

2003-0267

INTRODUCED BY: ALBERT D. LAQUE, PARISH PRESIDENT

ORDINANCE NO. 03-8-5

An ordinance to amend Ordinance No. 66-3-486 to incorporate the Uniform Local Sales Tax Code and re-adopt provisions for penalties, interest and attorney fees into the one-half percent sales tax ordinance.

WHEREAS, on May 7, 1979, the Police Jury of the Parish of St. Charles, now the Parish Council of the Parish of St. Charles, adopted an ordinance, under the preamble:

"ORDINANCE NO. 66-3-486"

"An ordinance levying within the Parish of St. Charles, State of Louisiana, a tax of one-half of one percent (1/2%) upon the sale at retail, the use, the lease or rental, the consumption and storage for use or consumption of tangible personal property and on sales of services in said Parish, all as defined herein in accordance with R.S. 47:301 through 47:317; defining the terms "tangible personal property", "dealers", "sale", "retail sales", "lease or rental", "storage", "use", "sales of services", and other terms used herein, levying and providing for the assessment, collection, payment and dedication of such tax and the purpose for which the proceeds of said tax may be expended; providing for an adequate remedy at law; defining violations of the provisions of this ordinance and prescribing penalties therefor; providing for rules and regulations for the enforcement of the provisions of this ordinance and the collection of the tax levied thereby; providing that any part of this ordinance which may be held invalid or unconstitutional shall not affect or impair any other provisions thereof; and repealing all resolutions and ordinances or parts thereof as may conflict herewith."

WHEREAS, under the provisions of Article VI, Section 29 of the Constitution of the State of Louisiana of 1974, and other present and prior constitutional and statutory authority, the Police Jury, and subsequently the Parish Council, of the Parish of St. Charles, State of Louisiana, is and has been authorized to levy and collect, and has levied and collected, within the Parish a tax of one-half of one percent (1/2%) upon the sale at retail, the use, the lease or rental, the consumption, and the storage for use or consumption of tangible personal property and upon the sale of services as defined by law; and,

WHEREAS, pursuant to the requirements of the *Constitution of the State of Louisiana*, and other statutory authority supplemental thereto, a special election was held in the Parish on April 7, 1979, to authorize the levy and collection of such tax, and the proposition set forth in the original ordinance was submitted at said election and duly approved by a majority of the qualified electors voting in said election; and,

WHEREAS, in compliance with the aforesaid constitutional and statutory authority and the said special election, a sales tax ordinance was adopted on the 7th day of May, 1979, to levy said tax and provide for the collection and distribution of the proceeds thereof and other matters in connection therewith, WHICH SAID ORDINANCE was amended on June 7, 1982; and,

WHEREAS, the recently adopted UNIFORM LOCAL SALES TAX CODE authorizes the adoption of ordinances to incorporate the UNIFORM LOCAL SALES TAX CODE by reference, and to provide for the adoption of amounts of penalties, interest and attorney fees as described in said code; and,

WHEREAS, it is desirable to adopt the other provisions set forth herein, reserving all rights granted to local subdivisions by the Louisiana Constitution and the Louisiana Revised Statutes, and in order to achieve other lawful purposes.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS, that Ordinance No. 66-3-486 adopted on May 7, 1979 is hereby amended and re-enacted as follows:

SECTION I. PREAMBLE — Pursuant to the authority of a special election held in the Parish of St. Charles an ordinance was adopted on May 7, 1979, and amended on June 7, 1982. The said ordinance is hereby continued within the Parish as reenacted and further amended herein. The purposes stated in the proposition attached to the original ordinance are reaffirmed, and a sales and use tax of one-half of one percent (1/2%) upon the sale at retail, the use, the lease or rental, the consumption and storage for use or consumption of tangible personal property and on sales of services in the Parish is continued, all in the manner and to the fullest extent permitted under the provisions and terms of those portions of Title 47 and Title 33 of the Louisiana Revised Statutes of 1950, as amended, the Constitution of the State of Louisiana of 1974, and other constitutional and statutory authority applicable to sales and use taxes levied by political subdivisions, and as specifically authorized by the UNIFORM LOCAL SALES TAX CODE, which is incorporated by reference. It is the intention of this Amended and Reenacted Ordinance (restating the intent of the Original Ordinance) to include within the tax base every item permitted by the Constitution and Statutes of the State of Louisiana with no exemptions other than those mandated by the Constitution and Statutes of the State of Louisiana. It is further the intent (restating the intent of the original ordinance and all amendments) that all penalties, interest and attorney fees and all collections procedures available to the State of Louisiana shall be available to the Parish Council of the Parish of St. Charles, Louisiana.

SECTION II. RATE OF TAX — The one-half of one percent (1/2%) sales and use tax shall be collected on the basis of the applicable integrated bracket schedule prescribed by the Collector of Revenue, State of Louisiana, pursuant to Section 304 of Title 47 of the Louisiana Revised Statutes of 1950 (LA R.S. 47:304). The dealers shall remit the proportionate part of the sales taxes collected in accordance with said integrated bracket schedule, and comply with the UNIFORM LOCAL SALES TAX CODE, particularly LA R.S. 47:337.29.

SECTION III. EFFECTIVE DATE — The effective date of the tax shall remain unchanged.

SECTION IV. TERM OF TAX — The term of the tax shall remain unchanged.

SECTION V. PURPOSE FOR WHICH THE PROCEEDS OF THE TAX SHALL BE USED — The proceeds of the tax shall continue to be used as previously authorized.

SECTION VI. VENDORS COMPENSATION — Vendors compensation shall continue as previously authorized.

SECTION VII. OPTIONAL EXCLUSIONS — There are no optional exemptions or exclusions. There continues to be included within the tax base every transaction, rent or service with no exemptions or exclusions except those mandated upon political subdivisions by the Constitution or Statutes of the State of Louisiana.

SECTION VIII. PENALTIES, INTEREST AND ATTORNEY FEES — Penalties, interest and attorney fees shall be as follows:

SECTION VIII (1). Interest on unpaid taxes — When any taxpayer fails to pay a tax, or any portion thereof, on or before the day when it is required to be paid under the provisions of the UNIFORM LOCAL SALES TAX CODE, or this ordinance, interest at the rate of one and one-quarter percent per month shall be added to the amount of tax due and such interest shall be computed from the due date until the tax is paid. The interest provided for herein shall be an obligation to be collected and accounted for in the same manner as if it were a part of the tax due and can be enforced in a separate action or in the same action for collection of the tax and shall not be waived or remitted.

SECTION VIII (2). Penalty for failure to make timely return —

A. When any taxpayer fails to make and file any return required to be made under the provisions of the UNIFORM LOCAL SALES TAX CODE or this ordinance, before the time that the return becomes delinquent or when any taxpayer fails to timely remit to the collector the total amount of tax that is due on a return which he has filed, there shall be imposed, in addition to any other penalties provided, a specific penalty to be added to the tax.

(1) In the case of a failure to file a tax return or of the filing of a return after the return becomes delinquent, the specific penalty shall be five percent of the total tax due on the return if the failure or delinquency is for not more than thirty days, with an additional five percent for each additional thirty days or fraction thereof during which the failure or delinquency continues, not to exceed twenty-five percent of the tax in the aggregate.

(2) Except as provided in Paragraph (3), in the case of the filing of a return without remittance of the full amount due, the specific penalty shall be five percent of the un-remitted tax if the failure to remit continues for not more than thirty days, with an additional five percent for each additional thirty days or fraction during which the failure to remit continues. The penalty imposed by this Paragraph for each thirty-day period shall be calculated only on the additional amount due from the taxpayer after the deduction of payments timely submitted, or submitted during any preceding thirty-day period. The penalty provided by this Paragraph shall not be imposed for any thirty-day period for which the penalty provided by Paragraph (1) is due. The penalties provided for by Paragraphs (1) and (2) of this Section shall not be imposed for more than five thirty-day periods in total for each tax return required to be filed.

B. The penalties provided for by this Section shall be an obligation to be collected and accounted for in the same manner as if it were part of the tax due, and can be enforced either in a separate action or in the same action for the collection of the tax.

C.

(1) Notwithstanding any other provision of the law to the contrary, any exemption granted to a taxpayer under a tax incentive contract except a contract granted pursuant to Article VII, Section 21(F) of the Constitution of Louisiana shall be suspended if at any time during the contract there is a final, non-appealable judgment against the taxpayer for non-payment of taxes.

(2) The collector shall send a notice by certified mail to the taxpayer at the address given in the last report filed by the taxpayer, or to any address obtainable from any private entity which will provide such address free of charge or from any federal, state, or local government entity, including but not limited to the United States Postal Service or from United States Postal Service certified software informing him of the following:

(a) That there is a final, non-appealable judgment against him for non-payment of taxes.

(b) That he has thirty days from the date of the notice to pay the tax, penalty, and interest due or the exemptions granted under the tax incentive contract will be suspended.

(c) That the suspension will continue until the tax, penalty, and interest due under the final, non-appealable judgment are paid in full.

(3) The provisions of this Section shall not apply if the taxpayer has paid the amount due under protest in accordance with R.S. 47:337.63 or has entered into an installment agreement with the department for the payment of the amount due and is in compliance with the terms of the agreement.

(4) For the purposes of this Subsection, during the period of suspension, the exemptions granted under the tax incentive contract are inoperable and of no effect.

SECTION VIII (3). Penalty for false or fraudulent return — When the taxpayer files a return that is false or fraudulent or grossly incorrect and the circumstances indicate that the taxpayer had intent to defraud the taxing authority of any tax due under the local ordinance or the UNIFORM LOCAL SALES TAX CODE, there shall be imposed, in addition to any other penalties provided, a specific penalty of fifty per centum (50%) of the tax found to be due. This specific penalty shall be an obligation to be collected and accounted for in the same manner as if it were a part of the tax due, and can be enforced either in a separate action or in the same action for the collection of the tax.

SECTION VIII (4). Negligence penalty — If any taxpayer fails to make any return required by the UNIFORM LOCAL SALES TAX CODE or this ordinance, or makes an incorrect return, and the circumstances indicate willful negligence or intentional disregard of rules and regulations, but no intent to defraud, there shall be imposed, in addition to any other penalties provided, a specific penalty of 5% of the tax or deficiency found to be due, or ten dollars (\$10.00) whichever is the greater. This specific penalty shall be an obligation to be collected and accounted for in the same manner as if it were a part of the tax due, and can be enforced either in a separate action or in the same action for the collection of the tax.

SECTION VIII (5). Insufficient fund checks in payment of taxes; penalties

— In the event a check used to make payment of a tax, interest, penalty, or other charge due is returned unpaid by the bank on which it is drawn for any reason related to the account on which the check is written, such shall constitute a failure to pay the tax, interest, penalty or fee due and a specific penalty shall be imposed on the taxpayer in addition to all other penalties provided by law; provided however, upon sufficient proof being furnished to the collector by the bank that the bank was at fault for the nonpayment of the check, the collector shall waive the penalty provided for in this Section. This specific penalty shall be an obligation to be collected and accounted for in the same manner as if it were part of the tax, interest, penalty or fee in payment of which the check was given and may be enforced in a separate action or in any action instituted for the collection of the tax, interest, penalty or fee. The specific penalty imposed under this Section shall be an amount equal to the greater of one percent of the check or twenty dollars. After receipt of three insufficient fund checks during any two-year period, the secretary of the Department of Revenue may require payment of the taxes, interest, penalties or fees due by the taxpayer to be paid by certified check, money order, or cash.

SECTION VIII (6). Power to employ counsel — The collector is authorized to employ private counsel to assist in the collection of any taxes, penalties or interest due under the UNIFORM LOCAL SALES TAX CODE or this ordinance, or to represent him in any proceeding pertaining to taxes on sales transactions, use, sales of services and/or rent of movables. If any taxes, penalties or interest due under the UNIFORM LOCAL SALES TAX CODE or this ordinance are referred to an attorney at law for collection, an additional charge for attorney fees, in the amount of ten per centum (10%) of the taxes, penalties and interest due, shall be paid by the tax debtor.

SECTION IX. AUTHORITY FOR THE TAX — The tax levied hereby shall be assessed, imposed, collected, paid and enforced under the authority granted to local governmental subdivisions under Louisiana Constitution of 1974, Article 6, Section 29 in the manner provided in the valid provisions of the UNIFORM LOCAL SALES TAX CODE, this ordinance, and other applicable provisions of the Louisiana Revised Statutes applicable to the assessment, imposition, collection, payment and enforcement of sales, use and related taxes by all political subdivisions. To the maximum extent possible, the said provisions applicable to the assessment, imposition, collection, payment and enforcement of sales and use taxes by local government subdivisions, school boards and political subdivisions, shall apply to the assessment, collection, payment and enforcement of the tax herein levied as though all such provisions were set forth in full. The person or authority designated to collect this tax shall have the authority granted to the "collector" or the "secretary" as used in Title 33 or Title 47 of the Louisiana Revised Statutes. HOWEVER, the provisions of the UNIFORM LOCAL SALES TAX CODE being incomplete as to penalties, interest and attorney fees, the provisions of this ordinance shall govern exclusively as to such matters.

SECTION X. DUTIES AND AUTHORITY OF COLLECTOR — Any Collector delegated by the Parish Council of the Parish of St. Charles, or any delegated collector under any collection agreement or ordinance is hereby authorized, empowered and directed to carry into effect the provisions of this ordinance, to appoint deputies, assistants or agents to assist in the performance of all delegated duties, and to make and enforce such rules and regulations as may be deemed necessary.

SECTION XI. SPECIAL PROVISIONS — If any one or more of the provisions of this ordinance shall for any reason be held to be illegal or invalid, such illegality of invalidity shall not affect any other provisions of this ordinance, but this ordinance shall be construed and enforced as if such illegal or invalid provisions had not been contained herein. The Ordinance hereby amended shall remain effective to the extent that any conflicting provision of this ordinance is held invalid. Any constitutional or statutory provision enacted after the date of this ordinance which validates or makes legal any provision of this ordinance which would not otherwise be valid or legal, shall be deemed to apply to this ordinance.

SECTION XII. PROSPECTIVE OPERATION — This ordinance is intended to operate prospectively only, and only to provide for penalties, interest and attorney fees as authorized by the UNIFORM LOCAL SALES TAX CODE. Should any requirements of the UNIFORM LOCAL SALES TAX CODE be held not to have superceded the provisions of this ordinance in effect prior to the adoption of said UNIFORM LOCAL SALES TAX CODE, then the prior ordinances shall remain in effect. All claims for taxes

arising under the ordinance prior to this amendment, shall continue and be enforced under the law in effect prior to July 1, 2003.

SECTION XIII. RESERVATION OF RIGHTS —

A. The St. Charles Parish Council expressly reserves all rights granted to it under Louisiana Constitution of 1974, Article 6, and reference herein to the provisions of the UNIFORM LOCAL SALES TAX CODE does not constitute a waiver of its rights to contest the validity of any provision of the UNIFORM LOCAL SALES TAX CODE which violates the Louisiana Constitution of 1974.

B. The St. Charles Parish Council further expressly reserves all rights granted to it under LA R.S. 33:2841, and its Constitutional right to collect penalties, interest and attorney fees equal to those collected by the State of Louisiana. This ordinance shall be published in one issue of the official journal of the Parish Council as soon as possible and shall be in full force and effect immediately upon its adoption, being an ordinance affecting the public peace, health and safety. A certified copy of this Ordinance shall be recorded as soon as possible in the Mortgage Records of the Parish of St. Charles, State of Louisiana.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: RAMCHANDRAN, FAUCHEUX, HILAIRE, FABRE, ABADIE, AUTHEMENT,
BLACK, MARINO
NAYS: NONE
ABSENT: MINNICH

And the ordinance was declared adopted this 18th day of August, 2003, to become effective five (5) days after publication in the Official Journal.

CHAIRMAN: Lance J. Mamm
SECRETARY: Pauline P. Gaudin
DLVD/PARISH PRESIDENT: August 19, 2003
APPROVED: [Signature] DISAPPROVED:
PARISH PRESIDENT: Albert D. Leque
RETD/SECRETARY: 8/19/03
AT: 3:30 RECD BY: BGG/NS

RECORDED IN THE ST. CHARLES PARISH
CLERK OF COURT OFFICE
ON August 22, 2003
AS ENTRY NO. 284612
IN MORTGAGE/CONVEYANCE BOOK
NO. 958 FOLIO 711