

ARTICLE XII
City of Bloomington Use Tax

§ 39-1201. [Ch. 39, Sec. 140] Nature of tax. [Ord. No. 1990-34]

This article shall be known and may be cited as the City of Bloomington Use Tax. The tax herein imposed is in addition to all other taxes imposed by the City of Bloomington, the State of Illinois, or any other municipal corporation or political subdivision thereof.

§ 39-1202. [Ch. 39, Sec. 141] Definitions.

For the purpose of this article, when any of the following words or terms are used herein, they shall have the meaning or construction ascribed to them in this section.

CITY — The City of Bloomington, Illinois.

DEPARTMENT — The Finance Department of the City of Bloomington.

DIRECTOR — The Finance Director of the City of Bloomington. **[Ord. No. 2017-28]**

GROSS RECEIPTS — From the sales of tangible personal property at retail means the total selling price or the amount of such sales, as hereinafter defined. In the case of charge and time sales, the amount thereof shall be included only as and when payments are received by the seller. Receipts or other consideration derived by a seller from the sale, transfer or assignment of accounts receivable to a wholly owned subsidiary will not be deemed payments prior to the time the purchaser makes payment of such accounts.

LIKE KIND AND CHARACTER — Shall be liberally construed (including but not limited to any form of motor vehicle for any form of motor vehicle, or any kind of farm or agricultural implement for any other kind of farm or agricultural implement), while not including a kind of item which, if sold at retail by that retailer, would be exempt from tax hereunder as an isolated or occasional sale.

PERSON — Any natural individual, firm, society, foundation, institution, partnership, association, joint stock company, joint adventure, public or private corporation, or a receiver, executor, trustee, conservator or other representative appointed by order of any court.

PURCHASE AT RETAIL — The acquisition of the ownership of or title to tangible personal property through a sale at retail.

PURCHASER — Any person who, through a sale at retail, acquires the ownership of or title to tangible personal property for a valuable consideration.

RECEIPTS — From sales of tangible personal property at retail with respect to any period of time means the aggregate selling price, as herein defined, received by seller during such period of time. In the case of charge and time sales, receipts include consideration only as and when payments are received by the seller.

RESIDING WITHIN THE CITY OF BLOOMINGTON — Maintaining an actual domicile (temporary or permanent) within the corporate limits of the City of Bloomington or maintaining permanently or temporarily a place of business within the City. A title or registration issued by a State of Illinois agency bearing an address within the corporate limits of the City of Bloomington shall create a rebuttable presumption that the purchaser of such titled or registered property resides

within the City of Bloomington.

RETAILER —

- A. Every person engaged in the business of making sales at retail as defined in this section.
- B. A person who is engaged in the business of leasing or renting motor vehicles to others and who, in connection with such business sells any used motor vehicle to a purchaser for his use and not for the purpose of resale, is a retailer to the extent of the value of the vehicle sold. For the purpose of this section, "motor vehicle" has the meaning prescribed in Section 1.157 of the Illinois Vehicle Code,¹ as now or hereafter amended (nothing provided herein shall affect liability incurred under this article because of the sale at retail of such motor vehicle to a lessor).

RETAILER MAINTAINING A PLACE OF BUSINESS IN THE CITY — Or any like term, shall mean and include any retailer:

- A. Having or maintaining within the City, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within the City under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in the City; or
- B. Engaging in soliciting orders within the City from users by mean, of catalogues or other advertising, whether such orders are received or accepted within or without the City.

SALE AT RETAIL — Any transfer of the ownership of or title to tangible personal property to a purchaser, for the purposes of use or consumption. "Sale at retail" includes any transfer made for resale unless made in compliance with § 39-1207 of this article.

- A. Transactions whereby the possession of the property is transferred but the seller retains the title as security for payment of the selling price shall be deemed to be sales.
- B. "Sale at retail" shall be construed to include any transfer of the ownership of or title to tangible personal property to a purchaser, for use or consumption by any other person to whom such purchaser may transfer the tangible personal property without a valuable consideration.
- C. A person whose activities are organized and conducted primarily as a not-for-profit service enterprise, and who engages in selling tangible personal property at retail (whether to the public or merely to members and their guests) is engaged in the business of selling tangible personal property at retail with respect to such transactions, excepting only a person organized and operated exclusively for charitable, religious or educational purposes either:
 - (1) To the extent of sales by such person to its members, students, patients or inmates of tangible personal property to be used primarily for the purposes of such person;
 - or

1. Editor's Note: See 625 ILCS 5/1-157.

- (2) To the extent of sales by such person of tangible personal property which is not sold or offered for sale by persons organized for profit.
- D. The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail does not constitute engaging in a business of selling such tangible personal property at retail within the meaning of this article; provided that any person who is engaged in a business which is not subject to the tax imposed by this article because of involving the sale of or a contract to sell real estate or a construction contract to improve real estate, but who, in the course of conducting such business, transfers tangible personal property to users or consumers in the finished form in which it was purchased, and which does not become real estate, under any provision of a construction contract or real estate sale or real estate sales agreement entered into with some other person arising out of or because of such nontaxable business, is engaged in the business of selling tangible personal property at retail to the extent of the value of the tangible personal property so transferred. If, in such a transaction, a separate charge is made for the tangible personal property so transferred, the value of such property, for the purpose of this article, shall be the amount so separately charged, but not less than the fair market value of such property.
- E. A person who holds himself or herself out as being engaged (or who habitually engages) in selling tangible personal property at retail is a person engaged in the business of selling tangible personal property at retail hereunder with respect to such sales (and not primarily in a service occupation) notwithstanding the fact that such person designs and produces such tangible personal property on special order for the purchaser and in such a way as to render the property of value only to such purchaser.

SELLING PRICE — The consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but shall not include charges that are added to the price by the seller on account of the seller's duty to collect, from the purchaser, the tax imposed upon the purchaser under this article or on account of a tax liability imposed upon the seller or the purchaser under any other ordinance of the City of any other unit of local government or under any law of the State of Illinois upon or in connection with such sale, purchase or use.

TANGIBLE PERSONAL PROPERTY —

- A. Items which are titled or registered with the State are motor vehicles, aircraft, motorboats, sailboats exceeding 12 feet in length, snowmobiles and implements of husbandry and special mobile equipment for which the owner decides to apply for an optional title.
- (1) For the purposes of this article:
 - (a) The term "motor vehicle" includes passenger cars, trucks, buses, motorcycles and any kind of vehicle which is required to be titled under the Illinois Vehicle

Code (Ill. Rev. State., 1979, ti. 95 1/2 P1-146),² (including house trailers for which a display certificate of title is required).

- (b) The term "implement of husbandry" means every vehicle designed and adopted exclusively for agricultural, horticultural or livestock raising operations, including farm wagons, wagon trailers or like vehicles used in connection therewith, or for lifting or carrying an implement of husbandry provided that no farm wagon, wagon trailer or like vehicle having a capacity of more than 400 bushel. or a gross weight of more than 36,000 pounds, shall be included hereunder (Ill. Rev. State., 1979, ti. 95 1/2, P1-130).
- (c) The term "special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: ditch digging apparatus, well boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditches, levelling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carryalls and scrapers, power shovels and drag lines, and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached (Ill. Rev. Stat., 1979, ch. 95 1/2, ¶1-191).

- B. Any item of tangible personal property which is titled or registered with an agency of the State of Illinois.

TAX COLLECTOR — A "retailer" maintaining a place of business in the City or a retailer authorized by the Department to collect the tax herein imposed pursuant to § 39-1202 hereof.

USE —

- A. The exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of such property in any form as tangible personal property in the regular course of business to the extent that such property is not first subjected to a use for which it was purchased, and does not include the use of such property by its owner for demonstration purposes.
- B. "Use" does not mean the interim use of tangible personal property by a retailer before he sells such tangible personal property and does not mean the physical incorporation of tangible personal property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, into other tangible personal property:
 - (1) Which is sold in the regular course of business; or
 - (2) Which the person incorporating such ingredient or constituent therein has undertaken at the time of such purchase to cause to be transported:
 - (a) In interstate commerce to destinations outside the State of Illinois; or

(b) To designate outside the City and within the State of Illinois.

- C. Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an internationally produced or by-product of manufacturing. **[Ord. No. 1990-34]**

§ 39-1203. [Ch. 39, Sec. 142] Imposition of tax; collection by sellers.

- A. Imposition of tax. A tax is hereby imposed upon the privilege of using, in the City, any item of tangible personal property which is purchased at retail from a retailer after August 31, 1990, and which is titled or registered to a purchaser residing within the City of Bloomington with an agency of the State of Illinois, at a rate of 3/4% of the selling price of such tangible personal property. **[Ord. No. 2009-25]**
- B. The tax imposed hereunder and the obligation to pay the same is upon the purchaser. The tax imposed hereunder shall be collected from the purchaser by the Tax Collector, as defined in § 38-1201 hereof, and remitted to the Department as provided herein. The Tax Collector shall be liable to the City for the amount of tax he is required to collect. Retailers shall collect the tax from purchasers by adding the tax to the selling price of tangible personal property, when sold for use, in the manner prescribed by the Department. Whenever possible, the tax imposed by this article shall, when collected, be stated as a distinct item separate and apart from the selling price of the tangible personal property. The Department may adopt and promulgate reasonable rules and regulations for the adding of such tax by retailers to selling prices by prescribing bracket systems for the purpose of enabling such retailers to add and collect, as far as practicable, the amount of such tax. The tax hereby imposed and not paid to a retailer pursuant to this section shall be paid to the Department directly by any person purchasing or using such property within the City pursuant to § 39-1207 hereof. If any seller collects an amount (however designated) which purports to constitute taxes measured by receipts which are not subject to such tax, or if any seller, in collecting an amount (however designated) which purports to constitute taxes measured by receipts which are subject to tax under this chapter, collects more from the purchaser than the actual tax liability on the transaction, the purchaser shall have a legal right to claim a refund of such amount from such seller. However, if such amount is not refunded to the purchaser for any reason, the seller is liable to pay such amount to the Department. This paragraph does not apply to an amount collected by the seller on receipts, which are subject to tax under this chapter as long as such collection is made in compliance with the tax collection brackets prescribed by the Department in its rules and regulations.
- C. When the City has entered into an Intergovernmental Agreement with any other municipality or county to collect such other governmental unit's use tax, the Tax Collector shall upon notice from the Department collect such tax for sales at retail within the City.
- D. Affidavit of exemption. Each purchaser at retail claiming an exemption from the tax imposed by this article shall complete at the time of purchase an Affidavit of Exemption on forms provided by the Department. It shall be a violation of this article to supply false or misleading information on such affidavit. The Tax Collector shall provide such affidavit to the purchaser and submit any completed affidavit to the Department along with the appropriate tax return information. **[Ord. No. 1995-60]**

§ 39-1204. [Ch. 39, Sec. 143] Exemptions.

- A. Purchases or uses of tangible personal property under the following circumstances shall not be subject to the tax imposed by this article:
- (1) The proceeds from the sales of motor vehicles of the first division, or any motor vehicle of the second division which is on the van configuration designed for the transportation of not less than seven nor more than 16 passengers, as defined in Section 1-146 of the Illinois Vehicle Code (Ill. Rev. Stat. ch. 95^o, @ 1-146, et seq.) which are used for automobile renting as defined in the Automobile Renting Occupation and Use Tax Act (Ill. Rev. Stat. ch. 120, @ 170);³
 - (2) The proceeds from the sale of personal property by a teacher sponsored organization affiliated with an elementary or secondary school located in Illinois;
 - (3) The proceeds of that portion of the selling price of a passenger car the sale of which is subject to the Replacement Vehicle Tax;
 - (4) The proceeds of the sale of personal property to an Illinois County Fair Association for use in conducting, operating or promoting the County Fair;
 - (5) The proceeds from the sale of personal property by a corporation, society, association, foundation, institution or organization which is organized and operated as a not-for-profit service enterprise for the benefit of persons 65 years of age or older if such personal property was not purchased by the enterprise for the purpose of resale by the enterprise;
 - (6) The proceeds from the sale of personal property for any not-for-profit music or dramatic arts organization which establishes, by such proof as the Department may require by rule, that it has received an exemption under Section 501(c)(3) of the Internal Revenue Code and which is organized and operated for the presentation of live public performances of musical or theatrical works on a regular basis;
 - (7) Sales to any governmental body, or to any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious or educational purposes or any not-for-profit corporation, society, association, foundation, institution or organization which has not compensated officers or employees and which is organized and operated primarily for the recreation of persons 55 years of age or older;
 - (8) The proceeds from sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce or lessors under leases of one year or longer executed or in effect at the time of purchase to interstate carriers for hire for use as rolling stock moving in interstate commerce;
 - (9) The proceeds from sales to owners, lessors or shippers of tangible personal property which is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce; The rolling stock exemption applies to rolling stock used by an

3. Editor's Note: See 35 ILCS 155/1 et seq.; and the municipal tax in 65 ILCS 5/11-8-7 and 5/11-8-8 and Arts. VI and VII of this chapter.

interstate carrier for hire, even just between points in Illinois, if such rolling stock transports, for hire, persons whose journeys or property whose shipments originate or terminate outside Illinois;

- (10) The proceeds from the sale of tangible personal property to a common carrier by rail which receives the physical possession of such property in Illinois, and which transports such property, or shares with another common carrier in the transportation of such property, out of Illinois on a standard uniform bill of lading showing the seller of the property as the shipper or consignor of such property to a destination outside Illinois, for use outside Illinois;
 - (11) However, such tax is not imposed upon the privilege of engaging in any business in interstate commerce or otherwise, which business may not, under the Constitution and statutes of the United States, be made the subject of taxation by the City; nor is such tax imposed upon the sale of a motor vehicle in this City, to a nonresident even though said motor vehicle is delivered to said nonresident in this City, if said motor vehicle is not to be titled to a resident of this City;
 - (12) The proceeds from the sales of motor vehicles of the first division which are leased for a period in excess of 12 months to a lessee who resides outside the corporate limits of the City of Bloomington or the Town of Normal.
- B. Any informal rulings, opinions or letters issued by the Department in response to any inquiry or request for any opinion from any person regarding the coverage and applicability of these exemptions to specific devises shall be published, maintained as a public record, and made available for public inspection and copying. If the informal ruling, opinion or letter contains trade secrets or other confidential information, where possible the Department shall delete such information prior to publication.
- C. If any seller collects an amount (however designated) which purports to reimburse such seller for use tax liability measured by receipts which are not subject to use tax, or if any seller, in collecting an amount (however designated) which purports to reimburse such seller for use tax liability measured by receipts which are subject to tax under this article collects more from the purchaser than the seller's use tax liability on the transaction is, the purchaser shall have a legal right to claim a refund of such amount from such seller. However, if such an amount is not refunded to the purchaser for any reason, the seller is liable to pay such amount to the Department. This paragraph does not apply to an amount collected by the seller as reimbursement of the seller's purchaser tax liability on receipts which are subject to tax under this article as long as such collection is made in compliance with the tax collection brackets prescribed by the Department in its rules and regulations. **[Ord. No. 1991-6]**

§ 39-1205. [Ch. 39, Sec. 144] Certificate of registration.

- A. Every retailer maintaining a place of business in the City shall obtain a certificate of registration as a Tax Collector from the Department no later than 30 days after commencing such business or 30 days after the effective date of this Ordinance, whichever occurs later.
- B. Application for a certificate of registration shall be made to the Department upon forms furnished by it. Each such application shall be signed and verified by the applicant or a

properly accredited agent, which in the case of a corporation shall include the President, any vice President, the secretary or treasurer or some other properly accredited agent and shall state:

- (1) The name of the applicant;
 - (2) His residence address and the address of his principal place of business;
 - (3) The address of the principal place of business from which he engages in the business of selling tangible personal property at retail in the City and the addresses of all other places of business, if any (enumerating such addresses, if any, in a separate list attached to and made a part of the application), from which he engages in the business of selling tangible personal property at retail in the City;
 - (4) The applicant's most recent annual gross receipts from the retail sale of tangible personal property whether or not incidental to the sale of service as reported to the Illinois Department of Revenue;
 - (5) The applicant's estimated receipts from sales of tangible personal property at retail in the City for the current calendar year; and
 - (6) Such other information as the Department may reasonable require.
- C. After notice by the Director, an applicant or holder of a certificate of registration hereunder shall, within 30 days, furnish a bond from a surety company authorized to do business in the State of Illinois, or a bond signed by two personal sureties who have filed with the Department sworn statements disclosing net assets equal to a least three times the amount of the bond to be required of such applicant, or a bond secured by an assignment of a bank account or certificate of deposit, stocks or bonds, conditioned upon the applicant paying the City all monies becoming due under this article. The Department shall fix the amount of such security in each case, taking into consideration the amount of money expected to become due from the applicant under this article. The amount of security required by the Department shall be such as, in its opinion, will protect the City against failure to pay the amount which may become due from the applicant under this article, but the amount of the security required by the Department shall not exceed three times the amount of the applicant's average monthly tax collection and remission liability, or \$50,000 whichever amount is lower. No certificate of registration under this article shall be issued by the Department until the applicant provides the Department with satisfactory security as herein provided for.
- D. Upon receipt of the application for a certificate of registration in proper form, and upon approval by the Department of the security furnished by the applicant, the Department shall issue to such applicant a certificate of registration.
- E. If the person so registered states that he operates other places of business as a retailer in the City, the Department shall furnish him with a sub-certificate of registration for each such place of business. All sub-certificates of registration for each such place of business. All sub-certificates of registration shall bear the same registration number as appearing upon the certificate of registration to which such sub-certificates relate.
- F. Where the same person engages in two or more businesses as a retailer in the City, which

businesses are substantially different in character or engaged in under different trade names or engaged in under other substantially dissimilar circumstances (so that it is more practicable, from an accounting, auditing or bookkeeping standpoint, for such business to be separately registered), the Department may require or permit such a person (subject to the same requirements concerning the furnishing of security as those that are provided for hereinbefore in this section as to each application for a certificate of registration) to apply for and obtain a separate certificate of registration for each such business or for any of such businesses, under a single certificate of registration supplemented by related sub-certificate of registration.

- G. With respect to security other than bonds (upon which the Department may sue in the event of a forfeiture), if the Tax Collector fails to pay, when due, any amount whose payment such security guarantees, the Department shall, after such liability is admitted by the Tax Collector or established by the Department through the issuance of a final assessment that has become final under the law, convert the security which that Tax Collector has furnished into money for the City after first giving the Tax Collector at least 10 days' written notice, by registered or certified mail, to pay the liability or forfeit such notice, by registered or certified mail, to pay the liability or forfeit such security to the Department. If the security consists of stocks or bonds or other securities which are listed on a public exchange, the Department sell such securities through such public exchange. If the security consists of a bank certificate of deposit, the Department shall convert the security into money by demanding and collecting the amount of such bank certificate of deposit from the bank which issued such certificate. If the security consists of a type of stocks or other securities which are not listed on a public exchange, the Department shall sell such security to the highest and best bidder after giving 10 days' notice of the date, time and place of the intended sale by publication in a daily newspaper of general circulation in the City. If the Department realized more than the amount of such liability from the security, plus the expenses incurred by the Department in converting the security into money, the Department shall pay such excess to the Tax Collector who furnished such security and the balance shall be paid into the Corporation Fund of the City.
- H. Every retailer maintaining a place of business in the City and making sales of tangible personal property for use in the City shall, when collecting the tax as provided in § 39-1202 of this article from the purchaser, give the purchaser (if demanded by the purchaser) a receipt therefor in the manner and form prescribed by the Department. Such receipt shall be sufficient to relieve the purchaser from further liability for the tax to which such receipt may refer. Each such retailer shall list with the Department the names and addresses of all his agents operating in the City and the location of any and all of his distribution or sales houses, offices or other places of business in the City. **[Ord. No. 1990-34]**

§ 39-1206. [Ch. 39, Sec. 145] Tax returns; payments; collection fees; deposit of collection.

- A. Except as provided in this section, every retailer required or authorized to collect the tax imposed by this article shall, on or before the last day of each calendar month, file a return for the preceding calendar month with the Department, stating:
- (1) The name and tax identification number of the retailer;

- (2) His residence address and the address of his principal place of business and the address of the principal place of business (if that is a different address) from which he engages in the business of selling tangible personal property in the City;
 - (3) Total amount of receipts received by him during the preceding calendar month from sales of tangible personal property in the City by him during such preceding calendar month;
 - (4) Total amount received by him during the preceding calendar month on charge and time sales of tangible personal property in the City by him prior to the month for which the return is filed;
 - (5) Deductions allowed by law;
 - (6) Gross receipts which were received by him during the preceding calendar month and upon the basis of which the tax upon purchasers from him is imposed;
 - (7) The amount of tax due;
 - (8) The amount of penalty due, if any; and
 - (9) Such other reasonable information as the Department may require.
- B. Notwithstanding any other provision in this article concerning the time within which a retailer may file his return, in the case of any retailer who ceases to engage in a kind of business which make him responsible for filing returns under this article, such retailer shall file a final return under this article with the Department not more than one month after discontinuing such business.
- C. Where the same person has more than one business registered with the Department under separate registrations under this article, such person may not file each return that is due as a single return covering all such registered businesses, but shall file separate returns for each such registered business.
- D. Refunds to purchasers made by the retailer during the preceding return period shall be allowed as a deduction under Subsection E of this section, in case the retailer had theretofore included the receipts from such sale in a return filed by him and has remitted the tax imposed by this article with respect to such receipts.
- E. Where the retailer is a corporation, the return filed on behalf of such corporation shall be signed by the President, vice President, secretary or treasurer or by the properly accredited agent of such corporation or by the chief executive officer or highest ranking manager.
- F. Except as provided in this section, the retailer filing the return under this section shall, at the time of filing such return, pay to the Department the amount of tax imposed by this article less a discount of 1.75% which is allowed to reimburse the seller for the expenses incurred in collecting the tax, keeping records, preparing and filing returns, remitting the tax and supplying data to the Department on request.
- G. All such deposits shall be credited against the Tax Collector's liabilities under this article.

- H. If the Tax Collector's average monthly liability to the Department under this article was \$25,000 or more during the preceding four complete calendar quarters, he shall file a return with the Department each month by the end of the month next following the month during which such liability is incurred and shall make payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred in an amount equal to 1/4 of the Tax Collector's actual liability for the month or an amount set by the Department not to exceed 1/4 of the average monthly liability of the Tax Collector to the Department for the preceding four complete calendar quarters (excluding the month of highest liability and the month of lowest liability in such four quarter period). The amount of such quarter monthly payments shall be credited against the final tax liability on the Tax Collector's return for that month. Once applicable, the requirement of the making of quarter monthly payments to the Department shall continue until such Tax Collector's average monthly liability to the Department during the preceding four complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than \$9,000 or until such Tax Collector's average monthly liability to the Department as computed for each calendar quarter of the four preceding complete calendar quarter period is less than \$10,000. If any such quarter monthly payment is not paid at the time or in the amount required by this section, then the 1.75% Tax Collector's discount shall be reduced by 1.75% of the difference between the minimum amount due as a payment and the amount of such quarter monthly payment actually and timely paid, except insofar as the Tax Collector has previously made payments for that month to the Department in excess of the minimum payments previously due as provided in this section. The Department shall make reasonable rules and regulations to govern the quarter monthly payment amount and quarter monthly payment dates for Tax Collectors who file on other than a calendar monthly basis.
- I. Notwithstanding the foregoing provisions of this section, for the first twelve-month period this tax is in effect, the Department may estimate what the amount of liability from any Tax Collector would have been for prior periods if the tax hereunder had been in effect for such periods and direct the frequency of remittance of the tax and filing of returns in accordance with the provisions of this section on the basis of such estimates.
- J. If any such payment or deposit provided for in this section exceed the Tax Collector's present and probable future liabilities under this article, the Department shall issue to the taxpayer no later than 60 days after the date of payment a credit memorandum, which may be submitted by the Tax Collector to the Department in payment of liability subsequently to be remitted by the Tax Collector to the Department or be assigned by the Tax Collector to a similar Tax Collector under this article, in accordance with reasonable rules and regulations to be prescribed by the Department.
- K. Any deposit previously made by a Tax Collector who is required to make quarter monthly payments under this article shall be applied against the Tax Collector's liability to the Department under this article for the month preceding the first month in which the Tax Collector is required to make such quarter monthly payments. If the deposit exceeds that liability, the Department may issue the Tax Collector a credit memorandum for the excess.
- L. The money received by the Department under the provisions of this article shall be deposited in the General Funds of the City as directed by the City Council.

- M. The Department may require the Tax Collector to prepare and file with the Department on a form prescribed by the Department within 15 days after filing the State income tax return for his fiscal year an annual information return for such fiscal year. Such annual return to the Department shall include a statement of receipts as shown by the retailer's last State income tax return. If the total receipts of the business as reported in the State income tax return do not agree with the receipts reported to the Department for the same period. The retailer shall attach to his annual return a schedule showing a reconciliation of the two amounts and the reasons for the difference. The retailer's annual return to the Department shall also disclose any additional reasonable information which the Department deems would be helpful in determining the accuracy of the quarter-monthly, or monthly returns filed by such seller as provided for in this section. The provisions of this section concerning the filing of an annual information return do not apply to a retailer who is not required to file an income tax return with the United States Government.
- N. If the annual information return by this section is not filed with and as required, the Tax Collector shall be liable for a penalty equal to 1/6 of 1% of the amount due from such Tax Collector under this article during the period to be covered by the annual return for each month or fraction of a month until such return is filed as required, the penalty to be assessed and collected in the same manner as any other penalty provided for this article.
- O. The President, vice President, secretary or treasurer, chief executive officer, proprietor, owner or highest ranking manager shall sign any return required to be filed under this section to certify the accuracy of the information contained therein. Any person who willfully signs any such return containing false or inaccurate information shall be guilty of a violation of this article and punished accordingly. The return forms prescribed by the Department shall include a warning that the person signing such return may be liable for a penalty as provided by this article.
- P. Any person engaged in the business of selling tangible personal property at retail as a concessionaire or other type of seller at art shows, flea markets and similar exhibitions or events may be required to make a daily report of the amount of such sales to the Department and to make a daily payment of the full amount of tax due. The Department shall impose this requirement when it finds that there is a significant risk of loss of revenue to the City at such an exhibition or event. Such a finding shall be based on evidence that a substantial number of concessionaires or other sellers who are not residents of the City will be engaging in the business of selling tangible personal property at retail at the exhibition or event, or other evidence of a significant risk of loss of revenue to the City. The Department shall notify concessionaires and other sellers affected by the imposition of this requirement. In the absence of notification by the Department, the concessionaires and other sellers shall file their returns as otherwise required in this section.
- Q. With respect to motor vehicles and aircraft, every retailer selling this kind of tangible personal property shall file, with the Department, upon a form to be prescribed and supplied by the Department a separate return for each such item of tangible personal property which the retailer sells, except that where, in the same transaction, a retailer of motor vehicles transfers more than one motor vehicle to another motor vehicle retailer for the purpose of resale, such seller for resale may report the transfer of all the motor vehicles involved in that transaction to the Department on the same uniform invoice transaction reporting return form.

- R. Each transaction reporting return in the case of motor vehicles shall be the same document as the Uniform Invoice referred to in Section 5-402 of the Illinois Vehicle Code⁴ and must show the name and address of the seller, the name and address of the purchaser, the amount of the selling price, including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the traded-in tangible personal property, if to the extent to which § 39-1201 of this article allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale; a sufficient identification of the property sold; such other information as is required in Section 5-402 of the Illinois Vehicle Code, and such other information as the Department may reasonably require.
- S. Such transaction reporting return in the case of aircraft must show the name and address of the retailer; the name and address of the purchaser; the amount of the selling price including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the traded-in tangible, personal property, if any, to the extent to which § 39-1203 of this Ordinance allowed an exemption for the traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale, a sufficient identification of the property sold, and such other information as the Department may reasonably require.
- T. Such transaction reporting return shall be filed not later than 30 days after the date of delivery of the item that is being sold, but may be filed by the retailer at any time sooner than that if he chooses to do so. With each such transaction reporting return, the retailer shall remit the proper amount of tax due (or shall submit satisfactory evidence that the sale is not taxable if that is the case), to the Department or its agents, whereupon the Department shall issue) in the purchaser's name, a tax receipt (or a certificate of exemption if the Department is satisfied that the particular sales is tax exempt).
- U. If the purchaser or user who would otherwise pay tax to the retailer wants the transaction reporting return filed and the payment of tax or proof of exemption made to the Department before the retailer is willing to take these actions and such purchaser or user may certify to the fact of such delay by the retailer, and may (upon the Department being, satisfied of the truth of such certification) transmit the information required by the transaction reporting return and the remittance for tax or proof of exemption directly to the Department and obtain his tax receipt or exemption determination, in which event the transaction reporting return and tax remittance (if a tax payment was required) shall be credited by the Department to the proper retailer's account with the Department, but without the 1.75% discount provided for in this section being allowed When the purchaser or user pays the tax directly to the Department, he shall pay the tax in the same amount and in the same form in which it would be remitted if the tax had been remitted to the Department by the retailer.

4. Editor's Note: See 625 ILCS 5/5-402.

- V. Any retailer filing a return under this section shall also include (for the purpose of paying tax thereon) the total tax, if any, imposed upon him hereunder for the purpose or use of tangible personal property purchased by him at retail from a retailer, but as to which the tax imposed by this chapter was not collected from the retailer filing such return, and such retailer shall remit the amount of such tax to the Department when filing such return. **[Ord. No. 1990-34]**

§ 39-1207. [Ch. 39, Sec. 146] Resale number.

- A. If the purchaser is not registered with the Department as a Tax Collector, but claims to be a re-seller of the tangible personal property in such a way that the purchaser's purchase or use is not taxable under this article or under some other tax, collection of which the Department may administer, such purchaser (except in the case of an out-of-town purchaser who will always resell and deliver the property to his customers outside the City) shall apply to the Department for a resale number. Such applicant shall state facts which will show the Department why such applicant is not liable for tax under this article or under some other tax law which the Department may administer and shall furnish such additional information as the Department may reasonably require.
- B. Upon approval of the application, the Department shall assign a resale number to the applicant and shall certify such number to him. The Department may cancel any such number which is obtained through misrepresentation, or which is used to make a purchase or use tax-free when the purchase in fact is not a purchase for resale, or which no longer applies because of the purchaser's having discontinued the making of resales of the property. Except as provided hereinabove in this section, no purchase or use shall be made tax-free on the ground of the retailer's sale being a sale for resale unless the purchaser has an active registration number or resale number from the Department and furnishes that number to the retailer in connection with certifying to the retailer that any purchase or use by such purchaser is non-taxable because of the retailer's sale being a sale for resale. **[Ord. No. 1990-34]**

§ 39-1208. [Ch. 39, Sec. 147] Payment by purchaser-lessor.

- A. When tangible personal property is purchased from a retailer in the City by a purchaser who did not pay the tax imposed by this article to the retailer, and who does not file returns with the Department as a retailer under § 39-1205 of this article, such purchaser (by the last day of the month following the calendar month in which such purchaser makes any payment upon the selling price of such property) shall, except as provided in this section, file a return with the Department and pay the tax upon that portion of the selling price so paid by the purchaser during the preceding calendar month. When tangible personal property is purchased by a lessor, under a lease for one year or longer, executed or in effect at the time of purchase to an interstate carrier for hire, who did not pay the tax imposed by this article to the retailer, such lessor (by the last day of the month following the calendar month in which such property reverts to the use of such lessor) shall file a return with the Department and pay the tax upon the fair market value of such property on the date of such reversion. Such return shall be filed on a form prescribed by the Department and shall contain such information as the Department may reasonably require. Such return and payment from the purchaser shall be submitted to the Department sooner than the last day of the month after the month in which the purchase is made to the extent that they may be necessary in order to secure the title to a motor vehicle or the certificate of registration for an aircraft.

- B. When a purchaser pays a tax imposed by this article directly to the Department, the Department (upon request therefor from such purchaser) shall issue an appropriate receipt to such purchaser showing that he had paid such tax to the Department. Such receipt shall be sufficient to relieve the purchaser from further liability for the tax to which such receipt may refer. A purchaser or user who is liable to pay tax directly to the Department only occasionally and not on a frequently recurring basis, and who is not required to file returns with the Department as a retailer under § 39-1205 of this article, need not register with the Department. However, if such a purchaser or user has a frequently recurring direct tax liability to pay to the Department, such purchaser or user shall be required to register with the Department on forms prescribed by the Department and to obtain and display a certificate of registration from the Department. In that event, all of the provisions of § 39-1205 of this article concerning the filing of regular monthly, quarterly or annual tax returns and all of the provisions of this article concerning the requirements for registrants to post bond or other security with the Department, as the provisions now exist or may hereafter be amended, shall apply to such purchasers or users. **[Ord. No. 1990-34]**

§ 39-1209. [Ch. 39, Sec. 148] Filing; penalties; suit for collections.

- A. In case any person liable for payment of the tax imposed by this article fails to file a return when and as herein required, but hereafter, prior to the Department's issuance of a notice of tax liability under this section, files a return and pays the tax, he shall also pay a penalty of 7.5% of the amount of the tax.
- B. In case any person liable for payment of the tax imposed by this article files the return at the time required by this article but fails to pay the tax, or any part thereof, when due, a penalty of 7.5% of the amount of the tax unpaid when due shall be added thereto.
- C. In case any person liable for payment of the tax imposed by this article fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under this section, files a return but fails to pay the entire tax, a penalty of 7.5% of the full amount of tax shown by such return shall be added thereto.
- D. In case any person liable for payment of the tax imposed by this article fails to file a return, the Department shall determine the amount of tax due from him according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown in such determination. In making any such determination of tax due, it shall be permissible for the Department to show a figure that represents the tax due for any given period of six months instead of showing the amount of tax due for each month separately. Proof of such determination by the Department may be made at any hearing before the Department or in any legal proceeding by a reproduced copy of the Department's record relating thereto in the name of the Department under the certificate of the Director. Such reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the amount of tax due, as shown therein. The Department shall issue to the Tax Collector a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty of 30% thereof.

- E. However, where the failure to file any tax return required under this article on the date prescribed therefor (including any extensions thereof), is due to reasonable cause, the penalties imposed by this article shall not apply.
- F. In case of failure to pay the tax, or any portion thereof, or any penalty provided for in this article, or interest, when due, the Department may bring suit against the Tax Collector or the purchaser or user to recover the amount of such tax or portion thereof, or penalty or interest; or, if the Tax Collector or purchaser or user has died or become incompetent, may file a claim therefore against his estate; provided that no such suit with respect to any tax, or portion thereof, or penalty, or interest shall be instituted more than six years after the date any proceedings in court for review thereof have terminated or the time for the taking thereof has expired without such proceedings being instituted, except with the consent of the person from whom such tax or penalty or interest is due; nor, except with such consent, shall such suit be instituted more than six years after the date any return is filed with the Department in cases where the return constitutes the basis for the suit for unpaid tax or portion thereof, or penalty provided for in this article, or interest: Provided that the time limitation period on the Department's right to bring any such suit shall not run during any period of time in which the order of any court has the effect of enjoining or restraining the Department from bringing such suit. **[Ord. No. 2014-21]**
- G. The collection of tax or penalty or interest by any means provided for herein shall not be a bar to collection by and any other means or to any prosecution under this article.
- H. In addition to any penalty provided for in this article, any amount of tax which is not paid when due shall bear interest at the rate of 2% per month or fraction thereof from the date when such tax becomes past due until such tax is paid or a judgment therefor is obtained by the Department; provided, if an audit of a Tax Collector's books and records is extended with the Tax Collector's consent, at the request of and for the convenience of the Department, beyond the date on which the statute of limitations upon the issuance of a notice of tax liability by the Department otherwise would run, no interest shall accrue during the period of such extension. **[Ord. No. 1990-34]**

§ 39-1210. [Ch. 39, Sec. 149] Records; audits.

- A. Every person engaged in the business of selling tangible personal property at retail in the City shall keep records and books of all such sales, together with invoices, sales records, copies of bills of sale, inventories prepared as of December 31 of each year or otherwise annually as has been the custom in the specific trade and other pertinent papers and documents. Every person who is engaged in the business of selling tangible personal property at retail in the City and who, in connection with such business, also engages in other activities, shall keep such additional records and books of all such activities as will accurately reflect the character and scope of such activities and the amount of receipts realized therefrom.
- B. All books and records and other papers and documents which are required by this article to be kept shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. To support deductions made on the tax return form, or authorized under this article, on account of receipts from isolated or occasional sales, on account of receipts from

sales to government bodies or other exempted types of purchasers, on account of receipts from sales in interstate commerce, and on account of receipts from any other kind of transaction that is not taxable under this article, entries in any books, records or other pertinent papers or documents of the Tax Collector in relation thereto shall be in detail sufficient to show the name and address of the Tax Collector's customer in each such transaction, the character of every such transaction, the date of every such transaction, the amount of receipts realized from every such transaction, and such other information as may be necessary to establish the nontaxable character of such transaction under this article.

- C. It shall be presumed that all sales of tangible personal property are subject to tax under this article until the contrary is established, and the burden of proving that a transaction is not taxable hereunder shall be upon the person who would be required to remit the tax to the Department if such transaction is taxable. In the course of any audit or investigation or hearing by the Department with reference to a given taxpayer, if the Department finds that the taxpayer lacks documentary evidence needed to support the taxpayer's claim to exemption from the tax hereunder, the Department is authorized to notify the taxpayer in writing to produce such evidence, and the taxpayer shall have 60 days subject to the right in the Department to extend, this period on request for good cause shown or on its own motion from the date when such notice is sent to the taxpayer by certified or registered mail (or delivered to the taxpayer if the notice is served personally) in which to obtain and produce such evidence for the Department's inspection, failing which the matter shall be closed, and the transaction shall be conclusively presumed to be taxable hereunder. Books and records and other papers reflecting gross receipts received during any period with respect to which the Department is authorized to issue notices of tax liability as provided by §§ 39-1208 and 39-1209 of this article shall be preserved until the expiration of such period unless the Department, in writing, shall authorize their destruction or disposal prior of such expiration. **[Ord. No. 1990-34]**

§ 39-1211. [Ch. 39, Sec. 150] Process; service. [Ord. No. 1990-34]

Any resident of the City who incurs liability under this article and who subsequently removes from the City or conceals his whereabouts, and any person who incurs tax liability under this article as a purchaser in the City and who removes from the City or conceals his whereabouts, shall be deemed thereby to appoint the City Clerk his agent for the service of process or notice in any or judicial or administrative proceeding under this article. Such process or notice shall be served by the Department to the City Clerk by leaving, at the office of the City Clerk at least 15 days before the return day of such process or notice, a true and certified copy thereof, and by sending to the taxpayer by registered or certified mail, postage prepaid, a like and true certified copy, with an endorsement thereon of the service upon said City Clerk, addressed to such taxpayer or Tax Collector at his last known address. Service of process or notice in the manner provided for in this section, under the circumstances specified in this section, shall be of the same force and validity as if served upon the taxpayer personally within the City. Proof of such service upon the taxpayer through the City Clerk as his agent and by mailing to the last known address of the taxpayer may be made in such judicial or administrative proceeding by the affidavit of the Director, or by his duly authorized representative who made such service, with a copy of the process or notice that was so served attached to such affidavit.

§ 39-1212. [Ch. 39, Sec. 151] Rules and regulations. [Ord. No. 1990-34]

It shall be the duty of the Department to collect and receive the tax imposed by this article. The Department shall keep an accurate and separate account of all such tax payments received by it showing the name and address of the person remitting the tax and the date of each payment. The Director is hereby empowered to adopt and promulgate, and to enforce, rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of the Article, including provisions for re-examination, correction and amendment of all returns. The Director, or any agent or employee designated in writing by him, is hereby authorized to examine the books, papers and records of any Tax Collector during regular business hours, in order to certify the accuracy of any return made, or if no return was made, to ascertain the tax imposed by this article.

§ 39-1213. [Ch. 39, Sec. 152] Error; claim for credit; hearing.

- A. Whenever it appears to a person paying or remitting the tax that an amount of tax, interest or penalty has been paid in error to the Department by him, whether such amount be paid through a mistake of fact or error of law, not later than one year from the date upon which such payment was made, such person may file a claim for credit or refund with the Department on forms provided by said Department for that purpose. **[Ord. No. 1990-34]**
- B. A claim for credit or refund shall be considered to have been filed with the Department on the date upon which it is received by the Department, and receipt of any claim for credit filed under this section shall be acknowledged by the Director or any designated person on his behalf, said receipt to describe the claim in sufficient detail as to identify it, and to state the date upon which the claim was received by the Department. **[Ord. No. 1990-34]**
- C. As soon as practicable after a claim for credit or refund is filed, the Director, or his designate, shall examine the same and determine the amount of credit or refund due, if any, and shall issue a Notice of Tentative Determination of Claim and notify the claimant of such determination. If the claimant disagrees with the determination, he shall file a protest and challenge thereto within the 20 days allowed. The City Manager, or his designate, shall fix the time and place for a hearing thereon, giving notice to the claimant thereof, not less than seven days prior thereto. At any hearing held as herein provided, the Tentative Determination of Claim shall be prima facie correct and the burden shall be upon the claimant to prove that it is incorrect. Upon the conclusion of the hearing, a decision shall be made by the City Manager, or his designate, and notice thereof given to the claimant. In the event no protest or challenge to the Tentative Determination of Claim is filed within the twenty-day period hereinabove set forth, said notice shall thereafter become and operate as a final determination. **[Ord. No. 1990-34]**
- D. The Director may in his discretion issue a letter of credit to a claimant who may be able to use said credit in the foreseeable future, or a refund certificate in lieu of a credit memorandum on application by a person who cannot use said credit, or sell or assign the same. Refund certificates shall be numbered serially as they are issued and shall be paid in the order of their issuance from funds that are appropriated to the Department for that purpose. **[Ord. No. 1990-34]**

§ 39-1214. [Ch. 39, Sec. 153] Deficiency demand; notice; hearing.

- A. If it shall appear to the Director that any person has violated any provision of this article or any rule or regulation promulgated hereunder, or if the amount of any tax payment is incorrect in that it does not include all taxes payable for such calendar quarter or period, or if the Director shall find that the collection of any taxes which have accrued but are not yet due will be jeopardized by delay, and declares said taxes to be immediately due and payable, or if it shall appear to the Director that he has made any final assessment which did not include taxes payable for the periods involved, or if it appears to the Director that any person has, by reason of any act or omission or by operation of law, become liable for the payment of any taxes, interest or penalties not originally incurred by him, the Director may in any of the above events determine and assess the amount of such taxes of deficiency, as the case may be, together with the interest and penalties due and unpaid, and immediately serve notice upon such person of such determination and assessment and make a demand for payment of the tax together with interest and penalties thereon. If the person incurring any such liability has died, such assessment may at the discretion of the Director be made against his personal representative. Such determination and assessment by the director shall be final at the expiration of 20 days from the date of the service of such written notice thereof and demand for payment, unless such person shall have filed with the City Manager a written protest and a petition for a hearing, specifying its objections thereto.

Upon the receipt of such petition within the 20 days allowed, the City Manager, or his designate, shall fix the time and place for a hearing and shall notify the petitioner thereof. The Director may amend his determination and assessment at any time before it becomes final. In the event of such amendment, the person affected shall be given notice thereof and an opportunity to be heard in connection therewith. At any hearing held as herein provided, the determination and the burden shall be upon the protesting person to prove that it is incorrect. Upon the conclusion of such hearing, a decision shall be made by the City Manager, or his designate, either canceling, increasing, modifying or affirming such determination or assessment and notice thereof given to the petitioner. Such notice shall contain a statement by the City Manager, or his designate, of the cost of the certification of the record computed at the rate of \$0.05 per 100 words, which cost shall be charged to the petitioner if the determination or assessment is affirmed. The record shall consist of the notices and demands caused to be served by the Director, the written protest and petition for hearing, the testimony introduced at such hearing, the exhibits produced at such hearing, or certified copies thereof, the decisions of the City Manager, or his designate, and such other documents in the nature of pleading filed in the proceeding. **[Ord. No. 1990-34]**

- B. Whenever any person shall fail to pay any tax as herein provided, the Corporation Counsel shall, upon the request of the Department, bring or cause to be brought an action to enforce the payment of said tax on behalf of the City in any court of competent jurisdiction. **[Ord. No. 1990-34]**
- C. If the City Manager, after notice and hearing, shall find that any person has willfully evaded payment or collection and remittance of the tax imposed by this article, he may suspend or revoke all City licenses held by such tax evader. Said person shall have an opportunity to be heard at such hearing to be held not less than seven days after notice is given to him of the time and place of the hearing to be held, addressed to him at this last known place of business.

Pending notice, hearing and finding, any license issued by the City possessed by said person may be temporarily suspended. Any suspension or revocation of any license shall not release or discharge said person from his civil liability for the payment or collection and remittance of the tax, nor from prosecution for such offense. **[Ord. No. 1990-34]**

§ 39-1215. [Ch. 39, Sec. 154] Investigation; hearing; evidence. [Ord. No. 1990-34]

For the purpose of administering and enforcing the provisions of this article, the City Manager, or any officer or employee of the Department or City designated, in writing, by the City Manager thereof, may hold investigations and hearings concerning any matters covered by this article and may examine any books, papers, records or memoranda bearing upon the sales or purchases of services of any such person, and may require the attendance of such person or any officer or employee of such person, or of any person having knowledge of such business, and may take testimony and require proof for its information. In the conduct of any investigation or hearing, neither the Department nor any officer or employee thereof shall be bound by the technical rules of evidence, and no informality in any proceeding, or in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made or approved or confirmed by the Department. The City Manager, the Director, or any officer or employee of the Department or City authorized by the City Manager or Director thereof, shall have power to administer oaths to such persons. The books, papers, records and memoranda of the Department, or parts thereof, may be proved in any hearing, investigation, or legal proceeding by a reproduced copy thereof under the certificate of the Director. Such reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal proceeding.

§ 39-1216. [Ch. 39, Sec. 155] Testimony; perjury. [Ord. No. 1990-34]

No person shall be excused from testifying or from producing any books, papers, records or memoranda in any investigations or upon any hearing, when ordered to do so by the City Manager or Department or any officer or employee thereof, upon the grounds that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to a criminal penalty, but no person shall be prosecuted or subjected to any criminal penalty for, or on account of, any transaction made or thing concerning which he may testify or produce evidence, documentary or otherwise, before the City Manager or Department or an officer or employee thereof; provided, that such immunity be granted by the appropriate executive branch of government and extend only to a natural person who in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

§ 39-1217. [Ch. 39, Sec. 156] Subpoenas; contempt.

- A. The Department, the City Manager, or any officer or employee of the City or Department designated, in writing, by the Director, shall at its or his own instance, or on the written request of any other party to the proceeding, issue subpoenas duces tecum requiring the production of books, papers, records or memoranda. All subpoenas and subpoenas duces tecum issued under the terms of this article may be served by any person of full age. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the Circuit Court of this State; such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the City or any other employee

thereof, such fees shall be paid in the same manner as other expenses of the Department, and when the witness is subpoenaed at the instance of any other party to any such proceeding, the City may require that the cost of service of the subpoena or subpoena duces tecum and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the City, in its discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena or subpoena duces tecum issued as aforesaid shall be served in the same manner as a subpoena issued out of a court.

- B. Any circuit of this State, or any judge thereof, upon the application of the City Manager or any officer or employee of the City, or upon the application of any other party to the proceeding, may, in its or his discretion, compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the Department or any officer or employee thereof conducting an investigation or holding a hearing authorized by this article 'by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before said court.
- C. The Department or any officer or employee thereof, or any other party in an investigation or hearing before the Department, may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State, and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda. **[Ord. No. 1990-34]**

§ 39-1218. [Ch. 39, Sec. 157] Privacy.

- A. All information received by the Department from returns filed under this article or from any investigation conducted under this article, shall be confidential, except for official purposes, and any person who divulges any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law, shall be punished by a fine not to exceed \$500.
- B. Nothing in this article prevents the Director from publishing or making available to the public the names and addresses of persons filing returns under this article, or reasonable statistics concerning the operation of the tax by grouping the contents of returns for the information in any individual return is not disclosed.
- C. Nothing in this article prevents the Director from divulging to the United States Government or the government of any state, or any officer or agency thereof, for exclusively official purposes, information received by the Department in administering this article providing that such other governmental agency agrees to divulge requested tax information to the Department.
- D. The Department's furnishing of information derived from a Tax Collector's return or from an investigation conducted, under this article to the surety on a Tax Collector's bond that has been furnished to the Department under this article, in order to support the Department's demand for payment from such surety under this bond, is an official purpose within the meaning of this section.
- E. The furnishing upon request of the City Auditor or his authorized agents, for official use, or returns filed and information related thereto under this article is deemed to be an official

purpose within the meaning of this section. **[Ord. No. 1990-34]**

§ 39-1219. [Ch. 39, Sec. 158] Services of notices.

- A. Whenever notice is required by this Ordinance, such notice may be given by United States registered or certified mail, addressed to the person concerned at his last known address, and proof of such mailing shall be sufficient for the purposes of this article. Notice of any hearing provided for by this article shall be so given not less than seven days prior to the day fixed for the hearing. Following the initial contact of a person represented by an attorney, the Department shall not contact the person concerned but shall only contact the attorney representing the person concerned.
- B. All hearings provided for in this article shall be at the City's office or at a place designated by the hearing officer. **[Ord. No. 1990-34]**

§ 39-1220. [Ch. 39, Sec. 159] Corporations; officers. [Ord. No. 1990-34]

Any officer or employee of any corporation subject to the provisions of this article who has the control, supervision or responsibility of filing returns and collecting and making payment of the amount of tax herein imposed and who willfully fails to file such return or to collect and make such payment to the Department shall be personally liable for such amounts, including interest and penalties thereon, in the event that after proper proceedings for the collection of such amounts, as provided in this article, such corporation is unable to pay such amounts to the Department; and the personal liability of such officer or employee as provided herein shall survive the dissolution of the Corporation.

§ 39-1221. [Ch. 39, Sec. 160] Violations; penalties. [Ord. No. 1990-34]

Any person found guilty of violating, disobeying, omitting, neglecting, or refusing to comply with, or resisting or opposing the enforcement of any of the provisions of this article except when otherwise specifically provided, upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$10,000 for the first offense and not less than \$1,000 no more than \$100,000 or five times the amount of tax imposed, if any, whichever is higher, for the second and each subsequent offense in any one 180-day period, provided, however, that all actions seeking the imposition of fines only shall be filed as quasi criminal actions subject to the provisions of the Code of Civil Procedure (Ill. Rev. Stat., Ch. 110, P.1-101, et seq.). Repeated offenses in excess of three within any 180-day period may also be punishable as a misdemeanor by incarceration in the County Jail for a term not to exceed six months under the procedures set forth in Section 1-2-1.1 of the Illinois Municipal Code (Ill. Rev. Stat., Ch. 24, P.1-2-1.1) and under the provisions of the Illinois Code of Criminal Procedures (Ill. Rev. Stat., Ch. 38, P100-1 et seq.) in a separate proceeding. A separate and distinct offense shall be regarded as committed each day upon which said person shall continue any such violation, or permit any such violation to exist after notification thereof.

§ 39-1222. [Ch. 39, Sec. 161] Legislative interest; severability. [Ord. No. 1990-34]

If any provision of this article or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity does not affect other provisions or

applications of this article which can be given effect without the invalid application or provision, and to this end each such invalid provision or invalid application of this article is severable, unless otherwise provided by this article. In particular, but without limitation, each provision creating an exception to or an exemption or exclusion from the imposition of the tax is severable. It is hereby declared to be the legislative intent of the City Council that this article would have been adopted had any such unconstitutional or otherwise invalid provision or application not been included.