

28
123

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR
MULTNOMAH COUNTY, OREGON
ORDINANCE NO. 58

An Ordinance relating to the imposition of a utility excise tax; providing for administration and collection; dedicating the revenues therefrom to a special revenue fund for library purposes; and other matters pertaining thereto.

Multnomah County ordains as follows:

Section 1. Section Title and Pleading.

This ordinance shall be known as the Multnomah County Utility Excise Tax Ordinance, may be so pleaded, and shall be referred to herein as "this ordinance".

Section 2. Definitions.

A. For the purposes of this ordinance, unless the context requires otherwise, the following terms are defined as follows:

1. Board: Board of County Commissioners of Multnomah County, Oregon.
2. Director: Director of the Department of Administrative Services of Multnomah County, Oregon, or his authorized representative.
3. Gross Revenue: All revenues derived from within the boundaries of Multnomah County, after adjustment for net write-off of uncollectable accounts, received from the sale of electrical energy, natural gas and communications or associated services through telephone or telegraph facilities, and from the use, rental or

lease of the operating facilities providing utility services.

- a. Gross revenue of a telephone business includes all local service revenues, as defined in the uniform system of accounts adopted by the Federal Communications Commission applicable to that business derived from within Multnomah County.
- b. Persons providing utility services and upon whom a tax is imposed by this ordinance may exclude the following from gross revenue:
 - (1) proceeds from the sale of bonds, mortgages, or other evidences of indebtedness, securities or stocks;
 - (2) proceeds from sales at wholesale from one such person to another when the purchaser is not the ultimate consumer;
 - (3) proceeds received by such person who provides transmission facilities to another such person;
 - (4) revenues paid directly by the United States of America or its agencies;
 - (5) revenues paid directly by municipalities;
 - (6) commissions paid for public telephones;
 - (7) revenues from the sale of electrical energy not consumed within Multnomah County, and
 - (8) revenues from the lease of residential spaced heaters.

4. Municipality: Any city, political subdivision or municipal corporation organized and existing pursuant to the laws of the State of Oregon.
5. Person: Individuals, joint ventures, partnerships, corporations, their officers, employees, agents, assignees, trustees or receivers, or any other legal entity whatsoever.
6. Utility Service: Electrical energy, natural gas, communications or other services through or associated with telephone or telegraph, provided by all persons except municipalities.

Section 3. Interpretation.

For the purpose of this ordinance, words in the singular number include the plural, the word "shall" is mandatory and not directory, and the term "this ordinance" shall be deemed to include all amendments hereafter made.

Section 4. Policy.

The Board has determined that it is necessary to raise additional revenues to provide those county services required for the health, safety and welfare of the people of Multnomah County; that the purpose for the imposition of taxes under this ordinance is to raise funds for the payment of those services within Multnomah County and, in accordance with this determination and purpose, all tax proceeds collected pursuant to this ordinance shall be placed in and become a part of the general fund of Multnomah County for appropriation

to those services required in Multnomah County.

Section 5. Rules and Regulations.

The Board may promulgate rules and regulations necessary for the administration and enforcement of this ordinance.

Section 6. Administration.

- A. The Director, subject to the supervision of the Board, shall be responsible for the administration and enforcement of this ordinance.
- B. In order to carry out the duties imposed by this ordinance, the Director shall have the authority to do the following acts, which enumeration shall not be deemed to be exclusive, namely: administer oaths; audit records; certify to all official acts; subpoena and require attendance of witnesses at Board meetings or hearings to determine compliance with this ordinance; require the production of relevant documents; swear witnesses; and take testimony of any person by deposition.

Section 7. Contracts.

The Board may contract with other municipalities or governmental agencies for the administration of any portion of this ordinance.

Section 8. Imposition of Tax and Dedication of Revenues.

There is hereby imposed an excise tax upon every person providing a utility service within the boundaries of Multnomah County at the rate of one percent (1%) of its gross revenue commencing October 1, 1972. Revenues derived from the imposition of this tax shall be placed in a special revenue fund and expended solely for library purposes.

Section 9. Returns and Remittance.

- A. Each person providing a utility service shall, on or before

the twentieth day of each month of each year, file a verified return with the Director on forms supplied by him or in a manner prescribed by him, stating its gross revenue and other information required to determine the tax to be paid, for the preceding one month period.

- B. Such person shall, at the time of filing the verified return, remit to the Director the amount of the tax computed according to this ordinance based upon the gross revenue shown on the return.
- C. The first return shall be filed and the tax paid thereon on or before November 20, 1972, for the period October 1, 1972 to October 31, 1972.
 - 1. If such person required to file the first return and pay the tax herein imposed through diligent and good faith effort to comply herewith is unable to submit a return verified as to its accuracy, or other required information, it shall submit a return as accurate as possible showing, where applicable, amounts based on estimates, and shall pay the tax accordingly. Such return may be amended and additional tax paid thereon, without interest or penalty, or refund made thereon at the next required return filing date; thereafter, claims for refunds and demand for deficiency payments shall be made as provided in Section 10.

Section 10. Return Review, Deficiencies and Refunds.

- A. The Director shall examine all returns filed and shall verify the accuracy thereof and the correct amount of tax imposed by this ordinance. If the tax found to be imposed is greater than the amount remitted, the Director shall mail notice of deficiency to the person filing the return. The amount of deficiency shall be paid, unless hearing is requested, within 30 days from date of notice. If the tax found to be imposed is less than the amount remitted because of erroneous computation or has been paid more than once, the Director shall give notice and make refund of such over-payment to the person who made payment.
- B. Persons having filed a return may submit a claim for refund by giving written notice to the Director. Such claims for refund must be submitted within 60 days from the date of filing the return upon which the refund claim is based or is waived thereafter. No interest shall be paid on any such refund.
1. The Director may make such refund in response to the claim, deny the claim, or allow only part of the amount claimed for refund. The Director shall give notice of his determination.
 2. Claims for refund are not assignable.

Section 11. Delinquent Taxes and Interest.

All taxes required to be paid pursuant to this ordinance which are not remitted on the dates specified are delinquent, except as pro-

vided in Section 9, C, 1. Every person who fails to pay the tax in full when they are due and payable shall, in addition to such tax, pay interest in the additional amount of 1% of the tax due per month or fraction thereof that they remain unpaid. Such interest imposed shall become a part of the tax required to be remitted.

Section 12. Appeals and Hearings.

- A. Persons receiving notice or demand from the Director may request a hearing by filing a written request for hearing with the Director within thirty days of receipt of the notice and in which shall be set forth reasons for the hearing and the issues to be heard.
1. The Director shall, upon receipt of request for hearing, promptly notify the Board and the Board shall set a time and place for hearing, not more than sixty days from the date of receipt of request for hearing.
 2. The Board shall give notice to the person requesting hearing as to the time and place for such hearing not less than thirty days prior thereto.
 3. The person requesting the hearing and the Director may make argument, submit testimony and written documentation and submit briefs on matters pertinent to the issue to be determined.
 4. All hearings shall be recorded in a manner which will allow for a written transcription to be made thereof and all materials submitted by the person requesting hearing and the Director shall be retained by the Board for a period of at least two years.

5. The Board shall issue its order determining the question within thirty days from the date of the hearing or any continuance thereof not to exceed thirty days, and the Director shall mail a copy of the order to the person requesting the hearing.
- B. The Director shall, at the time of mailing the order of the Board, make demand for payment or make payment of refund, in accordance with the order of the Board. Payment in response to demand, together with interest to date of payment and penalties, if applicable, shall be made within 60 days from date of demand.

Section 13. Fraudulent Returns.

If a false or fraudulent return is filed with intent to evade or reduce the tax imposed by this ordinance resulting in payment of a tax less than that amount imposed by this ordinance, or is filed with intentional disregard of this ordinance but without intent to defraud, there shall be added an amount equal to 15% of the total amount of the deficiency and the amount of interest as imposed by Section 11 of this ordinance from the date payment was due, which interest and penalty shall become due and payable within ten days after notice and demand by the Director. Such penalty and interest together with the tax due may be assessed and proceedings for the collection may be commenced at any time irrespective of Section 18 of this ordinance.

Section 14. Records.

Each person shall keep and preserve suitable records and such books and accounts as may be necessary to determine the amount of gross

revenues upon which this tax is imposed for a period of three years from the date required for filing the return. All such records, books and accounts shall be open for examination at any reasonable time by the Director. If such books, records or accounts are maintained outside Multnomah County, then, upon demand by the Director, such books, records and accounts shall be made available at a suitable place within Multnomah County as designated by the Director for his examination, inspection and audit.

Section 15. Notices.

All notices, claims and demands shall be in writing and, if mailed, then postpaid by certified or registered mail, return receipt requested, to the addressee's last known address, and shall be deemed to have been given at date of mailing.

Section 16. Tax as Debt.

The tax imposed by this ordinance and any interest and penalties thereon shall be a debt due and owing to Multnomah County and may be collected by civil action in the name of Multnomah County.

Section 17. Conformance with Law.

This ordinance shall not be a substitute for or eliminate the necessity of conforming with any and all laws of the State of Oregon, ordinances of Multnomah County, or other political subdivisions having jurisdiction.

Section 18. Statute of Limitations.

The taxes for any period, together with interest thereof, imposed by this ordinance shall not be assessed or suit for collection be instituted, or any other action to collect the same, be commenced

more than three years after the date on which the tax was or is payable, except as provided in Section 13.

Section 19. Penalties.

- A. It shall be a violation of this ordinance and unlawful for any person to refuse to make any return required by this ordinance, to make any false or fraudulent return, or to fail or refuse to make payment to the Director of any taxes due under this ordinance, or in any manner to evade the collection and payment of the tax, or any part thereof, imposed by this ordinance, or to aid or abet other persons in any attempt to evade the collection and payment of the tax imposed by this ordinance. Such a violation shall be deemed a County offense and shall be punishable, upon conviction, by a fine of not more than five hundred dollars (\$500), or imprisonment in the County jail for not more than six months, or by both such fine and imprisonment.
- B. Violation of this ordinance or rules or regulations enacted pursuant hereto by any officer, director, partner, or other individual having direction or control over any such person violating this ordinance shall subject him to the fine and imprisonment provided by this section.
- C. Each and every twenty-four (24) hours continuous of any violation shall constitute a distinct and separate offense.

Section 20. Separability.

- A. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction,

such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

B. Nothing in this ordinance shall be construed as imposing a tax on any person when imposition of such tax would be in violation of the Constitution of the United States or the State of Oregon.

Section 21. Review.

Review of any action of the Board taken pursuant to this ordinance, or the rules and regulations adopted pursuant thereto, shall be taken solely and exclusively by Writ of Review in the manner set forth in ORS 34.010 through 34.100, provided, however, that any aggrieved person may demand such relief by Writ of Review.

Section 2. Adoption.

This ordinance, being necessary for the health, safety and welfare of the people of Multnomah County, shall take effect on the thirtieth day after its adoption, pursuant to Section 5.50 of Charter of Multnomah County.

Adopted this 27th day of July, 1972, being the date of its 2nd reading before the Board of County Commissioners of Multnomah County, Oregon.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By M. James Harrison
Chairman