

ORDINANCE NO. 2000-7

AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA LEVYING A TAX ON EACH AND EVERY PURCHASE OF TELECOMMUNICATIONS SERVICES; 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.

There is hereby levied by the Town a tax on the purchase of telecommunication services as defined in Section 203.012 of the Florida Statutes, which originates and terminates in the State of Florida, at a rate of seven percent (7%) of the total amount charged for any telecommunications services provided within the Town, or if the location of the telecommunications services cannot be determined, the total amount billed for such telecommunications services to a telephone or telephone number, a telecommunications number or device, a service address, or customers' billing address located within the Town, excluding public telephone charges collected on site, charges for any foreign exchange service or any private line service except when such services are used or sold as a substitute for any telephone company switched service or dedicated facility by which a telephone company provides a communication path, access charges, and any customer access line charges paid to a local telephone company. Telecommunications services as defined in section 203.012(5)(b) of the Florida Statutes shall be taxed only on the monthly recurring customer service charges excluding variable usage charges.

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

(a) It shall be the duty of every seller of telecommunications services 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 treasurer and collector of 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 telecommunication services 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.

(d) For the purpose of compensating the seller of telecommunication services, the seller shall be allowed one percent (1%) of the amount of tax collected and due to the Town in the form of a deduction from the amount collected for remittance. The deduction shall be allowed as compensation for the keeping of records; and for the collection of the tax and remitting the same. This deduction shall not be allowed in the event of an untimely return, unless the seller has in writing requested and been granted an extension of time for filing such return.

Section 3. Records required; inspection; audit.

(a) Sellers of telecommunication services 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 telecommunication 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.

(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.

(d) The audit shall be conducted in accordance with Florida Statutes, including the determination of tax due, refund due and assessment of interest and penalties. Any information received by the Town in connection with an audit by the Town of any such sellers' records is confidential and is not subject to the provisions of Section 119.07(1), Fla. Stat., and in accordance with section 166.231(9)(c), Fla. Stat.

Section 4. Exemption.

(a) The purchase of telecommunications services by any entity required to be exempt pursuant to 166.231(5), Fla. Stat., from payment of the tax under this ordinance is hereby exempt from the public service tax levied by this ordinance.

(b) The purchase of telecommunications services for use in the conduct of a telecommunications services for hire or otherwise for resale are exempt from the tax imposed 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 October 1, 2000.

PASSED ON FIRST READING on August 24, 2000.

PASSED ON SECOND READING on September 7, 2000.

Mecca Fink, Mayor

Attest:

Katherine V. Selchan

Interim Town Clerk

Approved as to Form and Correctness:

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