

ORDINANCE NO. 84-041

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

MAY 15 1984

AN ORDINANCE REPEALING ARTICLES I THROUGH VI OF CHAPTER 23 OF THE SACRAMENTO CITY CODE (SECTIONS 23.101 THROUGH 23.679, INCLUSIVE), AND ENACTING NEW ARTICLES I THROUGH V OF CHAPTER 23 OF THE SACRAMENTO CITY CODE (SECTIONS 23.101 THROUGH 23.508, INCLUSIVE), RELATING TO THE BUSINESS OPERATIONS TAX

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

Articles I through VI of Chapter 23 of the Sacramento City Code (Sections 23.101 through 23.679, inclusive) are hereby repealed.

SECTION 2

Articles I through V (Sections 23.101 through 23.508, inclusive) are hereby added to Chapter 23 of the Sacramento City Code, to read as follows:

Article I - General Provisions

Sec. 23.101 Business Operations Tax

It shall be unlawful for any person, either for himself or for any other person, to commence, transact, engage in or carry on any business, trade, profession, calling, occupation or gainful activity in the City without having paid the applicable business operations tax and procured a valid business operations tax certificate. Compliance with such requirements shall not be construed to be a condition precedent to engaging in any business or occupation within the City where the imposition of such a condition precedent would be contrary to law.

Sec. 23.102 Definitions

For the purpose of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section, unless otherwise specifically provided:

ORDINANCE No. 84-041

MAY 15 1984

- (a) "Administrative Headquarters" shall mean a location where the principal business transacted consists of providing administrative or management-related services such as, but not limited to, record keeping, data processing, research, advertising, public relations, personnel administration, legal and corporate headquarters services, to other locations where the operations of the same business are conducted which lead more directly to the production of gross receipts.
- (b) "Administrator" shall mean the Revenue Officer or his designee.
- (c) "Business" shall mean any business, commercial enterprise, trade, calling, vocation, profession, or any means of livelihood whether or not carried on for gain or profit, and includes the offering of real property for rental by the owner of such property.
- (d) "City" shall mean the City of Sacramento, a municipal corporation, in the State of California.
- (e) "Director of Finance" shall mean the Director of the Department of Finance of the City of Sacramento or his designee.
- (f) "Engaged in business", "carrying on business", or "transacting business", herein used interchangeably, shall mean commencing, conducting, operating, managing, engaging in or carrying on of a business by any person, whether done as owner or by means of an officer, agent, manager, employee, servant, or lessee of any of them, whether operating from a fixed location in the City or coming into the City from an outside location to engage in said activities.
- (g) "Gross Receipts", except as otherwise in this chapter specifically provided, shall mean the gross receipts of the preceding calendar year or part thereof or such other fiscal year approved by the Administrator, and is defined as follows:

The total amount actually received or receivable from all sales; the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other emoluments, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

- (1) Cash discounts allowed and taken on sales.
- (2) Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "gross receipts".

- (3) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser.
- (4) Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit.
- (5) Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded.
- (6) Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the Administrator with the names and addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustee.
- (7) As to a retail gasoline dealer, a portion of his receipts from the sale of motor vehicle fuels equal to the motor vehicle fuel license tax imposed by and previously paid under Part 2 of Division 2 of Revenue and Taxation Code of the State of California.
- (8) As to a retail gasoline dealer, the special motor fuel tax imposed by Section 4041 of Title 26 of the United States Code if paid by the dealer or collected by him from the consumer or purchaser.
- (9) Cash value of sales, trades or transactions between departments or units of the same business.

As to any person engaged in the business of manufacturing or processing any goods, wares, merchandise, article or commodity at a fixed place of business within the City which does not generate gross receipts as defined herein within the City, gross receipts shall be deemed to include the total of all expenses incurred in the manufacturing or processing of such goods at the business location within the City for payroll, utilities, depreciation, and/or rent.

As to any person engaged in the business of operating an administrative headquarters at a fixed place of business within the City who does not have gross receipts as defined herein within the City, gross receipts shall be deemed to include the total gross payroll of all persons employed at such administrative headquarters.

- (h) "Manufacture" or "Process" shall embrace all the activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof of a new, different, or useful article of tangible personal property or substance of trade or commerce is produced. Manufacture shall include the production or fabrication of specially made or custom made articles.

- (i) "Person" shall include all domestic and foreign corporations; associations; syndicates; joint stock corporations, partnerships of every kind; clubs, Massachusetts business or common law trusts; societies, and individuals, transacting and carrying on any business in the City, other than strictly as a salaried employee.
- (j) "Sale" or "Sell" shall be deemed to include and refer to the making of any transfer of title, in any manner or by any means whatsoever, to tangible personal property or other property for a consideration; and to the serving, supplying of furnishing, for a consideration, of any tangible personal property or other property fabricated or made at the special order of consumers who do or do not furnish directly or indirectly the specification therefor. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price shall likewise be deemed a sale. The foregoing definitions shall not be deemed to exclude any transaction which is or which, in effect, results in, a sale within the contemplation of law. "Sale" shall include both wholesale and retail and sales by vending machines dispensing tangible personal property.
- (k) "Certificate" or "Business Operations Tax Certificate" shall mean the receipt given by the Department of Finance, City of Sacramento, which indicates that the tax imposed by this ordinance has been paid.
- (l) "Valid Certificate" shall mean a certificate which complies with all the requirements set forth under in this chapter, and any certificate which does not comply with said requirements shall not be deemed to be a valid certificate for the purposes of this chapter or any of its sections.

Sec. 23.103 Exemptions

(a) General

Business operations taxes imposed by this chapter do not apply to a person transacting and carrying on a business exempted by the constitution or statute of the United States or of the State of California from the payment of the tax prescribed.

Any person claiming an exemption under subsections (b) or (c) of this section shall file a sworn statement with the Administrator stating the facts upon which exemption is claimed. In the absence of such statement substantiating the claim, the person is liable for the payment of the taxes imposed by this ordinance.

Upon a proper showing contained in the sworn statement, the Administrator shall issue a certificate to a person claiming exemption under subsections (b) or (c) of this section without payment to the City of the tax required by this chapter.

The Administrator, after giving notice and a reasonable opportunity for hearing to a taxpayer, may revoke a certificate granted under this section upon information that the business is not entitled to the exemption as provided.

(b) Charitable and Nonprofit Organizations

Except as otherwise provided in this chapter, the following organizations and activities are exempt from payment of the business operations tax:

- (1) Business conducted by a charitable, non-profit or eleemosynary corporation, association or organization if the net proceeds of said business are used exclusively by such corporation, association or organization for a purpose which would qualify as a charitable deduction under section 17214 of the Revenue and Taxation Code of the State of California if said net proceeds were received as a gift by said organization.
- (2) The conduct of entertainment, concert, exhibition or lecture on scientific, historical, literary, religious or moral subject, whenever the receipts are for a religious, educational or charitable purpose.
- (3) The conduct of entertainment, dance, concert, exhibition or lecture by a religious, charitable, fraternal, educational, amateur theatrical group, military, state, county or municipal organization or association, whenever the receipts are for the purpose and objects for which the organization or association is formed, and from which profit is not derived, directly or indirectly, by any individual.

(c) Disabled Veterans

A disabled veteran holding an honorable discharge from a branch of the military service of the United States is exempt from the payment of the business operations tax prescribed by this chapter, if such person is physically unable to earn a livelihood by other means.

(d) Permit Requirements

The exemption from payment of business operations tax granted by this section does not exempt the person conducting the business from complying with any and all other requirements of the City Code or City ordinances.

Sec. 23.104 Revenue Measure Only

The taxes prescribed by this chapter constitute taxes for revenue purposes only, and are not regulatory permit fees. Such taxes shall be in addition to any regulatory permit fee imposed by the City Code or ordinances adopted by the City.

Sec. 23.105 Effect on Other Ordinances

The payment of a tax required by the provisions of this chapter and its acceptance by the City, and the issuance of a certificate to any person, shall not entitle the holder thereof to carry on any business unless he has complied with all other applicable laws of the City, or to carry on any business in any building or on any premises designated in the certificate in the event that such building or premises are situated in a zone or locality in which the conduct of such business is in violation of the City Code. The payment of such tax and its acceptance by the City shall in no way relieve the taxpayer from complying with the applicable laws of the City, nor shall it be construed as authorizing the

conduct or continuance of any illegal business or of a legal business in an illegal manner, nor as requiring the payment of a license tax for the doing of any act which would constitute an unlawful burden upon or an unlawful interference with interstate or foreign commerce, or which would be in violation of the Constitution of the United States or of the State of California.

Article II - Certificates and Records

Sec. 23.201 Contents of Certificate

All business operations tax certificates shall be prepared and issued by the Administrator upon payment of the sum required by the provisions of this chapter to be paid therefor. Each certificate so issued shall contain the following:

- (a) The name of the person to whom it is issued and the name under which the business is to be operated.
- (b) The type of business taxed and the business classification number.
- (c) The address of the location from which the business is conducted, or where no fixed place of business is maintained, the mailing address of the person to whom the certificate has been issued. A post office box shall not be sufficient address for this purpose. The mailing address so appearing shall be the address to which all notices required or authorized in this chapter shall be sent unless the business obtaining the certificate shall request in writing that another address be used for such purpose.
- (d) A receipt for the amount of tax paid.
- (e) The date of expiration of the certificate.

Sec. 23.202 Validity of Certificate

A certificate shall be valid only after the Administrator's stamp or endorsement has been affixed thereto indicating payment has been received of the amount of the tax and penalties thereon, if any. A certificate, however, which has been paid for by a check or bank draft which was subsequently dishonored by the bank upon which it was drawn shall not be a valid certificate even though the Administrator's stamp or endorsement appears thereon, and the person operating the business for which the certificate was issued shall be deemed to be operating without a valid certificate and shall be subject to the penalties provided in this chapter for so operating.

Sec. 23.203 Separate Certificate Required

A separate certificate must be obtained for each branch establishment or separate place of business in which the trade, calling, profession or occupation is carried on, and each certificate shall authorize the person obtaining it to carry on, pursue or conduct only that trade, calling, profession or occupation

described in such certificate and only at the location or place of business indicated thereon. Where more than one kind of classification of business is conducted at any one location, the classification for such business shall be determined in accordance with Section 23.302. Any interpretation hereunder shall be made by the Administrator.

Notwithstanding the above provisions, however, where the business engaged in within the City is from one or more locations outside the City, only one certificate for each classification of business need be obtained by the person so engaging in that business in the City from all such outside locations; and warehouses and distributing plants located in the City and used in connection with and incidental to a business which holds a certificate at a location in the City shall not be deemed to be branch establishments or separate locations, provided all receipts from any sales made at such warehouse or distributing plants are included in the gross receipts reported by the business which holds a certificate at a location in the City, if such business holds a certificate under the gross receipts classification.

Sec. 23.204 Transferability

A certificate issued under the provisions of this chapter shall be valid only for the person to whom it is issued to conduct the business specified thereon and at the location for which it was issued and for the period of time indicated on the certificate, except with the written consent of the Administrator endorsed thereon in the case of a change of business ownership or location and after payment of a transfer processing fee established by resolution of the City Council.

No person shall use or attempt to use any certificate which has been issued to another person or for a different type of business or for another location or which has expired.

Any person holding a certificate shall notify the Administrator if he ceases to operate the business or proposes to move it to another location.

Sec. 23.205 Posting and Keeping Certificate

- (a) Every person engaged in a business subject to tax under the provisions of this chapter and which business is conducted at or from a fixed place of business in the City shall keep the certificate issued therefor posted in a conspicuous place upon the premises at or from which the business is conducted at all times during business hours.
- (b) Every person engaged in a business subject to tax under the provisions of this chapter but not operating from a fixed place of business in the City shall keep the certificate issued therefor upon his person at all times while engaged in the business for which it is issued.
- (c) It shall be an infraction for any person to fail to post and keep posted or fail to carry upon his person, as the case may be, any certificate or certificates required by the provisions of this section to be so posted or carried upon his person, or to give away, sell, or transfer any certificate or permit issued to any other person, or to permit its use by another person.

- (d) The Revenue Division shall issue a duplicate Business Tax Certificate to replace any Certificate issued under this chapter which has been lost or destroyed, upon payment of a fee established by resolution of the City Council.

Sec. 23.206 Records to be Kept: Information Confidential

(a) Records

All persons subject to the provisions of this chapter shall keep complete records of business activities and transactions including sales, receipts, purchases, expenditures and any other record and data relevant to establishing and verifying tax liability hereunder; and shall retain all such records and data for examination by the Administrator for a period of at least three years. No person required to keep records under this section shall refuse to allow authorized representatives of the Administrator to examine said records at reasonable times and places for the purpose of administering and enforcing this chapter.

(b) Confidentiality

The Administrator and his deputies or authorized representatives shall not make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to pay a tax under the provisions of this chapter or divulge the amount or source of income, profits, losses, expenditures or any particular thereof, set forth in any statement of application, or permit any statement or application, or copy of either, or any other document relating thereto which contains specific information as to the amount or source of income or expenditures of any person obtaining a certificate to be seen or examined by any person; provided that nothing in this section shall be construed to prevent the disclosure to or examination of records by another City agent for the sole purpose of administering or enforcing any of the provisions of the chapter or auditing of accounts of the Administrator; Federal or State officials; a grand jury or court of law, upon subpoena, or in a proceeding to determine the existence or amount of any tax liability of the particular taxpayer to the City; nor shall the disclosure of the names and addresses of persons to whom certificates have been issued and the general type of their business, together with general statistics regarding business taxes collected or business done in the City, be prohibited hereunder.

Article III - Application and Issuance

Sec. 23.301 Application for First Certificate

A person making application for the first certificate to be issued hereunder, or for a newly established business or for a new ownership of a previously established business shall furnish to the Administrator a sworn statement, on a form provided by the Administrator, setting forth the following information:

- (a) The exact nature or kind of business for which a certificate is requested.

- (b) The place where such business is to be carried on, and if the same is not to be carried on at any permanent place of business, the places of residence of the owners of same;
- (c) The fictitious name or names under which the business will be operated, if any, and the name of the person to whom the certificate is issued;
- (d) Such further information as the Administrator may deem necessary to enable him to issue the certificate applied for.

Sec. 23.302 Determination of Type or Class of Business

The determination of the type or class of business or businesses a taxpayer is engaged in or about to engage in shall be an administrative function of the Administrator.

In cases where a taxpayer believes he is placed in the wrong business or class of business or businesses, he may apply in writing to the Administrator for a change in his classification, setting forth in full his reason for requesting such change. The Administrator shall conduct an investigation and shall thereupon render his decision in writing as to the proper classification or classifications.

If the taxpayer is aggrieved by the Administrator's decision, he shall have the right of appeal to the Director of Finance.

Sec. 23.303 Statement for Renewal of Business Tax Certificate

Every person subject to a business tax shall, upon the time of renewal of the business tax certificate, file with the Revenue Division a sworn statement setting forth the then applicable factor or factors that constitute the measure of the tax, together with such other information as shall be required by the Revenue Division to enable it to administer the provisions of this article and shall pay at such time the amount of the tax computed thereon.

Sec. 23.304 Notice Not Required

The Administrator is not required to send a renewal, delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

Sec. 23.305 Certificate Withheld

(a) Pending Action

The Administrator is hereby prohibited from issuing a certificate to any person for conducting any business when there are pending before the Director of Finance charges preferred by the Administrator against the holder of any certificate at the same location until such charges have been disposed of by the Director.

(b) Debt to City

No certificate for any ensuing, current or unexpired period shall knowingly be issued to any person who at the time of making application ~~therefor~~ ^{thereof} is indebted to the City for any unpaid business operations tax.

(c) Checks Returned

If any person shall have upon two or more occasions made payment for his certificate with a check which was returned by the bank upon which it was drawn unpaid, the Administrator may thereafter require that such person make payment of his business operations tax by cash payment or by money order or certified check.

Article IV - Determination, Calculation and
Payment of the Business Operations Tax

Sec. 23.401 Gross Receipts

Every person not falling within the categories described in Sections 23.402, 23.403 and 23.404 of this chapter shall pay an annual business operations tax as follows:

- (a) Every person which has gross receipts of \$10,000 or less shall pay a tax of \$25.00 for each year.
- (b) Every person which has gross receipts in excess of \$10,000 shall pay a tax of \$25.00 plus \$.0004 for each dollar of gross receipts in excess of \$10,000 for the reporting period; provided, however, that the maximum annual tax liability for any person under this section shall be \$3,000.

Sec. 23.402 Professionals

(a) Professionals - General

Every person engaged in the profession of: accountant, architect, attorney, audiologist, bacteriologist, Certified Public Accountant, engineer, dentist, mortician, optometrist, osteopath, physician, podiatrist, psychologist, surgeon, or veterinarian shall pay an annual business operations tax determined by the number of years the individual has been licensed by the State of California to practice such profession:

Three years or less: \$50.00
More than three years but less than seven years: \$100.00
Seven years or more: \$200.00

Nothing in this subsection shall be construed or deemed to apply to any person engaged in any of the professions enumerated in this subsection solely as the employee of any other person conducting, carrying on or managing such business, occupations or professions in the City, except, however, that each such employee

who has a contractual right to participate in the income or profits of the business, or is a shareholder of a professional corporation organized pursuant to Sections 13400 et. seq. of the California Corporations Code must pay the tax.

Every person who employs an individual who would be subject to a business operations tax under this section if the individual was not exempted from the payment of said tax by the preceding paragraph shall pay an annual business operations tax of \$20.00 for each such exempt individual in their employ.

(b) Professionals - Brokers

Every person engaged in the business of real estate broker, insurance broker, or stock broker, whether full or part-time, shall pay an annual business operations tax of \$80.00 for the principal broker or broker of record plus \$20.00 for each employee, agent, representative or independent contractor subject to supervision by a principal broker or broker of record who devotes time to handling of rents, listing property, collecting or selling property, soliciting or writing insurance policies or working as a salesperson or floorperson.

(c) Maximum Tax

The maximum annual tax payable by any firm under provisions of this section is \$3,000.

"Firm" is defined as any professional corporation, partnership or other business entity whose individual members share in the profits of the business entity.

(d) Revenue Measure

Nothing contained in this chapter shall be construed as giving the City Council, or any of the officers of the City in charge of administration of this chapter, any regulatory powers over any licensee who is engaged in the practice of a profession, trade, or calling and is one whose privilege to so engage in such profession, trade or calling is granted by the State or any of its agencies. As to such persons, and as indicated in Section 23.102, this chapter shall be construed as existing for revenue purposes only.

Sec. 23.403 Contractors

Every person engaged in any type of business activity as a contractor which requires a City building permit in order to be performed shall pay a business operations tax at the time the building permit is issued as follows:

- (a) Where the work to be done pursuant to the permit is valued at \$12,500 or less, a tax of \$5.00.
- (b) Where the work to be done pursuant to the permit is valued at more than \$12,500, a tax of \$5.00 plus \$.0004 for each dollar of valuation in excess of \$12,500.

The maximum annual tax payable by any person under this section shall be \$2,400. It shall be the responsibility of the contractor who has paid the maximum tax to establish at the time a building permit is issued that the maximum has been reached and that no additional tax is due.

Sec. 23.404 Housing and Shelter

(a) Rental of Residential Real Property

Every person engaging in the business of offering residential real property for rental shall pay an annual business operations tax of \$25.00 plus \$1.75 for each rental unit in excess of four units. Any person with fewer than four units is exempt from payment of the business operations tax. The maximum annual tax payable by any person is \$3,000.

(b) Hotels, Motels

Every person engaging in the business of renting out accommodations substantially on a transient occupancy basis shall pay an annual business operations tax of \$50.00 plus \$.75 for each rental unit in excess of four units per situs. The maximum annual tax payable for any situs is \$3,000.

(c) Rental of Non-Residential Real Property

Persons engaging in the business of offering non-residential real property for lease or rental shall be taxed pursuant to Section 23.401.

Sec. 23.405 Businesses without Fixed Place of Business within City

Every person, other than a contractor, not having a fixed place of business within the City who engages in business within the City shall pay a business operations tax calculated pursuant to Section 23.401; provided, however, that as to any person who would be taxed pursuant to 23.402 if the person had a fixed location within the City, the tax due shall not exceed the tax which would have been payable under 23.402 if the person had a fixed place of business within the City.

Sec. 23. 406 When and How Payable

(a) Quarterly Payment Periods Established; Payment Due

For purposes of this chapter, the annual calendar shall be divided into four quarters consisting of three-month periods commencing January 1, April 1, July 1, and October 1, of each year. All annual taxes shall be due and payable in advance on the first day of the quarter immediately following expiration of any existing certificate.

(b) New Businesses - No Proration

If a person establishes a business on or after July 1, 1984 for which a tax is payable, his first tax period shall commence on the day when he first engages in said business and shall terminate on the last day of the third quarter following the quarter during which the person first engaged in said business, and the tax payment for that period shall not be reduced by the Administrator even if the tax period is less than 12 full calendar months. Thereafter, the annual tax period shall be for twelve full months and the full annual tax shall be due and payable on the first day of the new annual period. The Administrator may assign a shorter tax period, in such case the annual tax shall be reduced on a proportionate basis by the Administrator.

(c) Contractor Payment

A contractor's business operations tax shall be due and payable at the time the City building permit is issued.

Sec. 23.407 Constitutional Apportionment

None of the business operations taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the equal protection and due process clauses of the Constitutions of the United States and the State of California.

In any case where a tax is believed by a business or applicant for a certificate to place an undue burden upon interstate commerce or to be violative of such constitutional clauses, he may apply to the Administrator for an adjustment of the tax. Such application may be made before, at, or within six months after payment of the prescribed business operations tax. The applicant shall, by sworn statement and supporting testimony, show his method of business and the gross volume or estimated gross volume of business and such other information as the Administrator may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Administrator shall then conduct an investigation, and after having first obtained the written approval of the City Attorney, shall fix as the tax for the applicant, an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be charged, the Administrator shall have the power to base the tax upon a percentage of gross receipts or any other measure which will assure that the tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this chapter.

Should the Administrator determine the gross receipts measure of tax to be the proper basis, he may require the applicant to submit, either at the time of termination of applicant's business in the City, or at the end of each three-month period, a sworn statement of the gross receipts and pay the amount of tax therefor, provided that no additional business operations tax during any one calendar year shall be required after the business shall have paid an amount equal to the annual tax as prescribed in this chapter.

Sec. 23.408 Penalties

Fifteen days after an annual business operations tax is due and payable, a penalty of \$50.00 shall be added to the unpaid amount. After thirty additional days, if the tax is still delinquent, an additional penalty of \$100.00 shall be added to the unpaid amount to cover the costs of enforcement.

Sec. 23.409 Refunds

No tax collected under the provisions of this chapter shall be refundable or prorated in any manner, except that if the business subject to the tax shall establish to the satisfaction of the Administrator it has overpaid tax and shall, within a period of one year from the day on which the overpayment was made, file with the Administrator a claim for refund of such overpayment, the Administrator may refund, or allow credit on a renewal, of the sum so overpaid.

Article V - Enforcement

Sec. 23.501 Enforcement

It shall be the duty of the Administrator, his deputies, agents, and employees, and they and each of them are hereby directed, to enforce each and all of the provisions of this chapter, and the Chief of Police shall render such assistance in the enforcement hereof as may from time to time be required by the City Manager. Each department of the City which issues permits or entitlements of use shall require the production of a valid unexpired certificate prior to the issuance of such a permit. The immediately preceding sentence shall not be construed to require any person to obtain a certificate prior to doing business within the City if such requirement conflicts with the Constitution or applicable statutes of the United States or of the State of California.

In the exercise of the duties imposed upon him hereunder, and acting through his deputies or duly authorized assistants, the Administrator shall examine or cause to be examined all places of business in the City to ascertain whether the provisions of this chapter have been complied with. For the purposes of this paragraph, in the case of a person coming into the City to do business from a location outside the City, the "place of business" shall be deemed to be the place where such person is engaging in business or offering to engage in business in the City.

Sec. 23.502 Violation

Every person violating any provision of this chapter or knowingly or intentionally misrepresenting to any officer or employee of this City a material fact in procuring the certificate herein provided for shall be deemed guilty of a separate offense for each day, or portion thereof, during which such violation continues and shall be punishable thereof as provided in this section. Any person violating the provisions of this article is guilty of an infraction subject to the provisions of Government Code Section 36900(b).

The conviction and punishment of any person for engaging in any business without a valid certificate shall not relieve such person from paying the taxes and penalties due and unpaid at the time of such conviction, nor shall the payment of any tax or penalty prevent a criminal prosecution for the violation of any of the provisions of this chapter. All remedies prescribed in this chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

Any sum required to be paid under the provisions of this chapter shall be deemed a debt owed to the City, and any person who engages in any business without first obtaining and paying for a valid certificate as required by this chapter shall be liable to an action by and in the name of the City in any court of competent jurisdiction for recovery of any such sum.

Sec. 23.503 Rules and Regulations - Apportionment

The Administrator may make such rules and regulations not inconsistent with the provisions of this chapter as may be necessary or desirable to supplement or clarify such provisions or aid in their enforcement.

When, by reason of the provisions of the Constitution of the United States or the Constitution of California, the business tax imposed by this chapter cannot be enforced without there being an apportionment according to the amount of business done in the City of Sacramento, or in the State of California, as the case may be, the Administrator may make such rules and regulations for the apportionment of the tax as are necessary or desirable to overcome the constitutional objections.

Such rules and regulations shall be known as "Business Operations Tax Rules and Regulations", shall be placed in written form and numbered consecutively, and shall be approved by the City Attorney before becoming effective. A copy of the "Business Operations Tax Rules and Regulations" shall be filed with the City Manager and with the City Clerk.

The Administrator is authorized to waive part or all of any penalty due under Section 23.408 upon making a finding that the imposition of the penalty would cause an undue hardship or that the failure to make timely payment was due to excusable neglect or other good cause.

Sec. 23.504 Failure to File Return and Remit Tax:
Determination of Tax Due by Administrator

If any person required to remit the tax imposed by this Chapter fails to file a return, the Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this article and payable by any person who has failed or refused to make such report and remittance, he shall proceed to determine and assess against such person the tax, interest and penalties provided for by this chapter.

Sec. 23.505 Deficiency Determination; Recomputation of Tax:
Authority to Make

If the Administrator has reasonable cause to believe the return or returns of the amount of tax required to be paid to the City by any person under this article is erroneous, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or that may come into his possession. One or more deficiency determinations may be made of the amount due for one or more periods.

Sec. 23.506 Notice of Administrator Determination

The Administrator shall give to the person written notice of any determinations made pursuant to Sections 23.504 and 23.505 of this article. This notice may be served personally or by postage prepaid mail addressed to the person at the address as it appears in the records of the Administrator. In case of service by mail of any notice required under this article, the service is complete at the time of deposit in the United States mail.

Sec. 23.507 Hearing - Director of Finance Determination

Any person served pursuant to Section 23.506 of this article may, within fifteen days after service or mailing of such notice, make application in writing to the

Director of Finance for a hearing to review the amounts determined and assessed under Section 23.504 or 23.505. If application by the person for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the Administrator shall become final and conclusive and immediately due.

Sec. 23.508 Appeal

Any person aggrieved by any decision of the Director of Finance with respect to any determination made pursuant to Section 23.507 may appeal to the Council by filing a notice of appeal with the City Clerk within fifteen days after service of the Administrator's decision. The Council may hear the matter itself or may refer the matter to a hearing examiner as authorized by Section 2.323 of the City Code. The Council decision shall be final and conclusive and shall be served upon the appellant in the manner prescribed by Section 23.506. Any amounts determined shall be due and payable upon the service of notice.

SECTION 3

The Council specifically states its intent that Article VII of Chapter 23 of the Sacramento City Code (Sections 23.701 through 23.711, inclusive) shall remain in full force and effect.


SECTION 4

This ordinance shall take effect on January 1, 1985 provided however that this ordinance shall not take effect at all and shall be null and void if that certain initiative constitutional amendment pertaining to taxation is adopted by the voters of California at the Statewide General Election to be held on November 6, 1984. The initiative constitutional amendment referred to above is commonly known as the Jarvis Initiative, and would amend Article XIII A of the California Constitution to require voter approval of any new City tax enacted after August 15, 1983.

PASSED FOR PUBLICATION: April 24, 1984

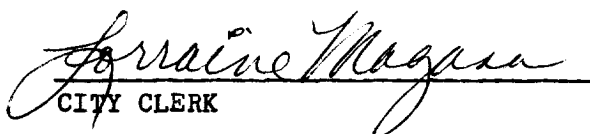
ENACTED: May 15, 1984

EFFECTIVE: ~~June 14, 1984~~ 1-1-85



MAYOR

ATTEST:



CITY CLERK