

ORDINANCE NO. 2000-2

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA LEVYING A TAX ON EACH AND EVERY PURCHASE OF ELECTRICITY, METERED OR BOTTLED GAS AND FUEL OILS; SETTING WHEN PAYABLE; ESTABLISHING DUTY OF SELLER TO COLLECT AND SUBMIT RETURN AND FAILURE OF PURCHASER TO PAY; SPECIFYING RECORDS REQUIRED; INSPECTION AND AUDIT; PROVIDING EXEMPTIONS; COMPUTATION OF TAX AND PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE THEREFOR.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA THAT THE FOLLOWING ORDINANCE IS CREATED IN ACCORDANCE WITH THE TOWN CHARTER:

Section 1: Levy; when payable.

(a) There is hereby levied by the Town against each and every purchaser or person using electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured) and fuel oils, within the corporate limits of the Town, a public service tax at a rate of ten percent (10%) on the payments received by the seller. The tax shall be paid by the purchaser for the use of the Town, to the seller of such fuel oils, at the time of paying the charge therefor to the seller thereof, but not less than monthly.

(b) Pursuant to section 166.231(1)(b), Fla. Stat., the tax heretofore imposed shall not be applied against any fuel adjustment charge and such charge shall be separately stated on each bill. "Fuel adjustment charge" means all increases in the costs of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utilities subsequent to October 1, 1973. Pursuant to judicial determination, fuel adjustment charges will include the increase in costs after October 1, 1973, of natural gas which is passed on to the consumer and is separately labeled on natural gas bills.

Section 2. Duty of seller to collect; failure of purchaser to pay.

(a) It shall be the duty of every seller of electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), and fuel oils to collect from the purchaser, for the use of the Town, the tax hereby levied, at the time of collecting the selling price charged for each transaction, and to report and pay over, on or before the twentieth day of each month, unto the Town, all such taxes levied and collected during the preceding month. It shall be unlawful

for any seller to collect the price of any purchase of electricity, metered or bottled gas (natural, liquefied petroleum gas, or manufactured), and fuel oils without at the same time collecting the tax hereby levied in respect to such purchase or purchases, unless such seller shall elect to assume and pay such tax without collecting the same from the purchaser.

(b) Every seller subject to the tax under this Chapter shall file a return with the Town each month. The return shall identify the name and address of the seller, the period of the return, the amount collected from the sale of taxable services, any collection allowance taken, the amount of tax remitted with the return, and the name and telephone number of a person authorized by the seller to respond to inquiries from the Town concerning the seller's administration of the tax.

(c) Any seller failing to collect such tax at the time of collecting the price of any purchase, where the seller has not elected to assume and pay such tax, shall be liable to the Town for the amount of such tax in like manner as if the same had been actually paid to the seller, and the Town Administrator of the Town shall cause to be brought all suits and actions and shall take all proceedings in the name of the Town as may be necessary for the recovery of such tax. The seller shall not be liable for the payment of such tax upon uncollectable bills.

Section 3. Records required; inspection; audit.

(a) (a) Sellers of electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured) and fuel oils, within the corporate limits of the Town taxable in accordance with this chapter shall provide to the Town, upon sixty (60) days written notice of intent to audit by the Town, access to all applicable records as defined in 166.234, Fla. Stat. for such services, except an extension of this 60-day period shall be granted if reasonably requested by the provider. The seller may at its option waive the 60-day notice requirement. The audit shall be conducted in accordance with Florida Statutes, including the determination of tax due, refund due and assessment of interest and penalties.

(b) Each seller of services taxable under this chapter shall preserve applicable records relating to such taxes. However, a seller is not required to retain duplicative or redundant records.

(c) The Town may assess and collect from the seller the reasonable travel expenses incurred by or charged by 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 subsection (a) 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.

Section 4. Exemption.

The purchase of electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured) and fuel oils, within the corporate limits of the Town by entities required to be exempt from payment of the tax under this ordinance pursuant to 166.231(5), Fla. Stat., is hereby exempt from the public service tax levied by this ordinance.

Section 5. Penalty.

(a) Failure to pay any tax when due or failure to file any required return, shall result in the assessment of interest at the rate of one percent (1%) per month of the delinquent tax from the date the tax was due until paid.

(b) Failure to pay any tax when due or failure to file any required return, shall result in the assessment of a penalty of five percent (5%) per month of the delinquent tax, not to exceed a total penalty of twenty-five percent (25%). In no event shall the penalty for failure to file a return be less than \$15.00.

(c) In the case of a fraudulent return or a willful intent to evade payment of the tax, the seller making such fraudulent return or willfully attempting to evade payment of the tax, shall be liable for a specific penalty of 100 percent (100%) of the tax.

Section 6. Inclusion in Town Code.

This ordinance, upon passage, shall become a part of and incorporated within the Town Code.

Section 7. Conflict.

That all Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict are hereby repealed to the extent of such conflict.

Section 8. Severability.

Should any section, paragraph, sentence, clause, phrase or other part of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion thereof, other than the part so declared to be invalid.

Section 9. Effective date.

This ordinance shall become effective on October 1, 2000.

PASSED ON FIRST READING on August 10, 2000.

PASSED ON SECOND READING on August 24, 2000.

Mecca Fink, Mayor

Attest:

Interim Town Clerk

Approved as to Form and Correctness:

Gary A. Poliakoff, J.D., Town Attorney