ORDINANCE NO. 2772 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING CHAPTER 21.1 (MODEL CITY PRIVILEGE (SALES) TAX CODE) BY ADOPTING A NEW CHAPTER 21.1 THAT INCORPORATES HOUSEKEEPING AND STATUTORY CHANGES APPROVED AND ADOPTED BY THE MUNICIPAL TAX CODE COMMISSION THROUGH 2010; ESTABLISHING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY AND PROVIDING PENALTIES FOR VIOLATIONS.

WHEREAS, the City of Glendale adopted the Model City Privilege (Sales) Tax Code on September 30, 1997 as Chapter 21.1;

WHEREAS, the A.R.S. § 42-6053 requires the City to adopt any changes to the Model City Privilege (Sales) Tax Code that are approved by the Municipal Tax Code Commission;

WHEREAS, the Municipal Tax Code Commission considered the proposed Code changes and have held public hearings on the proposed amendments;

WHEREAS, the City Council held a public hearing on May 24, 2011 and considered the required text amendment to Glendale's Model City Privilege (Sales) Tax Code; and

WHEREAS, that certain document entitled "2011 Amendment to Chapter 21.1 (Model City Privilege (Sales) Tax Code)," three copies of which are on file in the office of the City Clerk, was declared to be a public record by Resolution No. 4491, New Series.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That Glendale City Code, Chapter 21.1 (Model City Privilege (Sales) Tax Code) is hereby deleted in its entirety and a new Chapter 21.1 shall be adopted as more fully set forth in that certain document known as "2011 Amendment to Chapter 21.1 (Model City Privilege (Sales) Tax Code)," three copies of which are on file in the office of the City Clerk, which was made a public record by Resolution No. 4491, New Series, and is hereby referred to, adopted, and made a part hereof as if fully set out in this ordinance.

SECTION 2. That the "2011 Amendment to Chapter 21.1 (Model City Privilege (Sales) Tax Code)," shall be effective thirty (30) days after passage of this ordinance by the Glendale City Council.

SECTION 3. Any person who fails to pay taxes imposed by this code or is found guilty of violating any provision of the following amendments to the tax code is subject to the following penalties:

Sec. 21.1-540. Interest and civil penalties.

(a) Any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay interest upon such tax until paid. From and after October 1, 2005, the interest rate shall be determined in the same manner and at the same times as prescribed by Section 6621 of the United States Internal Revenue Code and compounded annually under the method described in subsection (1) below. The rate of interest for both overpayments and underpayments for all taxpayers is the federal short-term rate, determined pursuant to Section 6621(b) of the Internal Revenue Code, plus three percentage points. The interest rate prior to October 1, 2005 shall be one percent (1%) per month. Said interest may be neither waived by the Tax Collector nor abated by the Hearing Officer except as it might relate to a tax abated as provided by Section 21.1-570.

(1) On January 1 of each year any interest outstanding as of that date that was accrued from and after October 1, 2005 is thereafter considered a part of the principal amount of the tax and accrues interest pursuant to this section.

(2) Interest accrued prior to October 1, 2005 shall not be added to the principal.

(b) In addition to interest assessed under subsection (a) above, any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay any or all of the following civil penalties, in addition to any other penalties prescribed by this Chapter:

(1) A taxpayer who fails to timely file a return for a tax imposed by this Chapter shall pay a penalty of five percent (5%) of the tax for each month or fraction of a month elapsing between the delinquency date of the return and the date on which it is filed, unless the taxpayer shows that the failure to timely file is due to reasonable cause and not due to willful neglect. This penalty shall not exceed twenty-five percent (25%) of the tax due.

(2) A taxpayer who fails to pay the tax within the time prescribed shall pay a penalty of ten percent (10%) of the unpaid tax, unless the taxpayer shows that the failure to timely pay is due to reasonable cause and not due to willful neglect. If the taxpayer is also subject to a penalty under subsection (b)(1) above for the same tax period, the total penalties under subsection (b)(1) and this subsection shall not exceed twenty-five percent (25%) of the tax due.

(3) A taxpayer who fails or refuses to file a return within thirty (30) days of having received a written notice and demand from the Tax Collector shall pay a penalty of twenty-five percent (25%) of the tax, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect or the Tax Collector agrees to a longer time period.

(4) If the cause of a tax deficiency is determined by the Tax Collector to be due to negligence, but without regard for intent to defraud, the taxpayer shall pay a penalty of ten percent (10%) of the amount of deficiency. If the taxpayer is also subject to a penalty under subsection (b)(1) or (b)(2) above for the same tax period, the total penalties imposed under subsection (b)(1), (b)(2) and this subsection shall not exceed twenty-five percent (25%) of the tax due.

(5) If the cause of a tax deficiency is determined by the Tax Collector to be due to civil fraud or evasion of the tax, the taxpayer shall pay a penalty of fifty percent (50%) of the amount of deficiency.

(c) Penalties and interest imposed by this Section are due and payable upon notice by the Tax Collector.

(d) If, following an audit, penalties attributable to the audit period are to be assessed pursuant to subsection (b)(1) or (b)(2) above, the Tax Collector, before assessing such penalties, must take into consideration any information or explanations provided by the taxpayer as to why the return was not timely filed and/or the tax was not timely paid. If such information and/or explanations are provided by the taxpayer, and the Tax Collector nevertheless decides to assess penalties pursuant to subsection (b)(1) or (b)(2) above, then, at the time the penalties are assessed, the Tax Collector must provide the taxpayer with a detailed written explanation of the basis for the Tax Collector's determination that the information and/or explanations provided by the taxpayer did not constitute reasonable cause.

(e) The assessment of the penalties prescribed by subsections (b)(3) through (b)(5) above must be approved on a case-by-case basis by the Tax Collector prior to such assessment. In addition, any assessment which includes penalties based upon subsection (b)(3), (b)(4), or (b)(5) above must be accompanied by a statement signed by the Tax Collector setting forth in detail the basis for the Tax Collector's determination that the penalties are warranted under the circumstances.

(f) The Tax Collector shall waive or adjust penalties imposed by subsections (b)(1) and (b)(2) above upon a finding that:

(1) in the past, the taxpayer has consistently filed and paid the taxes imposed by this Chapter in a timely manner; or

(2) the amount of the penalty is greatly disproportionate to the amount of the tax; or

(3) the failure of a taxpayer to file a return and/or pay any tax by the delinquency date was caused by any of the following circumstances which must occur prior to the delinquency date of the return or payment in question:

(A) the return was timely filed but was inadvertently forwarded to another taxing jurisdiction.

(B) erroneous or insufficient information was furnished the taxpayer by the Tax Collector or his employee or agent.

(C) death or serious illness of the taxpayer, member of his immediate family, or the preparer of the reports immediately prior to the due date.

(D) unavoidable absence of the taxpayer immediately prior to the due date.

(E) destruction, by fire or other casualty, of the taxpayer's place of business or records.

(F) prior to the due date, the taxpayer made application for proper forms which could not be furnished in sufficient time to permit a timely filing.

(G) the taxpayer was in the process of pursuing an active protest of the tax in question in another taxing jurisdiction at the time the tax and/or return was due.

(H) the taxpayer establishes through competent evidence that the taxpayer contacted a tax advisor who is competent on the specific tax matter and, after furnishing necessary and relevant information, the taxpayer was incorrectly advised that no tax was owed and/or the filing of a return was not required.

(I) the taxpayer has never been audited by a City for the tax or on the issue in question and relied, in good faith, on a state exemption or interpretation.

(J) the taxpayer can provide some public record (court case, report in a periodical, professional journal or publication, etc.) stating that the transaction is not subject to tax.

(K) the Arizona Department of Revenue, based upon the same facts and circumstances, abated penalties for the same filing period.

A taxpayer may also request a waiver or adjustment of penalty for a reason thought to be equally substantive to those reasons itemized above. All requests for waiver or adjustment of penalty must be in writing and shall contain all pertinent facts and other reliable and substantive evidence to support the request. In all cases, the burden of proof is upon the taxpayer.

(g) No request for waiver of penalty under subsection (f) above may be granted unless written request for waiver is received by the Tax Collector within forty-five (45) days following the imposition of penalty. Any taxpayer aggrieved by the refusal to grant a waiver under subsection (f) above may appeal under the provisions of Section 21.1-570 provided that a petition of appeal or request for an extension is submitted to the Tax Collector within forty-five (45) days of the taxpayer's receipt of notice by the City that waiver has been denied.

(h) For the purpose of this Section, "reasonable cause" shall mean that the taxpayer exercised ordinary business care and prudence, i.e., had a reasonable basis for believing that the tax did not apply to the business activity or the storage or use of the taxpayer's tangible personal property in this City.

(i) For the purpose of this Section, "negligence" shall be characterized chiefly by inadvertence, thoughtlessness, inattention, or the like, rather than an "honest mistake". Examples of negligence include:

(1) the taxpayer's failure to maintain records in accordance with Article III of this Chapter;

(2) repeated failures to timely file returns; or

(3) gross ignorance of the law.

Sec. 21.1-580. Criminal penalties.

(a) It is unlawful for any person to knowingly or willfully:

(1) fail or refuse to make any return required by this Chapter.

(2) fail to remit as and when due the full amount of any tax or additional tax or penalty and interest thereon.

(3) make or cause to be made a false or fraudulent return.

(4) make or cause to be made a false or fraudulent statement in a return, in written support of a return, or to demonstrate or support entitlement to a deduction, exclusion, or credit or to entitle the person to an allocation or apportionment or receipts subject to tax.

(5) fail or refuse to permit any lawful examination of any book, account, record, or other memorandum by the Tax Collector.

(6) fail or refuse to remit any tax collected by such person from his customer to the Tax Collector before the delinquency date next following such collection.

(7) advertise or hold out to the public in any manner, directly or indirectly, that any tax imposed by this Chapter, as provided in this Chapter, is not considered as an element in the price to the consumer.

(8) fail or refuse to obtain a Privilege License or to aid or abet another in any attempt to intentionally refuse to obtain such a license or evade the license fee.

(9) reproduce, forge, falsify, fraudulently obtain or secure, or aid or abet another in any attempt to reproduce, forge, falsify, or fraudulently obtain or secure, an exemption from taxes imposed by this Chapter.

(b) The violation of any provision of subsection (a) above shall constitute a Class One Misdemeanor.

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(c) In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 14th day of June, 2011.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager