years of the date the tax is due.
 - (3) Provide for judicial relief from proposed assessments in accordance with subsection (d) of this section.
 - (4) Issue certificates of indebtedness in accordance with subdivision (3) of this subsection.
- (d) (1) Within thirty (30) days of the issuance of the notice and demand for payment of a deficiency in tax established by a final determination of the hearing officer, taxpayer may seek judicial relief from the final determination by either:
- (A) Paying under protest the amount of the deficiency, plus penalty and interest determined by the commission to be due, and filing a suit to recover that amount within one (1) year from the date of payment under protest; or
 - (B)
 - (i) Filing with the commission a bond in double the amount of the tax deficiency due and by filing suit within thirty (30) days thereafter to stay the effect of the commission's determination.
 - (ii) The bond shall be subject to the condition that the taxpayer shall file suit within thirty (30) days after filing the bond, shall faithfully and diligently prosecute the suit to a final determination, and shall pay any deficiency found by the court to be due and any court costs assessed against him.

- (iii) A taxpayer's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by this subsection, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs.
- (2) The method provided in this section is the exclusive method for seeking relief from a written decision of the commission establishing a deficiency in tax. No injunction shall issue to stay proceedings for assessment or collection of this tax.
- (e) (1) If a taxpayer does not timely and properly pursue his remedies seeking relief from a decision of the commission and a final assessment is made against the taxpayer, or if the taxpayer fails to pay the deficiency assessed upon notice and demand, then the commission shall, as soon as practicable thereafter, issue to the circuit clerk of the county in which the taxpayer's business is located a certificate of indebtedness certifying that the person named therein is indebted to the commission for the amount of the tax established by the commission as due.
- (2) The circuit clerk shall enter immediately upon the circuit court judgment docket:
- (A) The name of the delinquent taxpayer;
- (B) The amount certified as being due;
- (C) The name of the tax; and
- (D) The date of entry upon the judgment docket.
- (3) The entry of the certificate of indebtedness shall have the same force and effect as the entry of a judgment rendered by the circuit court. This entry shall constitute the commission's lien upon the title of any real and personal property of the taxpayer in the county where the certificate of indebtedness is recorded.
- (4) The certificate of indebtedness authorized by this subsection shall continue in force for ten (10) years from the date of recording and shall automatically expire after the ten-year period has run. Actions on the lien on the certificate of indebtedness shall be commenced within ten (10) years after the date of recording of the certificate, and not afterward.
- (5) The commission shall have all remedies and may take all proceedings for the collection of the tax which may be taken for the recovery of a judgment at law.

- (f) The provisions of subsections (d) and (e) of this section shall be effective upon the passage of this ordinance which specifically provides that these provisions shall be utilized by the commission in enforcing the tax.

SECTION 4. DISPOSITION OF REVENUES

(a) All taxes, interest, penalties, and costs collected pursuant to a tax levied by the City of Osceola, Arkansas, as authorized in this subchapter shall be credited to the city advertising and promotion fund which shall be created by this ordinance levying the tax in the City of Osceola, Arkansas.

SECTION 5. ADVERTISING AND PROMOTION COMMISSION

(a) The City of Osceola, Arkansas, hereby creates a municipal advertising and promotion commission, to be composed of seven (7) members, as follows:

(1)(A) Four (4) members shall be owners or managers of businesses in the tourism industry, and the owner or manager shall reside in the levying municipality.

(B) At least three (3) of these members shall be owners or managers of hotels, motels, or restaurants and shall serve for staggered terms of four (4) years;

(2) Two (2) members of the commission shall be members of the City Council of the City of Osceola, Arkansas, and selected by the City Council of the City of Osceola, Arkansas, and shall serve at the will of the City Council of Osceola, Arkansas; and

(3) One (1) member shall be from the public at large who shall reside within the City of Osceola, Arkansas, and shall serve for a term of four (4) years.

(b) The initial members of the commission shall be selected as follows:

(1) The four (4) tourism industry positions provided for in subdivision (a)(1) of this section shall be filled by appointment made by the City Council of Osceola, Arkansas for staggered terms so that:

(A) One (1) member will serve for a term of one (1) year;

(B) One (1) for a term of two (2) years;

(C) One (1) for a term of three (3) years; and

(D) One (1) for a term of four (4) years.

(2) The at-large position provided for in subdivision (a)(3) of this section shall be filled by nomination by the Mayor of the City of Osceola, Arkansas, and approval by the City Council of Osceola, Arkansas.

(d) Whether resulting from expiration of a regular term or otherwise, a vacancy on the commission in any of the four (4) tourism industry positions provided for in subdivision (a)(1) of this section or in the at-large position provided for in subdivision (a)(3) of this section shall be filled by appointment made by the remaining members of the commission, with the approval of the City Council of Osceola, Arkansas.

SECTION 6. USE OF FUNDS COLLECTED

(a)(1)(A) In the manner as shall be determined by the municipal advertising and promotion commission, all funds credited to the city advertising and promotion fund pursuant to this subchapter shall be used for the:

- (i) Advertising and promoting of the city and its environs;
- (ii) Construction, reconstruction, extension, equipment, improvement, maintenance, repair, and operation of a convention center;
- (iii) Operation of tourist promotion facilities in the city or the county where the city is located if the city owns an interest in the convention center or facility, and facilities necessary for, supporting, or otherwise pertaining to, a convention center; or
- (iv) Payment of the principal of, interest on, and fees and expenses in connection with bonds as provided in this subchapter.

(B) The commission may engage such personnel and agencies and incur such administrative costs as it deems necessary to conduct its business.

(2)(A) The commission is the body that determines the use of the city advertising and promotion fund.

(B) Pursuant to this section, if the commission determines that funding of the arts is necessary for or supporting of its city's advertising and promotion endeavors, it may use its funds derived from the hotel and restaurant tax..

(b)(1)(A) Any city of the first class that may levy and does levy a tax pursuant to this subchapter may use or pledge all or any part of the revenues derived from the tax for the purposes prescribed in this subchapter or for the operation of tourist-oriented facilities, including, but not limited to, theme parks and other family entertainment facilities or for the retirement of bonds issued for the establishment and operation of other tourist-oriented facilities, including, but not limited to, theme parks and other family entertainment facilities.

(B) These revenues shall be used or pledged for the purposes authorized in this subsection only upon approval of the commission created pursuant to this subchapter.

(2) Funds credited to the city advertising and promotion fund pursuant to this subchapter may be used, spent, or pledged by the commission, in addition to all other purposes prescribed in this subchapter, on and for the construction, reconstruction, repair, maintenance, improvement, equipping, and operation of public recreation facilities in the city or the county where the city is located if the city owns an interest in the center or facility, including, but not limited to, facilities constituting city parks and also for the payment of the principal of, interest on, and fees and expenses in connection with bonds as provided in this subchapter in the manner as shall be determined by the commission for the purpose of such payment.

(c)(1) All local taxes levied as authorized in § 26-75-602(a) shall be credited to the city advertising and promotion fund and shall be used for the purposes described in subsections (a) and (b) of this section.

(2) The taxes shall not be used:

- (A) For general capital improvements within the city or county;
- (B) For the costs associated with the general operation of the city or county; or
- (C) For general subsidy of any civic group or the chamber of commerce.

(3) However, the commission may contract with such groups to provide to the commission actual services that are connected with tourism events or conventions.

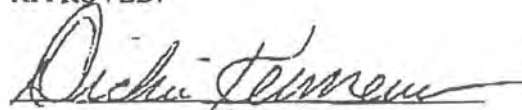
Company, timing is of the essence. Based on such facts there is hereby found and declared to be an immediate need for the Amendments as approved by this Ordinance in order to permit the Company to complete the New Security Arrangements and continue the financing of the Project and the Plant on the most favorable basis. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in force and effect immediately upon and after its passage.

PASSED: February 19, 2007.

ATTEST:

APPROVED:


Cynthia J. Weiss
City Clerk


Dickie Terrence
Mayor

(SEAL)