

ORDINANCE NO. 13-2004

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF LAKE PARK, CHAPTER 28, ARTICLE III, PERTAINING TO PUBLIC SERVICE TAX, AMENDING SECTION 28-18 ENTITLED "LEVIED; RATE;" AMENDING SECTION 28-19 ENTITLED "COLLECTION BY SELLER REQUIRED;" AMENDING SECTION 28-20 ENTITLED "COMPUTATION;" REPEALING SECTION 28-21 ENTITLED "RECORDS OF SELLERS;" AMENDING SECTION 28-22 ENTITLED DISPOSITION OF REVENUES;" AMENDING SECTION 28-23 ENTITLED "EXEMPTIONS;" REPEALING SECTION 28-24 ENTITLED "SELLER COMPENSATION;" CREATING NEW SECTION 28-24 ENTITLED "DEFINITIONS;" PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission has adopted general provisions pertaining to public service tax, which have been codified at Chapter 28 of the Code of Ordinances; and

WHEREAS, the Town's outside consultant, Municipal Code Corporation, and Town staff have conducted a study and analysis of the codified provisions of the Town Code of Ordinances in order to determine which provisions of the Town's Code require amendment, repeal, modification, or revision; and

WHEREAS, Municipal Code Corporation and Town staff have recommended to the Town Commission that Sections 28-18, 28-19, 28-20, 28-21, 28-22, 28-23 and 28-24 of Chapter

28 of the Town's Code be amended in order to more accurately set forth the limitations and requirements for the levy of a public service tax; and

WHEREAS, the Town Commission has reviewed the recommendations of Municipal Code Corporation and Town staff, and has determined that amending Sections 28-18, 28-19, 28-20, 28-21, 28-22, 28-23 and 28-24 of Chapter 28 of the Town's Code of Ordinances is necessary to further the public's health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The whereas clauses are incorporated herein as true and correct and as the findings of the Town Commission.

Section 2. Chapter 28, Article III, of the Code of Ordinances of the Town of Lake Park, Florida is hereby amended as follows:

Sec. 28-18. Levied; rate.

Section 28-18 is repealed in its entirety and replaced with the following text:

(1) Public service tax. There is levied by the town on every purchase in the town of electricity, metered or bottled gas (natural, liquefied petroleum gas, manufactured), and water service, a tax of ten percent (10%) of the payments received by the seller of the item taxed by this section from the purchaser for the purchase of such service. The tax levied by this subsection shall be collected by the seller of the item subject to this tax from the purchaser at the time of payment for such service.

(2) Public service tax on fuel oil . There is hereby further levied by the town a tax on every purchase in the town of fuel oil at the rate of \$0.04 per gallon. This tax shall in every case be paid by the purchaser of fuel oil to the seller of fuel oil. The tax levied in this section on fuel oil shall be collected by the seller of fuel oil from the purchaser at the time of payment for such service. The term "fuel oil" as used in this subsection shall include fuel oil grade nos. 1, 2, 3, 4, 5, and 6, kerosene, and coal oil.

(3) The tax imposed by paragraph (1) shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. The term "fuel adjustment charge" means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

Sec. 28-19. Collection by seller required.

Section 28-19 is repealed in its entirety and replaced with the following text:

It shall be the duty of every seller of electricity, metered or bottled gas (natural or manufactured), water service, or fuel oil to collect from the purchaser, for the use of the town, the tax hereby levied in this article, at the time of collecting the selling price charged for each transaction, and to report and pay over, on or before the 20th day of each calendar month, or quarter, if applicable, or if the 20th day is either a legal holiday or is not a town business day, then, on or before the first town business day that is not also legal holiday, unto the finance director, all such taxes levied and collected during the preceding calendar month. Any seller of electricity, metered or bottled gas (manufactured or natural), fuel oil, and water service failing to remit to the town, on or before the 20th day of each calendar month, will be subject to the provisions of section 28-22.

Sec. 28-20. Computation.

(a) In all cases where the seller of ~~telecommunications service~~, electricity, metered or bottled gas (natural or manufactured), ~~and~~ water service, or fuel oil, collects the price thereof at monthly periods, the tax hereby levied may be computed on the aggregate amount of purchases during such period; provided that, the amount of tax to be collected shall be the nearest whole cent to the amount computed.

Sec. 28-21. Records of sellers.

Section 28-21 is repealed in its entirety and replaced with the following text:

(1) Each seller of electricity, metered or bottled gas (natural or manufactured), water service, and fuel oil shall keep records showing all sales in the town of such commodities or service, which records shall show the price charged upon each sale, the date thereof, and the date of payment therefore. Duly authorized agents of the town may, during the sellers normal business hours at the official location of the seller's books and records, audit the records of any seller of a service that is taxable by the town under §166.231, F.S. or §166.232, F.S. for the purpose of ascertaining the correctness of any return that has been filed or payment that has been made, if the town's power to assess tax or grant a refund is not barred by the applicable limitations period. Each such seller must provide to the town, upon sixty (60) days written notice, access to applicable records for such service except that extensions of this sixty (60) day period will be granted if reasonably requested by the seller. The seller may at its option waive

the sixty (60) day notice requirement. If either the town or the seller requires an additional extension, it must give notice to the other no less than thirty (30) days before the existing extension expires, except in cases of bona fide emergency or waiver of the notice requirement by the other party. In an audit, the seller is liable only for its taxable accounts collected which correspond to the information provided to it by the town under §166.233(3), F.S.

(2) Each seller of services that is taxable under §166.231, F.S. or §166.232, F.S. shall preserve applicable records relating to such taxes until the expiration of the time which the town may make an assessment with respect to that tax; however, a seller is not required to retain duplicative or redundant records. The term "applicable records" as used in this section shall mean records kept in the ordinary course of business which establish the collection and remittance of taxes due. Such applicable records may be provided to the town on an electronic medium if agreed to by the seller and the town. No fee or any portion of a fee for audits conducted on behalf of the town shall be based upon the amount assessed or collected as a result of the audit, and no determination based upon an audit conducted in violation of this prohibition shall be valid.

(3) Before auditing a seller under subsection (1), the town shall, upon request of the seller, discuss with the seller the town's proposed audit methodology. The town shall prepare and furnish to the seller a report of each audit which identifies the nature of any deficiency or overpayment, the amount thereof, and the manner in which identifies the nature of any deficiency or overpayment, the amount thereof, and the manner in which the amount was computed. In addition, the town, upon request, and no less than forty-five (45) days before issuing a determination under section 28.22(8), shall furnish the seller with all other information or material in possession of the town or its agents which is necessary to supplement the audit findings.

Sec. 28-22. Disposition of revenue, administrative provisions, rights and remedies.

(1) All revenues received, collected and derived from the taxes levied by this article shall be deposited by the director of finance of the town in its general fund and disbursed as other general funds of the town.

(2) (a) The town may issue a proposed assessment of tax levied under §166.231, F.S. or §166.232, F.S. within three (3) years after the date the tax was due. However, this limitation is tolled for one year if within three-year period the town issues to the seller a notice of intent to audit. If the audit cannot be completed prior to the expiration of this limitation period as extended by tolling, and such condition is due to the seller's refusal or delay in allowing access to applicable records, the town may make a proposed assessment from an estimate based upon the best information available for the taxable period, unless the seller agrees in writing to extend the limitation period. The town may also make a proposed assessment from such an estimate if, notwithstanding, agreed extensions of the limitation period to a date which is three

(3) years following issuance of the notice of intent to audit, the seller does not allow access to applicable records prior to such date.

(b) A seller may apply to the town for refund of, or may take a credit for, any overpayment of tax or interest or penalty thereon within three (3) years following remittance by the seller, and the town will refund or allow the seller credit for such overpayments as were remitted to the town. However, in the case of an overpayment which the seller has previously refunded or credited to a purchaser in accordance with subsection (6), the limitation period for the seller's refund application or credit shall expire three (3) years following the seller's remittance to the town or sixty (60) days following the seller's issuance of the refund or credit to the purchaser, whichever is later.

(3) Notwithstanding subsection (2)(b), the town shall offset a seller's overpayment of any tax, interest, or penalty revealed by an audit against any deficiency of tax, interest, or penalty which is determined to be due for the same audit period, and such offsets must be reflected in any proposed assessment. If the overpayments by the seller exceed the deficiency, the town will refund to the seller the amount by which the aggregate overpayments exceed the total deficiency. Absent proof to the contrary, the methodology that is employed in computing the amount of a deficiency is presumed to yield an appropriate computation of the amount of any overpayments. As used in subsection (2) and this subsection, "overpayment" to the town means, and includes, all remittance of public service tax, interest, or penalty which were not due to the town, including amounts property collected, but remitted to an incorrect municipality.

(4) Any purchaser of a service may request from a seller a refund of, or credit for, taxes collected from the purchaser upon the ground that the amounts collected were not due to the town. The seller shall issue the refund or allow a credit to the purchaser entitled thereto, if the request is made within three (3) years following collection of the tax from the purchaser. In any event, a seller shall issue a refund or credit to a purchaser within forty-five (45) days following the seller's determination of the amount of taxes collected from the purchaser within the preceding three (3) years that were not due to the town.

(5) The town is authorized to assess interest and penalties in accordance with this section for failure to pay any tax when due or to file any required return, except that no penalty shall be assessed absent evidence of willful neglect, willful negligence, or fraud. Interest will be assessed at a maximum rate of one percent (1%) per month of the delinquent tax from the date the tax was due until paid. Penalties will be assessed at a maximum rate of five percent (5%) per month of the delinquent tax, not to exceed a total penalty if twenty-five percent (25%), except that in no event will the penalty for failure to file a return be less than \$15.00. In the case of a fraudulent return or willfully attempting to evade payment of the tax, the seller shall be liable for a specific penalty of one hundred percent (100%) of the tax. Interest and penalties shall be computed on the net tax due after application of any overpayments, interest and penalties shall be computed on the net tax due after application of any overpayments, and are subject to compromise pursuant to subsection (12).

(6) Any proposed assessment or finding of amount due from the seller constitutes a determination of the town for purposes of this section. A determination will separately state the amounts of tax, interest, and penalty claimed to be due or to be refunded, will be accompanied by a written narrative explanation of the basis for the town's determinations, will inform the seller of the remedies available to it if it disagrees with any such determination, and will state the consequences of the seller's failure to comply with any demand of the town which is stated in the determination.

(7) A seller may file with the town a written protest of any determination within sixty (60) days after the determination is issued. The town will consider the protest, and will within sixty (60) days, issue a written notice of decision to the seller. The seller may petition the town for reconsideration of a notice of decision within thirty (30) days after the issuance of the notice, and following reconsideration of such a petition, the town will, within thirty (30) days, issue a written notice of reconsideration to the seller.

(8) A determination becomes final sixty (60) days after the date of issuance, unless the seller, before the sixty (60) day period expires, has filed a protest or secured a written extension of time within which to file a protest. If the seller has secured a written extension of time and fails to file a protest within the extended time period, the proposed assessment becomes a final assessment at the expiration of the extended filing period. If a protest is timely filed, and the seller and the town are unable to resolve the disputed issues, the determination becomes final as of the date of issuance of the notice of decision, unless the seller timely files a petition for reconsideration. If a petition for reconsideration is timely filed, the determination becomes final upon issuance of a notice of reconsideration.

(9) A notice of decision, or a notice of reconsideration must address each issue raised in the protest or petition, must explain the reasoning underlying the conclusions reached, and must advise the seller of the remedies available to it if it disagrees with the town's disposition of the issues.

(10) A seller may contest the legality of any determination by filing an action in circuit court within sixty (60) days after the date the determination becomes final. However, in any action filed in circuit court to contest the legality of any tax, penalty, or interest assessed under this action, the seller (plaintiff) must pay the town the amount of the tax, penalty, and accrued interest which is not being contested by the seller. Venue for any such action shall be in Palm Beach County.

(11) A seller's failure to protest a determination under this section, administratively or judicially, does not waive or impair the seller's right to seek refund of any overpayment within the time allowed under this section.

(12) A seller's liability for any tax, interest, or penalty may be settled or compromised by the town, upon the grounds of doubt as to liability or doubt as to the collectibility of such tax, interest, or penalty. The town and a seller may enter into a written closing agreement that reflects the terms of any settlement or compromise. When such a closing agreement has been approved on behalf of the town and the seller, it shall be final, conclusive, and binding on the parties, with respect to all matters set forth therein. Unless there is a showing of fraud, or misrepresentation of material fact, an additional assessment may not be made against the seller for the tax, interest, or penalty specified in the closing agreement for the time period specified in the closing agreement, and the seller may not institute any judicial or administrative proceeding to recover any tax, interest, or penalty paid under the closing agreement. In issuing a determination, the town shall include in its notification to the seller, the names of the persons authorized to approve compromises, and to execute closing agreements. The town may also enter into agreements for scheduling payments of taxes, interest, and penalties. These agreements shall recognize both the seller's financial condition and the best interests of the town, provided the seller gives accurate, current information, and meets all other tax obligations on schedule.

(13) All notices of intent to audit determinations, notices of decisions, and notices of reconsideration issued under this article shall be transmitted to the seller by certified mail, return receipt requested, and the date of issuance shall be determined by the postmark date of the transmittal. All protests and petitions for reconsideration are timely filed if postmarked or received by the town within the time prescribed by this section. If mailed, protests and petitions by a seller must be transmitted by certified mail, return receipt requested.

(14) A seller may pay any contested amount, in whole or in part, at any time, and the payment shall not impair any of the seller's remedies as provided in this section.

(15) The town will furnish sellers with prompt, accurate responses to questions and to requests for tax assistance.

(16) In all matters connected with the administration of the public service tax, sellers have the right:

(a) to be represented by counsel or other qualified representatives;

(b) to procedural safeguards with respect to the recording of interviews during tax determination processes conducted by the town; and

(c) to have audits, inspections of records, and interviews conducted at a reasonable time and place.

(17) The town may communicate with other municipalities concerning the following:

(a) Technical information concerning a seller's tax and accounting system necessary to conduct an accurate and efficient audit of a specific company; however, in no event shall the information include any data relevant to a specific purchaser or account or the seller's tax treatment of specific services;

(b) Names and addresses of companies selling taxable services within their respective jurisdictions; and

(c) The name of any company issued a refund of taxes and the total amount of taxes refunded to such company.

(18) Except as otherwise provided in this subsection, the town will not assess or attempt to assess a seller for any costs incurred by, or charged to, the town in connection with performing an audit of the seller's books and records, including travel expenses. Any assessment or proposed assessment of such costs shall be void and unenforceable. The town may, however, assess and collect from the seller the reasonable travel expenses incurred by, or charged to, the town in connection with performing an audit of the seller's books and records if the seller received timely notice requesting access to such books and records in accordance with section 28.21, and the seller failed or refused to allow such access and did not propose an alternative date on which the audit was to commence, or if the seller and the town agreed in writing to an alternative date on which the audit was to commence, but the seller then failed or refused to permit reasonable access to its books and records on the alternative date.

(19) The provisions of this section, other than subsection (4), shall not apply to the extent that the seller is the town levying the tax under audit or a separate utility authority, board, or commission of the town.

Sec. 28-23. Exemptions.

Section 28-23 is repealed in its entirety and replaced with the following text:

(1) The United States of America, the state, and political subdivisions and agencies thereof are hereby exempted from payment of the taxes imposed by section 28.18.

(2) There is excluded from the tax levied and imposed pursuant to section 28.18 the following:

(a) Purchases of special fuels as defined in §206.86, F.S.;

(b) The purchase of not more than five (5) gallons of fuel oil delivered at the seller's place of business into the purchaser's container of not more than five (5) gallon capacity;

(c) The purchase of fuel oil or kerosene for use as aircraft engine fuel or propellant or for use in internal combustion engines;

(d) The purchase of natural gas or fuel oil by a public or private utility, including municipal corporations and rural electric cooperative associations, either for resale or for use as fuel in the generation of electricity; and

(e) Purchases by any recognized church in this state for to be used exclusively for church purposes.

~~Sec. 28-24. Seller compensation.~~

Section 28-24 is repealed in its entirety, and a new section 28.24 is hereby created.

Sec. 28-24. Definitions.

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Electronic transfer means the use, by the seller, of the automated clearing house (ACH), or other electronic transfer system approved by the town finance director, to send the taxes directly from the seller's bank to the town's bank.

Purchase in the town means, with respect to public services subject to the tax levied by section 28.18 every instance in which the commodity or service is delivered to a purchaser or consumer within the town, regardless of whether the seller maintains its business office within the town or elsewhere.

Remit, remittance, remitting mean the sending by the seller and receipt by the town of all taxes levied and collected pursuant to section 28.18. The date of receipt of such taxes by the town will be the date of postmark, or if by electronic transfer, the date received by the town's bank as indicated on the town's bank statement.

Seller means a person, firm, corporation, or other legal entity who sells a service subject to a levy.

Tax means a person, firm, corporation, or other legal entity who sells a service subject to a levy.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any 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 thereof.

Section 4. **Repeal of Laws in Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. **Codification.** The sections of the Ordinance may be made a part of the Town Code of Laws and Ordinances and may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 6. **Effective Date.** This Ordinance shall take effect immediately upon adoption.

Upon First Reading this 21st day of April, 2004 the foregoing ORDINANCE was offered by Vice Mayor Balius who moved its approval. The motion was seconded by Commissioner Jeff Carey, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR PAUL CASTRO	X	
VICE MAYOR CHUCK BALIUS	X	
COMMISSIONER PAUL GARRETSON		ABSENT
COMMISSIONER JEFF CAREY	X	
COMMISSIONER ED DALY	X	

Upon Second Reading this 5th day of May, 2004 the foregoing ORDINANCE was offered by Commissioner *GARRETSON* who moved its adoption. The motion was seconded by Commissioner *DALY*, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR PAUL CASTRO	X	
VICE MAYOR CHUCK BALIUS	X	
COMMISSIONER PAUL GARRETSON	X	
COMMISSIONER JEFF CAREY	X	
COMMISSIONER ED DALY	X	

The Mayor thereupon declared Ordinance No. 13-2004 duly passed and adopted this 5th day of May, 2004

TOWN OF LAKE PARK, FLORIDA

BY: *Paul Castro*
Mayor Paul Castro

ATTEST:

Approved as to form and legal sufficiency:

Carol Simpkins
Carol Simpkins, Town Clerk
(Town Seal)

Thomas J. Baird
Thomas J. Baird, Town Attorney

