

TITLE 5

TAXATION

CHAPTER.

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CHAPTER 1**ALCOHOLIC BEVERAGE TAX****5-1-1. Hotel and restaurant alcoholic beverage permit (on-premise consumption -- mixed drink).**

- (a) *Permit application and fee.* In addition to the permit fee levied by the State of Arkansas, the city of Hot Springs hereby levies the following fees on applicants for permits for on-premises consumption of alcoholic beverages (“Hotel and Restaurant Alcoholic Beverage Permit”) pursuant to the terms of Act 132 of 1969, as amended (A.C.A. §3-9-214), to-wit:
- | | | |
|-----|--|------------|
| (1) | Hotels having fewer than 100 rooms | \$500.00 |
| (2) | Hotels having 100 or more rooms | \$1,000.00 |
| (3) | Restaurants having a seating capacity of less than 100 persons | \$500.00 |
| (4) | Restaurants having a seating capacity of 100 or more | \$1,000.00 |
| (5) | Large attendance facility (A.C.A. §3-9-227) | \$1,000.00 |
- (b) *Annual permit.* An annual renewal fee in the amount provided in §1(a) hereof shall be paid to the city of Hot Springs on or before June 30 of each calendar year for the next permit year beginning July 1.
- (c) *Half year permit.* The fee for a new permit issued between January 1 and July 1 shall be one-half (2) of the amount specified in § 5-1-1 (a) hereof.
- (d) *Beer and wine permit.* Any permit issued pursuant to this section shall include authority to sell beer and native and imported wine as authorized by A.C.A. §3-9-211.
- (e) *Supplemental tax.* In addition to the permit fees as set forth in § 5-1-1 (a) hereof, the city of Hot Springs hereby levies a supplemental tax of ten percent (10%) upon the gross proceeds or gross revenues from all sales of alcoholic beverages made pursuant to the terms of Act 132 of 1969, as amended (A.C.A. §3-9-214). Said supplemental tax shall be reported and paid to the city of Hot Springs at the same time as the gross receipts tax under the Gross Receipts Tax Act of 1941, as amended. (Ord. No. 4500, § 1, 8/7/95)

State law reference - For general state law concerning alcoholic beverages, see Title 3, A.C.A. 1987.

Cross reference - Business classifications, § 5-3-9 (Sector 72); permit issuance prohibited if indebted to city, §4-11-2.

- (f) *Penalty.* If any permittee shall fail to remit the supplemental tax on gross receipts within the time provided by A.C.A. §3-9-201, *et. seq.*, a penalty of twenty-five percent (25%) thereof shall be due and payable (*see* A.C.A. § 3-9-234).(Ord. No. 4500, § 1, 8/7/95; Ord. No. 5818, §1, 5/3/11)

5-1-2. Private club alcoholic beverage permit (on-premise consumption - mixed drink).

(a) *Annual permit.* The city of Hot Springs hereby levies an annual permit fee on all fraternal, social or otherwise private clubs as defined in A.C.A. §3-9-202(10) and as licensed by the Alcoholic Beverage Control Division to dispense alcoholic beverages for on-premises consumption (“Private Club Alcoholic Beverage Permit”) pursuant to the terms of Act 132 of 1969, as amended (A.C.A. §3-9-223) in an amount of two hundred fifty dollars (\$250.00) per year. Said permit shall be renewed with the city of Hot Springs on or before July 1 of each year, provided that any new permit issued between January 1 and July 1 of any year shall be one hundred twenty-five dollars (\$125.00).

(b) *Supplemental tax.* In addition to the permit fee as set forth in § 5-1-2 (a) hereof, a supplemental tax of five percent (5%) is hereby imposed on the gross proceeds or gross receipts derived by such private clubs by charges to members for the preparation and serving of such alcoholic beverage, or for the cooling and serving of such beer and wine, drawn from the private stocks of such members for consumption on premises where served. Said supplemental tax shall be reported to the city of Hot Springs and paid in the same manner and at the same time as the gross receipts tax under the Gross Receipts Tax Act of 1941, as amended. (Ord. No. 4500, § 2, 8/7/95)

(c) *Penalty.* If any permittee shall fail to remit the supplemental tax on gross receipts within the time provided by A.C.A. § 3-9-201, *et. seq.*, a penalty of twenty-five percent (25%) thereof shall be due and payable (*see* A.C.A. § 3-9-234). (Ord No. 5818, § 2, 5/3/11)

5-1-3. Retail liquor alcoholic beverage permit (off-premise consumption).

In addition to the permit fee levied by the State of Arkansas, for the privilege of operating a dispensary from which vinous, spirituous, and malt liquors, except wine, are to be sold and dispensed at retail for consumption off premises (“Retail Liquor Alcoholic Beverage Permit”), there is hereby assessed and there shall be paid to the city of Hot Springs a permit fee, in the sum of two hundred dollars (\$200.00) per annum payable on or before June 30 of each calendar year for the fiscal year beginning July 1 (A.C.A. §3-4-202, 3-4-604). (Ord. No. 4500§3, 8/7/95)

5-1-4. Retail beer alcoholic beverage permit (off-premise and on-premise consumption).

(a) *Permit required.* Before any person shall be authorized to offer for sale at retail the liquors as defined in A.C.A. Title 3, Subchapter 5 (beer and light wine), he shall apply to and secure from the city clerk a “Retail Beer Alcoholic Beverage Permit.” A permit shall not be granted or issued until the retailer exhibits a state permit granted or issued to him by the Alcoholic Beverage Control Division. The state permit shall be prima facie evidence of the retailer’s right to apply for and purchase a city permit, and it shall be unlawful for the city clerk to refuse to issue the permit upon proper application by the retailer.

- (b) *Permit Fee.* The city clerk shall charge the following permit fee:
- (1) a sum not in excess of fifteen dollars (\$15.00) for a retailer whose total gross annual sales shall not exceed one thousand dollars (\$1,000.00);
 - (2) a sum not in excess of twenty dollars (\$20.00) for retailers whose gross annual sales shall not be in excess of two thousand dollars (\$2,000.00); or
 - (3) a sum of twenty dollars (\$20.00) plus an additional five dollars (\$5.00) for each one thousand dollars (\$1,000.00) gross annual business in excess of two thousand dollars (\$2,000.00) for retailers whose total gross annual sales exceed two thousand dollars (\$2,000.00).
 - (4) A new applicant shall pay a fee of forty dollars (\$40.00) for the initial permit to expire June 30 of the year issued.

Permit fees shall be due and payable for each place where the business of a retail dealer is carried on. Permit fees shall become due and payable on or before June 30 of each calendar year for the fiscal year beginning July 1.

- (c) *Proper Fee Required.* Whenever it shall appear to the city clerk that a retail dealer has secured a permit for fifteen dollars (\$15.00) when a larger amount should have been paid therefor, he shall require the payment of the difference or cancel the permit. (Ord. No. 4500, §4, 8/7/95)
- (d) *Violation Notification.* The city clerk or his designee charged with the duty of collecting the license fees shall notify the director of the Alcoholic Beverage Control Division of the identity of retailers failing to comply with the provisions of this section. The director shall then notify wholesale dealers to discontinue sales to delinquent retailers. When the license fee is paid, the city clerk shall notify the director of the Alcoholic Beverage Control Division that the retailer has paid the fee. The director shall notify wholesalers to resume sales to the retailers. Any wholesaler who continues to sell to a retailer after notification from the director to discontinue sales shall be subject, upon conviction, in the Hot Springs Municipal Court, or any other court of competent jurisdiction, to such fines and penalties as established by the general penalty clause for the Hot Springs Code of Ordinances as may now or hereafter be enacted by the Hot Springs Board of Directors. (Ord. No. 4958, §7, 2/20/01)

5-1-5. Microbrewery - restaurants alcoholic beverage permit (on-premise consumption--beer).

In addition to the permit fees levied by the State of Arkansas, any person, firm or corporation licensed by the Alcoholic Beverage Control Division as a microbrewery-restaurant shall be issued a "Microbrewery-Restaurants Alcoholic Beverage Permit" by the city clerk and shall pay a retail beer permit fee in the same manner as a restaurant for consumption on the licensed premises (A.C.A. §3-5-1205). (Ord. No. 4500§5, 8/7/95)

5.1.6. Small Restaurant Permit (Spirituos Only - A.C.A. § 3-9-239)

In the event that a restaurant is issued a small restaurant permit as defined by A.C.A. § 3-9-239 (no more than 560 l of spirituous liquors), an annual renewal fee in the amount of one hundred fifty dollars (\$150) shall be paid to the City of Hot Springs on or before June 30th of each calendar year for the next permit year beginning July 1st. (Ord. No 5818, §3, 5/3/11)

5.1.7. Combination Restaurant Retail Beer and Wine (A.C.A. § 3-4-1001)

- (a) (1) In addition to all other existing alcoholic beverage permits authorized to be issued by the Alcoholic Beverage Control Division for the retail sale of alcoholic beverages, there is created a restaurant beer and wine permit, which authorizes the sale of beer and wine as defined in A.C.A § 3-9-301(2) at restaurants as defined in A.C.A. § 3-9-301(4).
- (2) The restaurant beer and wine permit is not subject to any quota restrictions.
- (b) The permit may be issued by the Alcoholic Beverage Control Division to a qualified person.
- (c) Each restaurant beer and wine permit shall be issued annually for a fee of one hundred seventy-five dollars (\$175) and shall expire on June 30 of each year

(Ord. No. 5818§4, 5/3/11)

5.1.8. Small Farm Winery - Retail (A.C.A. §3-5-1605(a)(3))

- (a) For the privilege of manufacturing wine in quantities not to exceed five thousand gallons (5,000 gals.), an annual renewal fee in the amount of one hundred dollars (\$100) shall be paid to the City of Hot Springs on or before June 30th of each calendar year for the next permit year beginning July 1st.
- (b) For the privilege of manufacturing small farm wine in excess of five thousand gallons (5,000 gals.), an annual renewal fee in the amount of two hundred dollars (\$200) shall be paid to the City of Hot Springs on or before June 30th of each calendar year for the next permit year beginning July 1st.
- (c) For the privilege of selling small farm winery wine (except by a manufacturer for consumption at the manufacturer's winery) an annual renewal fee in the amount of one hundred dollars (\$100) shall be paid to the City of Hot Springs on or before June 30th of each calendar year for the next permit year beginning July 1st.
- (d) This provision applies to all retail licenses for grocery stores, convenience stores, liquor stores, and package stores that sell malt beverages and wine.

(Ord. No. 5818 §5, 5/3/11)

5-1-9. Restaurant Wine (A.C.A. § 3-9-301)

- (a) An annual renewal fee in the amount of one hundred fifty dollars (\$150) shall be paid to the City of Hot Springs on or before June 30th of each calendar year for the next permit year beginning July 1st for each license or renewal of a permit to sell wine in a restaurant or café.
- (b) “Restaurant” or “café” means a place of business serving food to the public prepared for consumption on the premises at an established eating place, as defined by reasonable rules and regulations promulgated by the Alcoholic Beverage Control Board. However, a drive-in shall not be classified as an established eating place.
- (c) “Wine” or “wines” means any port wine, sherry wine, vermouth wine, or other wines, the alcoholic content of which does not exceed twenty-one percent (21%), regardless of whether the wines are manufactured within or without the State of Arkansas.

(Ord. No. 5818 §6, 5/3/2011)

5-1-10. Permit issuance and form.

Upon payment of the required permit fee(s) the city clerk or his designee shall issue an alcoholic beverage permit of the type(s) required herein in a form to be prescribed by the city clerk. Alcoholic beverage permits shall be effective for a fiscal year of July 1 through June 30 and must be renewed annually before June 30 for the year beginning July 1. The permit for any new applicant which may be approved during any fiscal year (partial year) shall expire June 30 regardless of the date issued. Alcoholic beverage permit(s) shall be displayed in a conspicuous place. Alcoholic beverage permits are not transferable. Any person, firm or corporation to which an alcoholic beverage permit has been issued shall comply with all applicable laws and regulations of the State of Arkansas, the Alcoholic Beverage Control Division and the city of Hot Springs. Alcoholic beverage permits may be revoked or suspended as authorized by law. (Ord. No. 4500, § 6, 8/7/95)

5-1-11. Effective date.

(a) This ordinance shall be effective from and after September 1, 1995. Provided, however, that the permit fees established by this ordinance shall not apply to renewal permits issued prior to July 1, 1995, for the fiscal year July 1, 1995, through June 30, 1996. This ordinance shall apply to any new alcoholic beverage permits issued after September 1, 1995, and to all alcoholic beverage permits, new or renewal, issued for the fiscal year beginning July 1, 1996, and subsequent years. (Ord. No. 4500§8, 8/7/95)

(b) This ordinance shall be effective from and after June 15, 2011. (Ord. No. 5818§7, 5/3/11)

Editor's note - §5-1-11(a) pertains to Ord.No. 4500 (§5-1-1 -§5-1-5, §5-1-10) adopted 8/7/95 whereas §5-1-11(b) pertains to Ord No. 5818 adopted 5/3/11 enacting new permit types (§5-1-6 -§5-1-9)

Cross reference-Closing hours for establishments selling alcoholic beverages, § 4-3-6.

(Ord. No. 4500§1-8, 8/7/95, Ord. No. 5818, § 1-7, 5/3/2011)

Amendment note - Ord. No. 5818 established 4 additional permits types (§5-1-6 - §5-1-9)

CHAPTER 2

ADVERTISING AND PROMOTION TAX

Art. I. Advertising and Promotion Tax, §§5-2-1--5-2-9

Art. II. Tax Collection Procedures, §§5-2-10 -- 5-2-35

ARTICLE I. ADVERTISING AND PROMOTION TAX.

5-2-1. Advertising and Promotion Commission established.

5-2-1.1. Creation; terms of members; vacancies.

(a) There is hereby created the City of Hot Springs Advertising and Promotion Commission, which shall be composed of seven (7) members as follows:

(1) Four (4) members shall be owners or managers of businesses in the tourism industry, at least three (3) of whom shall be owners or managers of hotels, motels, or restaurants, and all of whom shall be appointed by the board of directors for staggered terms of four (4) years; and

(2) Two (2) members of the commission shall be members of the governing body of the city and selected by the governing body; and

(3) One (1) member shall be from the public at large and shall be nominated by the city manager and approved by the board of directors for a term of four (4) years.

(b) The four (4) tourism industry representatives appointed by the board of directors, at the first meeting of the commission, shall draw lots for terms established as follows:

(1) One (1) member shall serve for a term of one (1) year; and

(2) One (1) member shall serve for a term of two (2) years; and

(3) One (1) member shall serve for a term of three (3); and

(4) One (1) member shall serve for a term of four (4) years.(A.C.A. §26-75-602(g)(1)(2)(3)(4)).

(c) Vacancies on the commission whether resulting from expiration of a regular term or otherwise occurring after March 1, 1991, in any of the four (4) tourism industry positions provided for in §5-2-1.1 (a)(1) hereof or in the at-large position provided for in §5-2-1.1 (a)(3) hereof shall be filled by appointment made by the remaining members of the commission with the approval of the board of directors. (A.C.A. §26-75-605). (Ord. No. 4002§3, 5/1/89; Ord. No. 4177 §1, 10/21/91)

Cross reference §2-5-40 Board selection procedure

Editor's note-Ordinance No. 4002 (§ 5-2-1 etseq) was referred to a special election held on July 11, 1989 and approved by a vote of 3,195 for and 2,427 against. Resolution No. 3110, adopted 1/9/95, established the term of office for the two board of director's positions for four years or until the expiration of the selected director's current term of office.

5-2-1.2. Commissioner's oath, bonds, reference.

- (a) Each member of the commission shall file the oath required by law in the State of Arkansas of public officials.
- (b) Each member of the commission shall furnish to the City of Hot Springs a five thousand dollar (\$5,000.00) surety bond that will serve to ensure the city against misappropriation or mishandling of funds. The surety on said bonds shall be a reputable surety corporation. The premium on said bond shall be paid from the City of Hot Springs Advertising and Promotion Fund.
- (c) Any reference in the ordinances of this city to the Advertising and Tourist Promotion or to the Advertising and Tourist Promotion Fund shall be deemed to refer to the Advertising and Promotion Commission or to the Advertising and Promotion Fund, respectively. (Ord. No. 3853 §1, Paragraph 5A(3)(4)(5), 6/16/86)

5-2-1.3. Removal of commissioner for cause.

An commissioner appointed under the provision of this article may be removed for cause upon a two-thirds (2/3) vote of the Hot Springs board of directors. (Ord. No. 2834, § 5B, 6/17/65)

5-2-1.4. Organization of commission.

- (a) The City of Hot Springs Advertising and Tourist Promotion Commission shall meet within two (2) weeks of its appointment and shall be organized by electing a chairman, a secretary and a treasurer. Thereafter, the commission shall meet as often as may be necessary, and also shall be subject to special call by the chairman.
- (b) The commissioners shall adopt such rules and regulations as they may deem necessary and expedient for the proper operation of said commission, and they shall have the authority to alter, change or amend such rules and regulations at their discretion. (Ord. No. 2834, §§6A, 6B, 6/17/65)

5-2-1.5. Commission-Powers and duties.

(a) The commissioners hereunder appointed in addition to their other powers enumerated herein, shall have the exclusive right and power to make purchases of all supplies necessary for the management and operation of the commission.

(b) The commissioners shall have authority to employ the necessary personnel to assist in the administration and operation of the advertising and tourist promotion fund and shall have the authority to fix the salary or salaries for such personnel. Any employee who shall handle funds for the commission shall be required to furnish the city a surety bond in an amount to be determined by the commission to insure the city against misappropriation of funds.

(c) The commissioners shall make quarterly reports to the mayor and city council beginning three (3) months after their oath of office, reporting in full on the operations of the commission, including an accounting of receipts and disbursements, and shall upon request of the city council furnish such other and further reports and data as may be required. The commissioners shall select a recognized auditing firm to submit an annual audit of the operations of the commission to the mayor and city council. (Ord. No. 2834, §§ 6C-6F, 6/17/65)

5-2-1.6. Additional authority re: auditorium.

In addition to the powers and duties previously assigned to the advertising and tourist promotion commission pursuant to the provisions of Ordinance No. 2834 of 1965, said commission is hereby given the full and complete authority to manage, operate and maintain the Hot Springs Convention Auditorium and the (commission) shall have the full and complete charge of said building including the right to control and permit or refuse to permit such public gatherings or other meetings or affairs as may be in the best interest of the city of Hot Springs, Arkansas. They shall also have the power to enter into contracts with person, firms or corporations for the use of the Hot Springs Convention Auditorium or parts thereof, and to perform any other duties which are incidental thereto. (Ord. No. 3601, § 1, 12/22/80)

5-2-2. Tax levied, collected; disposition of funds.

- (a) (1) *Hotel/motel accommodations.* A tax of three (3) percent is hereby levied on the gross receipts or gross proceeds received from the renting, leasing or otherwise furnishing of hotel, motel or short-term condominium rental accommodations for sleeping, meeting or party-room facilities for profit in the city, but such accommodations shall not include the rental or lease of such accommodations for periods of thirty (30) days or more;
- (2) *Restaurants/cafes.* A tax of three (3) percent is hereby levied on the portion of the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store restaurants and similar businesses from the sale of prepared food and beverages for on- or off-premises consumption; except that such tax shall not apply to such gross receipts or gross proceeds of fraternal organizations qualified under §501(c)(3) of the Federal Internal Revenue Code (A.C.A. §26-75-602)

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ADVERTISING AND PROMOTION TAX

- (b) (1) *Collection by commission.* The three (3) percent tax described in this section hereof shall be paid by the persons, firms and corporations liable therefor and shall be collected by the advertising and promotion commission of the city (hereinafter the "commission") or by a designated agent of the commission in the same manner and at the same time as the tax levied by the Arkansas Gross Receipts Act, A.C.A. § 26-52-101 et seq. (A.C.A. §26-75-603(a))
- (2) *Authorized collection procedure.* The person collecting the tax shall pay and report said tax on forms provided by the commission and as directed by the commission. The rules, regulations, forms of notice, assessment procedures, and the enforcement and collection of the tax under the Arkansas Gross Receipts Act shall, so far as is practicable, be applicable with respect to the enforcement and collection of the tax described herein. However, the administration and enforcement and all actions shall be by and in the name of the commission through the proper commission officials or agents. (A.C.A. §26-75-603(b))
- (3) *Collectors; report forms.* The tax levied by this article shall be collected from the purchaser or user of the food or accommodations by the person selling such food or furnishing such accommodations. Such person shall pay to the city on the twentieth day of each month all collections of the tax for the preceding month, accompanied by reports on forms to be prescribed by the commission. (Ord. No. 4002, § 1, 2, 5/1/89)
- (c) (1) *Uses of tax revenue.* All funds credited to the city advertising and promotion fund pursuant to this ordinance shall be used for advertising and promoting the city and its environs or for the construction, reconstruction, extension, equipment, improvement, maintenance, repair and operation of a convention center or for the operation of tourist promotion facilities in the city and facilities necessary for supporting, or otherwise pertaining to, a convention center, or for the payment of the principal of interest on and fees and expenses in connection with bonds as provided in this ordinance and A.C.A. Title 26, Chapter 75, Subchapter 6, in the manner as shall be determined by the city advertising and promotion commission. (A.C.A. §26-75-606(a)(1))
- (2) *Commission determines use.* The commission is the body that determines the use of the city advertising and promotion fund. Pursuant to this section, if the commission determines that funding of the arts is necessary for or supporting of its city's advertising and promotion endeavors, it can use its funds derived from the hotel and restaurant tax. (A.C.A. §26-75-606(a)(2))

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(3) *Taxes credited to fund.* All local taxes levied as authorized by this ordinance shall be credited to the city advertising and promotion fund and shall be used for the purposes described in subsections (c) and (d) of this section.

- a. *Prohibited use of taxes.* Such taxes shall not be used:
 1. for general capital improvements within the city;
 2. for the costs associated with the general operation of the city; and
 3. for general subsidy of any civic groups or the chamber of commerce.
- b. However, the advertising and promotion commission may contract with such groups to provide to the commission actual services that are connected with tourism events or conventions;
- c. The authorization and limitations contained in this subsection shall be reasonably construed so as to provide funds for promoting and encouraging tourism and conventions while not allowing such special revenues to be utilized for expenditures that are normally paid from general revenues of the city. (A.C.A. §26-75-606(c))

(d) (1) *Use for tourist-oriented facilities.* Any city of the first class which is authorized to levy and does levy a one percent (1%) or two percent (2%) gross receipts tax on the gross receipts or gross proceeds derived from furnishing hotel or motel accommodations and upon the gross receipts or gross proceeds of restaurants and similar establishments, as authorized in A.C.A. Title 26, Chapter 75, Subchapter 6, is authorized to use or pledge all, or any part of, the revenues derived from the tax for the purposes prescribed in that subchapter, or for the operation of tourist-oriented facilities including, but not limited to, theme parks and other family entertainment facilities. These revenues shall be used or pledged for the purposes authorized in this subsection only upon approval of the city advertising and promotion commission created pursuant to this ordinance. (A.C.A. §26-75-606(b)(1))

(2) *Use for public recreation.* Funds credited to the city advertising and promotion fund pursuant to this ordinance may be used, spent or pledged by the commission in addition to all other purposes prescribed in this ordinance on and for the construction, reconstruction, repair, maintenance, improvement, equipping and operation of public recreation facilities in Hot Springs and for the payment of the principal of, interest on, and fees and expenses in connection with bonds as provided in A.C.A. Title 26, Chapter 75, Subchapter 6 in the manner as shall be determined by the city advertising and promotion commission for this purpose. (A.C.A. §26-75-606(b)(2)) (Ord. No. 4177, § 2, 10/21/91)

5-2-3. Discounts and penalties.

Persons or entities liable for payment of the taxes levied by this chapter shall be entitled to discounts and shall be subject to penalties as follows:

- (a) A two (2) percent discount if the report is filed and the tax is paid within twenty (20) days after the end of the month for which the report is filed and the tax is paid;
- (b) A five (5) percent penalty for each period of thirty (30) days during which the report is not filed or the tax is not paid, after the end of the month for which the report is required to be filed and the tax is required to be paid, not exceeding twenty-five (25) percent of the tax due; and
- (c) A penalty in a sum equal to twenty-five (25) percent of the face amount of any uncollectible check, draft or other instrument for the payment of money which is submitted in payment of said tax. (Ord. No. 3871, § 2, 9/15/86)

5-2-4. Penalty.

In addition to any civil penalties provided or imposed by statute or ordinance, the penalty for violation of this ordinance by any person or entity liable for payment of said tax which fails to file the said report or which fails to pay the said tax for a period of sixty (60) days or more after the end of any month for which a report or payment of tax is due, shall, upon conviction in the Hot Springs Municipal Court, or any other court of competent jurisdiction, be such fines and penalties as established by the general penalty clause for the Hot Springs Code of Ordinances as may now or hereafter be enacted by the Hot Springs Board of Directors. (Ord. No. 4958, § 9, 2/20/01)

5-2-5--5-2-9. Reserved.

ARTICLE II. TAX COLLECTION PROCEDURE

5-2-10. Title; Purpose.

(a) This ordinance shall be known and may be cited as the "Hot Springs Advertising and Promotion Gross Receipts Tax Collection and Enforcement Ordinance."

(b) The purpose of this ordinance is to provide the procedures for the enforcement and collection of the tax levied by the city pursuant to Ordinance No. 4002, as amended from time to time; hereafter termed A&P tax. (Ord. No. 5021, §1(1), 11/19/01)

5-2-11. Application of ordinance and construction with other laws.

The provisions of this ordinance shall be cumulative to the Arkansas Gross Receipts Act of 1941, A.C.A. §26-52-101, et seq, and the Arkansas Tax Procedure Act, §26-18-101, et seq, the provisions of which, so far as is practicable, shall be deemed incorporated herein as applicable with respect to the enforcement and collection of the A&P tax. (Ord. No. 5021, §1(2), 11/19/01)

5-2-12. Definitions.

The following words and phrases, except where the context clearly indicates the application of a different meaning, when used in this ordinance shall have the following meanings:

- (a) *A&P tax* means the gross receipts tax levied by Ordinance No. 4002, as amended from time to time.
- (b) *Assessment* means a tax is assessed when it is recorded as the liability of a taxpayer on the commission's records. The assessment becomes a first assessment following the decision of the commission or a hearing officer, if the assessment is protested.
- (c) *Business entity* means a corporation, association, partnership, joint venture, limited liability company, limited liability partnership, trust or other legal business entity.
- (d) *Commission* means the City Advertising and Promotion Commission of Hot Springs, Arkansas, and any agent or representative designated by the commission to perform any function hereunder.
- (e) *City* means the City of Hot Springs, Arkansas.
- (f) *Delinquency date* means the A&P tax is delinquent and subject to penalty on the first day of the month following the month it was due.
- (g) *Due date* means the A&P tax is due no later than the 20th calendar day of the month following the month the tax is imposed on gross receipts.

- (h) *Person* means any natural person, firm, corporation or other business entity.
- (i) *Taxpayer* means any person liable to remit the A&P. (Ord. No. 5021, §1(3), 11/19/01)
- (j) *Prepared food* shall have the same meaning as defined by Emergency Rule 2007-3 promulgated by the Arkansas Department of Finance and Administration on May 11, 2007 (effective July 1, 2007) or as thereafter amended by the State of Arkansas. (Ord. 5581, §1, 7/2/07)

5-2-13. Administration and regulations.

The administration of this ordinance is vested in the commission and the commission shall promulgate rules and regulations and prescribe all forms as are necessary or required for the enforcement and collection of the A&P tax. (Ord. No. 5021, §1(4), 11/19/01)

5-2-14. Permits.

- (a) It shall be unlawful for any person subject to the A&P tax to transact business within the City prior to the issuance and receipt of an A&P tax permit from the commission.
- (b) A separate A&P tax permit must be obtained from the commission for each location whereat the person conducts a business which is subject to the A&P tax.
- (c) An A&P tax permit shall have no stated term. (Ord. No. 5021, §1(5), 11/19/01)

5-2-15. Application for permit.

Any person subject to the A&P tax transacting business in the city shall file with the commission an application for an A&P tax permit to conduct that business, the form and contents of which application shall be as prescribed by the commission from time to time. (Ord. No. 5021, §1(6), 11/19/01)

5-2-16. Permits not assignable, display required and expiration.

- (a) The A&P tax permit shall not be assignable and shall be valid only for the person in whose name it is issued and for the location thereon designated.
- (b) The A&P tax permit shall at all times be conspicuously displayed at the location thereon designated.
- (c) The A&P tax permit shall expire at the time of cessation of the business of the person at the location designated thereon. (Ord. No. 5021, §1(7), 11/19/01)

5-2-17. Discontinuance of business-Unpaid taxes.

(a) Any person operating under an A&P tax permit, upon discontinuance of the business at the location designated thereon, shall return the A&P tax permit to the commission for cancellation together with remittance of any unpaid and accrued A&P taxes.

(b) Failure to surrender the A&P tax permit and pay any and all accrued A&P taxes shall be sufficient cause for the commission, through its designated representative, to refuse the issuance of any A&P tax permit in the future to the person.

(c) In the case of the sale of any business which is subject to the A&P tax, the A&P tax shall be deemed to be due and payable at the time of the sale of fixtures and equipment incident to business and shall constitute a lien against the said fixtures and equipment in the hands of the purchaser of the business until all A&P taxes have been paid. (Ord. No. 5021, §1(8)(a)(1),(2),(3), 11/19/01)

5-2-18. Revocation or suspension-Renewal.

(a) Whenever a person to whom an A&P tax permit has been issued fails to comply with any provision of this ordinance, including any rule or regulation prescribed by the commission from time to time, the commission, through its designated representative, shall give notice to the person of an intention to revoke the A&P permit.

(b) (1) The person may, within ten (10) days after receipt of the Notice of Intent to Revoke the A&P tax permit, apply to the commission for a hearing. Hearing procedures are as follows:

(2) The hearing shall be conducted at a time and place to be designated by the commission before such person as is designated by the commission to conduct such hearing, and the person requesting the hearing shall be entitled to introduce testimony and be represented by counsel, and the designated representative of the commission shall determine at the hearing whether the person's A&P tax permit should be revoked.

(3) Failure of the person to appear at the hearing shall be grounds for the commission, acting through its designated representative, to revoke the taxpayer's A&P tax permit.

(c) The person shall be entitled, within thirty (30) days from the date of the revocation of the A&P tax permit, to appeal to the Circuit Court of Garland County, Arkansas, where the action shall be tried de novo.

(d) An appeal shall lie from the Circuit Court to the Supreme Court of Arkansas as in other cases provided by law.

(e) Any revoked or suspended permit may be renewed upon the filing of proper returns and the payment of all A&P taxes due or removal of any other cause of revocation or suspension. (Ord. No. 5021, §1(9), 11/19/01)

5-2-19. Preparation of returns-Payment of A&P tax.

(a) The A&P tax shall be due and payable as of the first day of each calendar month by the person liable for the payment of the A&P tax (taxpayer) and shall be delinquent if not paid on or before the first day of the next calendar month.

(b) (1) It shall be the duty of the taxpayer on or before the twentieth (20th) day of each calendar month to deliver to the commission, upon forms prescribed and furnished by the commission, returns under oath showing the total combined gross receipts which are subject to the A&P tax for the preceding calendar month and the amount of tax due. The tax due shall be remitted with the return.

(2) The returns shall contain such further information as the commission may require and, once the taxpayer has become liable for the payment of the A&P tax, the taxpayer must continue to file a return, even though no tax may be due, until such time as the taxpayer surrenders the A&P tax permit.

(c) If not paid on or before the twentieth day of each calendar month, the full amount of the A&P tax shall be due from that date; provided, however, no penalty for delinquency shall be assessed if payment thereof is made on or before the first day of the calendar month next following. (Ord. No. 5021, §1(10), 11/19/01)

5-2-20. Discount for prompt payment.

(a) If the return is delivered on or before the twentieth (20th) day of the calendar month, the taxpayer may remit therewith to the commission ninety-eight (98%) percent of the A&P tax due on or before the twentieth (20th) of that calendar month. A return is "delivered" on the date it is postmarked if it is delivered by U.S. Postal Service.

(b) Failure of the taxpayer to remit the A&P tax on or before the twentieth (20th) of each calendar month shall cause the taxpayer to forfeit his claim to the discount and the taxpayer must remit to the commission one hundred (100%) percent of the amount of the A&P tax due, plus any penalty and interest accrued thereon. (Ord. No. 5021, §1(11), 11/19/01)

5-2-21. Additional penalties and tax.

If a taxpayer shall fail to comply with certain provisions of this ordinance, then the following penalties and additions to tax shall be applicable:

(a) In the case of a taxpayer's failure to file the A&P tax return and pay the tax due on or before the date prescribed, determined with regard to any extension of time for filing thereof, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be added to the amount required to be shown as tax on the A&P tax return five percent (5%) of the amount of the A&P tax if the failure is not more than one (1) month, with an additional five percent (5%) for each additional month or fraction thereof during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate;

(b) In addition to any penalty assessed hereunder, simple interest on any unpaid A&P tax shall be assessed at the rate of (10%) percent per annum from the delinquency date. (Ord. No. 5021, §1(12), 11/19/01)

5-2-22. Examinations and investigations.

(a) In the administration of this ordinance, the commission or its designated representatives, for the purpose of determining the accuracy of a return or fixing any liability hereunder, may make an examination or investigation of the place of business, the tangible personal property, equipment, and facilities, and the books, records, papers, vouchers, accounts, and documents of any taxpayer or other person. Every taxpayer or other person and his agents and employees shall exhibit to the commission its designated representative these places of business and items and facilitate any examination or investigation.

(b) No taxpayer shall be subjected to unnecessary examination or investigations, and only one (1) inspection of a taxpayer's books of account may be made for each taxable year unless the taxpayer requests otherwise or unless the commission or the executive director, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

(c) (1) When conducting an investigation or an audit of any taxpayer, the commission or its designated representatives may, in its discretion, examine the records and files of any person, except where privileged by law, any other business, institution, financial institution, the records of any state agency, agency of the United States Government, or agency of any other state where permitted by agreement or reciprocity.

(2) The commission or its designated representative may compel production of these records by summons. A summons may be served directly by the commission or its designated representatives.

(d) In the administration of this ordinance, the commission, the executive director or his designated representatives may:

(1) Administer oaths, conduct hearings, and compel by summons the attendance of witnesses, testimony, and the production of any books, records, papers, or other data of any person or taxpayer; or

(2) a. Examine under oath any person regarding the business of any taxpayer concerning any matter incident to the administration of this ordinance.

- b. The fees of witnesses required by the commission, the executive director or his designated representatives to attend any hearing shall be the same as those allowed to the witnesses appearing before circuit courts of this state. The fees shall be paid in the manner provided for the payment of other expenses incident to the administration hereof.
- (e) (1) The investigation may extend to any person that the commission or its designated representative determines has access to information which may be relevant to the examination or investigation.
- (2) When any summons requiring the production of records as described in subsection (c) of this section is served on a third-party record keeper, written notice of the summons shall be mailed to the taxpayer that his records are being summoned at least fourteen (14) days prior to the date fixed in the summons as the day for the examination of the records.
- (3) Notice to the taxpayer required by this section is sufficient if it is mailed by certified mail to the last address on record with the commission.
- (f) When the commission or its designated representatives have the power to issue a summons for its own investigative or auditing purposes, then the commission shall honor any reasonable request by any taxpayer to issue a summons on the taxpayer's behalf.
- (g) (1) The commission or the taxpayer may apply to a court of competent jurisdiction in Garland County, Arkansas, for an order compelling the production of the summoned records.
- (2) Failure to comply with the order of the court for the production of records may be punished by the court as for contempt.
- (h) (1) The cost of producing records of a third party required by a summons shall be borne by the taxpayer if he requests the summons to be issued.
- (2) If the commission or its designated representatives initiate the summons for third-party records, the commission shall bear the reasonable cost of producing the records. The commission or its designated representatives may later assess the cost against any delinquent or deficient taxpayer as determined by the records. (Ord. No. 5021, §1(13), 11/19/01)

5-2-23. Time limitations for assessments, collection, refunds, and prosecution.

- (a) Except as otherwise provided in this ordinance, no assessment of the A&P tax shall be made after the expiration of three (3) years from the date the return was required to be filed or the date the return was filed, whichever period expires later. The commission shall not begin court proceedings after the expiration of the three-year period unless there has been a previous assessment for the collection of the tax.

(b) Upon written agreement of the commission and the taxpayer, the time within which the commission may make a final assessment, as provided herein, may be extended to a date mutually agreed upon in the written agreement.

(c) Where, before the expiration of the time prescribed for the assessment of the tax or of extensions thereof, both the commission and the taxpayer have consented in writing to an assessment after that time, then the A&P tax may be assessed at any time prior to the expiration of time agreed upon.

(d) In the case of a fraudulent return or failure to file a report or return required hereunder, the commission may compute, determine, and assess the estimated amount of A&P tax due from any information in its possession or may begin an action in court for the collection of the tax without assessment, at any time.

(e) Whenever a taxpayer requests an extension of time for filing any return required hereunder, the limitation of time for assessing any tax shall be extended for a like period.

(f) Where the assessment of the A&P tax has been made within the period of limitation properly applicable thereto, the A&P tax may be collected by levy or proceeding in court, but only if the levy is made or the proceeding is begun within ten (10) years after the date of the assessment of the tax.

(g) No person shall be prosecuted, tried, or punished for any of the various criminal offenses arising under the provisions of this ordinance unless the indictment of the taxpayer is instituted within six (6) years after the commission of the offense. (Ord. No. 5021, §1(14), 11/19/01)

5-2-24. Notice requirements.

(a) (1) The commission shall give a taxpayer notice of any assessment, demand, decision, or hearing before the commission or its designated representative which directly involves that taxpayer.

(2) All notices required to be given by the commission to a taxpayer shall be either served by personal service or sent by mail to the taxpayer's last address on record with the commission. If this mail is returned unclaimed or refused, then proper notice shall have been served and given, and the commission may take any action permitted by this ordinance or otherwise by law.

(3) All notices of final assessment hereunder shall be sent by certified mail, return receipt requested.

(b) The taxpayer, when giving notice to the commission, shall give notice either by mail or by personal service on the commission. The notice the taxpayer gives shall be effective when postmarked or, in case of personal service, when so served.

(c) The commission and any taxpayer may, by written agreement, provide for any other reasonable means of giving notice.

(d) All notices shall be in writing. (Ord. No. 5021, §1(15), 11/19/01)

5-2-25. Assessment and collection of taxes generally.

(a) (1) The commission or its designated representatives are authorized and required to make the inquiries, determinations, and assessments of the A&P tax, including interest, additions to taxes, and assessable penalties, imposed hereby.

(2) The assessment shall be made by recording the liability of the taxpayer in the offices of the commission in accordance with rules or regulations prescribed by the commission.

(3) Upon request of the taxpayer, the commission shall furnish the taxpayer a copy of the record of the assessment.

(b) (1) The commission shall collect all A&P taxes imposed by law.

(2) As soon as practicable after the making of assessment of the A&P tax, the commission shall give notice to each person liable for the unpaid tax, stating the amount and demanding payment within ten (10) days.

(3) Upon receipt of notice and demand from the commission, the person liable for the tax shall pay the stated amount including any interest, additions to tax, and assessable penalties at the place and time stated in the notice and demand. (Ord. No. 5021, §1(16), 11/19/01)

5-2-26. Proposed assessments.

(a) (1) If any taxpayer fails to file any return as required hereunder, the commission, from any information in its possession or obtainable by it, may determine the correct amount of tax for the taxable period. If a return has been filed, the commission or its designated representatives shall examine the return and make any audit or investigation that is considered necessary.

(2) When no return has been filed and the commission determines that there is an A&P tax due for the taxable period or when a return has been filed and the commission determines that the A&P tax disclosed by the return is less than the tax disclosed by its examination, the commission shall propose the assessment of additional tax plus penalties, as the case may be, and shall give notice of the proposed assessment to the taxpayer. The notice shall explain the basis for the proposed assessment and shall state that a final assessment, as provided

for herein, will be made if the taxpayer does not protest such proposed assessment as provided hereby. The taxpayer does not have to protest the proposed assessment to later be entitled to exercise the right to seek a judicial review of the assessment.

(b) Any demand for additional payment of the A&P tax which is made as the result of a verification of a mathematical error on the return shall not be deemed to be a proposed assessment under the provisions of this section and shall not be subject to the hearing or appeal provisions of this section. (Ord. No. 5021, §1(17), 11/19/01)

5-2-27. Taxpayer relief.

- (a) Any taxpayer who wishes to seek administrative relief from any proposed assessment of taxes or proposed notice of disallowance of a claim for refund by the commission shall follow the procedure provided by this section.
- (b) (1) A taxpayer may at his option either request the commission to consider his request for relief solely upon written documents furnished by the taxpayer or upon the written documents and any evidence produced by the taxpayer at a hearing.
- (2) A taxpayer who requests the commission to render its decision based on written documents is not entitled by law to any other administrative hearing prior to the commission's rendering of its decision and, if necessary, the issuing of a final assessment and demand for payment or issuing of a certificate of indebtedness.
- (c) Within thirty (30) days after service of notice of the proposed assessment, the taxpayer may file with the commission a written protest under oath, signed by himself or his authorized agent, setting forth the taxpayer's reasons for opposing the proposed assessment.
- (d) The commission may, in its discretion, extend the time for filing a protest for any period of time not to exceed an additional ninety-day period. (Ord. No. 5021, §1(18), 11/19/01)

5-2-28. Hearing on proposed assessments.

- (a) (1) The executive director or his designee shall serve as hearing officer to review all written protests submitted by taxpayers, hold all hearings, and make written findings as to the applicability of the proposed assessment.
- (2) Decisions of the hearing officer shall be final unless revised by the commission.
- (3) The hearing on written and oral protests and determinations made by the hearing officer shall not be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 *et seq.*

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- (b) The actual hearing on the written protest shall be held in the commission's offices.
- (c) (1) The hearing officer shall set the time and place for hearing on the written protest and shall give the taxpayer reasonable notice thereof.
- (2) At the hearing, the taxpayer may be represented by an authorized representative and may present evidence in support of his position.
- (3) After the hearing, the hearing officer shall render his decision in writing and shall serve copies upon both the taxpayer and the commission.
- (4) a. If the proposed assessment is sustained, in whole or part, the taxpayer may request in writing, within twenty (20) days of the mailing of the decision, that the commission revise the decision of the hearing officer.
- b. If the commission refuses to make a revision or if the taxpayer does not make a request for revision, then a final assessment shall be made upon the final determination of the hearing officer or the commission.
- c. A taxpayer may seek relief from the final decision of the hearing officer or the commission on a final assessment of a tax deficiency by following the procedure set forth in this section.
- d. 1. In addition to the hearing procedures set out in subsections (a)-(c) of this section, the commission or the hearing officer may hold administrative hearings by telephone, video conference, or other electronic means if the commission or the hearing officer determines that conducting the hearing in such a manner:
- i. Is in the best interest of the taxpayer and the commission;
 - ii. Is agreed to by both parties;
 - iii. Is not fiscally unsound or administratively burdensome; and
 - iv. Adequately protects the confidentiality of the taxpayer's information.
2. The commission is authorized to contract with third parties for all services necessary to conduct hearings by telephone, video, or other electronic means.

3. Any person who enters into a contract with the commission to provide services necessary to conduct hearings by telephone, video, or other electronic means shall be subject to the laws providing for the confidentiality of taxpayer records. (Ord. No. 5021, §1(19), 11/19/01)

5-2-29. Judicial relief.

(a) Within thirty (30) days after the issuance and service on the taxpayer of the notice and demand for payment of a deficiency in tax established by (1) an audit determination that is not protested by the taxpayer, or (2) a final determination of the hearing officer or the commission, a taxpayer may seek judicial relief from the final determination by either:

(1) Within thirty (30) days of the date of the final assessment, paying the entire amount of the A&P tax due, including any interest or penalties, for any taxable period or periods covered by the final assessment and filing suit to recover that amount within one (1) year of the date of payment. The commission may proceed with collection activities, including the filing of a certificate of indebtedness as authorized hereunder, within thirty (30) days of the issuance of the final assessment for any assessed but unpaid A&P taxes, penalties, or interest owed by the taxpayer for other taxable periods covered by the final assessment, while the suit for refund is being pursued by the taxpayer for other taxable periods covered by the final assessment; or

(2) a. Within thirty (30) days of the issuance and service on the taxpayer of the notice and demand for payment, filing with the commission a bond in double the amount of the tax deficiency due and by filing suit within thirty (30) days thereafter to stay the effect of the commission's determination.

b. The bond shall be subject to the condition that the taxpayer shall file suit within thirty (30) days after filing the bond, shall faithfully and diligently prosecute the suit to a final determination, and shall pay any deficiency found by the court to be due and any court cost assessed against him.

c. A taxpayer's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by subsection (a) of this section, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs.

(b) Jurisdiction for a suit to contest a determination of the commission under this section shall be in a circuit court in Garland County, where the matter shall be tried de novo.

(c) The methods provided in this section shall be the sole alternative methods for seeking relief from a written decision of the commission or the hearing officer establishing a deficiency in the A&P tax. No injunction shall issue to stay proceedings for assessment or collection of any A&P taxes.

(d) In any court proceeding under this section, the prevailing party may be awarded a judgment for court costs. (Ord. No. 5021, §1(20), 11/19/01)

5-2-30. Issuance of certificates of indebtedness and execution.

- (a) (1) a. If a taxpayer does not timely and properly pursue his remedies seeking relief from a decision of the commission or hearing officer and a final assessment is made against the taxpayer, or if the taxpayer fails to pay the deficiency assessed upon notice and demand, then the commission through its authorized representatives shall, as soon as practicable thereafter, issue to the circuit clerk of any county of the state in which the taxpayer's business is located a certificate of indebtedness certifying that the person named therein is indebted to the commission for the amount of the tax established by the commission as due.
- b. If a taxpayer has a delinquent A&P tax liability to the commission of less than one thousand dollars (\$1,000), the commission or its hearing officer may enter into an agreement with the taxpayer to allow the taxpayer to pay the delinquency in installments. The commission or its hearing officer may choose not to issue a certificate of indebtedness during the period of the installment agreement if it determines that it is in the best interest of the commission.
- (2) The circuit clerk shall enter immediately upon the circuit court judgment docket:
- a. The name of the delinquent taxpayer;
- b. The amount certified as being due;
- c. The name of the tax; and
- d. The date of entry upon the judgment docket.
- (3) a. The entry of the certificate of indebtedness shall have the same force and effect as the entry of a judgment rendered by the circuit court. This entry shall constitute the commission's lien upon the title of any real and personal property of the taxpayer in the county where the certificate of indebtedness is recorded.

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b. This lien is in addition to any other lien existing in favor of the commission to secure payment of taxes, applicable interest, penalties, and costs. The lien is superior to other liens of any type or character attaching to the property after the date of entry of the certificate of indebtedness on the judgment docket. This lien is superior to all claims of unsecured creditors.

c. The certificate of indebtedness authorized by this subsection shall continue in force for ten (10) years from the date of recording and shall automatically expire after the ten-year period has run. Actions on the lien on the certificate of indebtedness shall be commenced within ten (10) years after the date of recording of the certificate, and not afterward.

(b) (1) After entry of the certificate, the circuit clerk shall issue a writ of execution directed to the commission, authorizing the commission to levy upon and against all real and personal property of the taxpayer.

(2) The commission shall have all remedies and may take all proceedings for the collection of the tax which may be taken for the recovery of a judgment at law.

(3) The writ shall be issued, served, and executed in the same manner as provided for in the issuance and service of executions rendered by the circuit courts of this state, except the commission shall act in the place of the county sheriffs.

(c) (1) Nothing in this chapter shall preclude the commission from resorting to any other means provided by law for collecting delinquent taxes.

(2) The issuance of a certificate of indebtedness, entry by the clerk, and levy of execution as provided in this section shall not constitute an election of remedies with respect to the collection of the tax.

(3) The taxes, fees, interest, and penalties imposed or levied hereby may be collected in the same way as a personal debt of the taxpayer.

(4) The commission may sue to the same effect and extent as for the enforcement of a right of action for debt.

(5) All provisional remedies available in these actions are available to the commission in the enforcement of the payment of the A&P tax.

(d) (1) In addition to the remedies provided in subsections (b) and (c) of this section, the commission may direct the circuit clerk to issue a writ of execution directed to the sheriff of any county authorizing the sheriff to levy upon and against all real and personal property of the taxpayer. The writ shall be issued, served, and executed in the same manner as provided for in the issuance and service of executions rendered by the circuit courts of this state.

(2) The circuit clerks and sheriffs shall be entitled to receive the same fees provided by law in these matters. These fees shall be collected from the taxpayer by either the commission or the sheriff in addition to the tax, penalties, and interest included in the certificate of indebtedness. If the sheriff is unable, after diligent effort, to collect the tax, interest, penalties, and costs, the commission may pay such fees as are properly shown to be due to the clerk and sheriff.

(e) The commission may contract with persons inside or outside the state to help the commission collect delinquencies of resident or nonresident taxpayers. (Ord. No. 5021, §1(21), 11/19/01)

5-2-31. Injunction proceedings.

When a return required hereunder has not been filed or does not furnish all the information required by the commission or when the A&P taxes imposed by law have not been paid or when any required license or permit has not been secured, the commission may institute any necessary action or proceeding in a court of competent jurisdiction in Garland County to enjoin the person or taxpayer from continuing operations until the report or return has been filed, required licenses or permits secured, or taxes paid as required. The injunction shall be issued without a bond being required from the commission. (Ord. No. 5021, §1(22), 11/19/01)

5-2-32. Settlement or compromise of liability controversies.

(a) The commission may enter into an agreement to compound, settle, or compromise any controversy relating to the A&P tax when:

- (1) The controversy is over the amount of tax due; or
- (2) The inability to pay results from the insolvency of the taxpayer.

(b) The commission may waive or remit the interest or penalty, or any portion thereof, ordinarily accruing because of a taxpayer's failure to pay the A&P tax within the statutory period allowed for its payment

- (1) If the taxpayer's failure to pay the tax is satisfactorily explained to the commission; or
- (2) If the failure results from a mistake by the taxpayer of either the law or the facts subjecting him to such tax; or
- (3) If the inability to pay the interest or penalty results from the insolvency or bankruptcy of the taxpayer.

(c) In settling or compromising any controversy relating to the liability of a person for the A&P tax for any taxable period, the commission is authorized to enter into a written closing agreement concerning the liability. When the closing agreement is signed by the commission, it shall be final and conclusive, and except upon a showing of fraud or misrepresentation of a material fact, no additional assessment or collection shall be made by the commission, and the taxpayer shall not institute any judicial proceeding to recover such liabilities as agreed to in the closing agreement.

(d) The commission shall promulgate rules and regulations establishing guidelines for determining whether a proposed offer in compromise is adequate and is acceptable to resolve a tax dispute. (Ord. No. 5021, §1(23), 11/19/01)

5-2-33. Release of property from lien.

(a) Upon written application by any person, the commission may release any property from the lien imposed by any assessment, order, judgment, or certificate of indebtedness obtained by or from any levy made by it if:

(1) Either full payment is made to the commission of the sum it considers adequate consideration for the release; or

(2) Adequate security deposit is made with the commission to secure the payment of the debt evidenced by the lien.

(b) When the commission determines that its assessment, certificate of indebtedness, or judgment is clouding the title of property because of an error in the description of properties or similarity in names, the commission may issue a release without the payment of any consideration.

(c) The commission's release shall be given under its seal and filed in the office of the circuit clerk in the county in which the lien is filed, or it shall be recorded in any office in which conveyances of real estate may be recorded. (Ord. No. 5021, §1(24), 11/19/01)

5-2-34. Criminal penalties.

Sanctions for any taxpayer who willfully attempts to evade or defeat the payment of the A&P tax, or who assists a taxpayer to evade or defeat the payment, or otherwise fails to file a report, fails to pay the tax, or makes a false or fraudulent report, return, statement, claim, application or other instrument required by the commission in connection with the A&P tax, or knowingly makes a false answer to any question from the commission or its designated representative concerning any A&P tax, neglects to answer a subpoena to appear and answer questions about records for the A&P tax, or fails to obtain an A&P tax permit as required, or who acts, or fails to act, in conformance with the provisions of the Arkansas Tax Procedure Act, as that Act applies to the A&P tax, shall be subject to the penalties set forth in Ark. Code Ann. §§ 26-18-101 to 105; 26-10-201 to 212 (Michie Repl. 1997 and Supp. 1999), as they exist on the date of the passage of this ordinance, or as they may be amended by the General Assembly and are in effect on the date of any such violation. (Ord. No. 5021, §1(25), 11/19/01)

5-2-35. Severability.

The provisions of this ordinance are hereby declared to be severable. If any provision shall be held to be invalid or to be inapplicable to any persons or circumstances, such invalidity or inapplicability shall not affect the remainder of the provisions of this ordinance. (Ord. No. 5021, §2, 11/19/01)

5-2-36-39 Reserved**5-2-40 Selection of Board of Director Positions on the Advertising and Promotion Commission**

Whenever a vacancy in one or more of the Board of Director positions on the Advertising and Promotion Commission shall occur by expiration of a term of office or otherwise, the procedure for filling said vacancy shall be as follows:

(1) The Mayor shall draw from lots consisting of the position number of each Board member, excluding the Mayor and any Board member whose term on the Advertising and Promotion Commission has yet to expire. The purpose of said drawing shall be to establish the order of voting on candidates to the Advertising and Promotion Commission. As each eligible Board position number is drawn, any Director not wishing to serve on the Advertising and Promotion Commission may so indicate by stating "pass" upon the drawing of his or her lot (position number). Otherwise, voting on such candidate shall occur immediately by way of a call of the roll. Should a candidate not receive the requisite four (4) affirmative votes, then the Mayor shall draw from the remaining lot(s), and the process shall continue thereafter until a candidate has received the requisite four (4) affirmative votes, at which time drawing shall cease and the Board member receiving the four (4) affirmative votes shall be considered the Board's nominee for appointment to the Advertising and Promotion Commission.

(2) Once a nominee has been selected in accordance the above described procedure, his or her appointment shall be confirmed by resolution of the Board of Directors.

(Res. No. 7609, §1, 2/01/11)

CHAPTER 3**BUSINESS LICENSES AND OCCUPATION TAX****5-3-1. Activities declared privilege; payment of privilege or occupation tax required.**

The carrying on of any business, profession or occupation of whatever kind or nature within the corporate limits of the city of Hot Springs, Arkansas, is hereby declared to be a privilege, and from and after the effective date of this chapter any person, firm or corporation engaged in any business, profession or occupation of whatever kind or nature within the city, shall pay an annual privilege or occupation tax. (Ord. No. 3836, § 2, 1/14/86)

No person, firm or corporation shall be permitted to operate nor shall an occupation tax license be issued to any business, person, profession or occupation of whatever kind or nature within the city if said person, firm or corporation is in any way indebted to the city of Hot Springs or any of its political subdivisions. Upon application for an occupation tax license, all businesses required to collect sales and use taxes under the Arkansas Gross Receipts Act and/or advertising and promotion sales taxes shall provide proof of registration with the applicable authority for the collection of said taxes. (Ord. No. 4678, § 1, 11/17/97)

5-3-2. Tax due on basis of calendar year.

(a) The annual privilege or occupation tax shall be paid on the basis of the calendar year of January 1 through December 31, and all such taxes shall be payable on January 1, for the ensuing year except where the following conditions are found to exist:

- (1) The business licensee shall have the option of paying his annual tax in two (2) equal installments on January 1 and July 1, respectively, each year; provided, that at least half of the full amount is received by the City Manager or his designee on or before January 10 and the licensee specifically requests the option of paying the second installment on or before July 1;
- (2) Where the business licensee operates on a fiscal year different to the calendar year, he may request in writing for the privilege of paying such tax on his fiscal year in advance as opposed to the calendar year; and
- (3) Businesses beginning on other than the first of the calendar year must pay the tax in advance for opening business on a pro rata monthly basis to the end of the year.

Cross references-City clerk to collect all taxes and license fees, §2-4-1; fee required to construct or repair buildings, §15-7-2; public performance requiring permits, §11-2-12; sexually oriented business, §16-8-1; fees for transportation related business, §13-1-23(6); transient merchants, §4-10-1.

Editor's Note: (Ord. 6222, 1/16/18) changed the wording from "City Manager or his designee" from "City Clerk".

State law reference-Municipal occupation taxes and licenses, A.C.A. Title 26, Chapter 77.

(b) Notwithstanding the provisions of subsection (a) hereof, the taxes levied in this chapter shall be applicable from the first publication of this ordinance following its passage through December 31 in the year 1986 only. In 1987 and subsequent years, such taxes shall be paid on the basis of the calendar year January 1 through December 31. (Ord. No. 3836, §§ 3, 4, 1/14/86)

5-3-3. Delinquent taxes-Penalty.

Any occupation tax or portion thereof which shall not have been paid by March 31 of each year shall be delinquent and ten (10) per cent of the unpaid balance shall be added as a penalty for nonpayment; provided, that this section shall not apply to those businesses paying their occupation tax in installments under the provisions of §5-3-2(a)(1) above and, provided this section shall not apply to those businesses paying their occupation taxes under the provisions of §5-3-2(a)(2) above. Those businesses paying under the provisions of §5-3-2(a)(1) above shall be delinquent in the payment of their occupation tax or portion thereof which shall not have been received by July 31 of each year; and those businesses paying under the provisions of §5-3-2(a)(2) above shall be delinquent in the payment of their occupation tax or any portion thereof not received ninety (90) days following the commencement of its fiscal year. (Ord. No. 3836 §5, 1/14/86)

5-3-4. Delinquent taxes-List to be published.

In September of each year, the City Manager or his designee shall compile a list of delinquent occupation tax accounts and shall cause the same to be published once a week for two (2) consecutive weeks in a newspaper having general circulation within the corporate limits of this city. (Ord. No. 3836, § 6, 1/14/86)

5-3-5. Refund of tax upon termination of business.

If any person, firm or corporation shall have paid their yearly occupation tax as provided in this chapter and ceased to do business during that calendar year, upon satisfaction tax paid by such person, firm or corporation shall be reimbursed on a pro rata basis. It is not the intent of the Hot Springs city council to provide pro rata tax relief to persons, firms or corporations who operate on a seasonal basis, but to provide relief to those businesses which actually cease to exist. (Ord. No. 3836, § 7, 1/14/86)

5-3-6. Initial occupation tax payments.

Before any new business shall commence within the corporate limits of the city of Hot Springs, Arkansas, or before any permit shall be issued for the construction of such new business or a permit issued for the renovation of an existing structure to accommodate a new business, the applicable occupation tax for said business shall be paid in advance. Thereafter the occupation tax may be paid by said business pursuant to the existing payment schedules of the occupation tax code of the city of Hot Springs, Arkansas. (Ord. No. 3836, § 8, 1/14/86)

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5-3-7. Seasonal businesses.

Businesses which shall operate within the corporate limits of this city on a seasonal basis only shall be required to pay the applicable occupation tax rate for said business at the commencement of their respective seasonal operation. (Ord. No. 3836, § 9, 1/14/86)

5-3-8. Industrial classification manual adopted.

The North American Industry Classification System United State Manual, 1997 Edition, as prepared by the Executive Office of the President, Office of Management and Budget, including revisions and additions thereto, is hereby adopted as the standard guide for classifying businesses in the corporate limits of the City of Hot Springs, Arkansas. All businesses, professions or occupations carried on within the corporate limits of the City of Hot Springs, Arkansas, shall be classified and assigned a classification number in accordance with this manual, as nearly as practical, and shall pay on the basis of the rate fixed for this classification as shall be set forth in the following section. (Ord. No. 4861, § 1, 4/3/00)

5-3-9. Occupation tax schedule

The annual business license and occupation tax rate for each North American Industry Classification System (NAICS) classification shall be as established in this section. In this regard, the rate set for a NAICS sector, sub-sector or industry group shall apply to all businesses and industries within that sector, sub-sector or industry group except as noted hereinafter (Ord. No. 5118, § 9, 9/3/02):

<u>NAICS CLASSIFICATION</u>	<u>annual tax rate</u>
Sector 11. Agriculture, Forestry, Fishing and Haunting.	
111.Crop Production	\$ 75.00
112. Animal Production	75.00
Exemptions: 1123. Poultry and Egg Production	200.00
1129. Other Animal Production	100.00
113. Forestry and Logging	75.00
114. Fishing, Hunting and Trapping	75.00
115. Support Activities for Agriculture and Forestry	75.00
Sector 21. Mining.	MS ¹
Sector 22. Utilities.	MS ¹

Exception: Utility companies paying a franchise tax pursuant to a city franchise agreement are exempt from occupation tax.

NAICS CLASSIFICATION**annual tax rate****Sector 23. Construction.**

233. Building, Developing and General Contracting	
2331. Land Subdivision and Land Development	75.00
2332. Residential Building Construction	75.00
2333. Nonresidential Building Construction	150.00
234. Heavy Construction	
2341. Highway, Street, Bridge & Tunnel Construction	200.00
2349. Other Heavy Construction	150.00
235. Special Trade Contractors	
2351. Plumbing, Heating & AC Contractors	100.00 ^a
2352. Painting and Wall Covering Contractors	75.00
2353. Electrical Contractors	100.00 ^a
2354. Masonry, Drywall, Insulation and Tile Contractors	75.00
2355. Carpentry and Floor Contractors	75.00
2356. Roofing, Siding, and Sheet Metal Contractors	75.00
2357. Concrete Contractors	100.00
2358. Water Well Drilling Contractors	100.00
2359. Other Special Trade Contractors	75.00
<i>Exceptions:</i> 235910. Structural Steel Erection Contractors	100.00
235950. Building Equipment and Other Machinery Installation Contractors	125.00
235991. Fencing Contractors	50.00

^a plus 10.00 for each truck over one

Sector 31-33. Manufacturing.

311. Food Manufacturing	MS ¹
<i>Exceptions:</i> 311511. Fluid Milk Manufacturing	200.00
311811. Retail Bakeries	50.00 ^a
^a plus 10.00 for each employee over five	
312. Beverage and Tobacco Product Manufacturing	MS ¹
<i>Exceptions:</i> 312111. Soft Drink Manufacturing	100.00 ^a
312112. Bottled Water Manufacturing	30.00 ^b
312113. Ice Manufacturing	125.00

^a plus 25.00 per truck

^b per employee

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NAICS CLASSIFICATION**annual tax rate**

313. Textile Mills	MS ¹
314. Textile Product Mills	MS ¹
<i>Exception:</i> 314912. Canvas and Related Product Mills	75.00
315. Apparel Manufacturing	MS ¹
316. Leather and Allied Product Manufacturing	MS ¹
321. Wood Product Manufacturing	MS ¹
<i>Exception:</i> 321999. All Other Miscellaneous Wood Product Manufacturing	5.00 ^a
^a <i>per employee</i>	
322. Paper Manufacturing	MS ¹
323. Printing and Related Support Activities	75.00
324. Petroleum and Coal Products Manufacturing	MS ¹
325. Chemical Manufacturing	MS ¹
326. Plastics and Rubber Products Manufacturing	MS ¹
327. Nonmetallic Mineral Product Manufacturing	MS ¹
<i>Exceptions:</i> 32721. Glass and Glass Product Manufacturing	125.00
32732. Ready-Mix Concrete Manufacturing	15.00 ^a
32733. Concrete Pipe, Brick & Block Manufacturing	175.00
^a <i>per ready mix truck</i>	
331. Primary Metal Manufacturing	MS ¹
332. Fabricated Metal Product Manufacturing	MS ¹
<i>Exception:</i> 332321. Metal Window & Door Manufacturing	125.00
333. Machinery Manufacturing	MS ¹
334. Computer and Electronic Product Manufacturing	MS ¹
335. Electrical Equipment, Appliance and Component Manufacturing	MS ¹

NAICS CLASSIFICATION**annual tax rate**

336. Transportation Equipment Manufacturing	MS ¹
337. Furniture and Related Product Manufacturing	MS ¹
339. Miscellaneous Manufacturing	MS ¹
<i>Exceptions:</i> 339116. Dental Laboratories	75.00
33995. Sign Manufacturing	75.00
Sector 42. Wholesale Trade.	
421. Wholesale Trade, Durable Goods	
4211. Motor Vehicle/Motor Vehicle Pt & Supply Whsle	IS ¹
4212. Furniture & Home Furnishing Whsle	IS ¹
4213. Lumber & Other Construction Materials Whsle	150.00
4214. Professional & Commercial Equip & Supp Whsle	175.00
4215. Metal & Mineral (except Petroleum) Whsle	200.00
4216. Electrical Goods Whsle	IS ¹
4217. Hardware & Plumb & Heating Equip & Sup Whsle	IS ¹
4218. Machinery, Equipment & Supplies Whsle	IS ¹
4219. Miscellaneous Durable Goods Whsle	IS ¹
422. Wholesale Trade, Nondurable Goods	
4221. Paper & Paper Product Whsle	150.00
4222. Drugs & Druggists= Sundries Whsle	IS ¹
4223. Apparel, Piece Goods & Notions Whsle	IS ¹
4224. Grocery & Related Product Whsle	125.00 ^a
<i>Exceptions:</i> 42241. General Line Grocery Whsle	75.00
42243. Dairy Product (exc Dried or Canned) Whsle	75.00
42245. Confectionery Whsle	100.00
42247. Meat & Meat Product Whsle	75.00
4225. Farm Product Raw Material Whsle	IS ¹
4226. Chemical & Allied Products Whsle	IS ¹
4227. Petroleum & Petroleum Products Whsle	
42271. Petroleum Bulk Stations & Terminals	250.00 ^b
42272. Petroleum Prod Whsle (exc Bulk Sta/Terminals)	125.00
4228. Beer/Wine/Distilled Alcoholic Beverage Whsle	200.00 ^c
4229. Miscellaneous Nondurable Goods Whsle	IS ¹
<i>Exceptions:</i> 42292. Book, Periodical & Newspaper Whsle	50.00
42294. Tobacco & Tobacco Product Whsle	125.00 ^a
^a plus 10.00 per truck	
^b plus 10.00 each station	
^c plus 75.00 each truck	

NAICS CLASSIFICATION**annual tax rate****Sector 44-45. Retail Trade.**

441. Motor Vehicle & Parts Dealers	
4411. Automobile Dealers	
44111. New Car Dealers	200.00
44112. Used Car Dealers	100.00
4412. Other Motor Vehicle Dealers	100.00
<i>Exception:</i> 441222. Boat Dealers	IS ¹
4413. Automotive Parts, Accessories & Tire Stores	IS ¹
<i>Exception:</i> 441329. Used Tire Dealers	75.00
442. Furniture & Home Furnishings Stores	
4421. Furniture Stores	50.00 ^a
4422. Home Furnishings Stores	75.00
	<i>^a plus 25.00 each truck, plus 15.00 each full-time employee or employed owner</i>
443. Electronics & Appliance Stores	IS ¹
444. Building Material and Garden Equipment and Supplies Dealers	
4441. Building Material & Supplies Dealers	IS ¹
4442. Lawn & Garden Equip & Supplies Stores	50.00
<i>Exception:</i> 44421. Outdoor Power Equipment Stores	200.00
445. Food and Beverage Stores	
4451. Grocery Stores	IS ¹
4452. Specialty Food Stores	65.00
4453. Beer, Wine & Liquor Stores	50.00 ^a
	<i>^a plus applicable alcohol permit</i>
446. Health and Personal Care Stores	
44611. Pharmacies & Drug Stores	IS ¹
44612. Cosmetics, Beauty Supplies & Perfume Stores	50.00
44613. Optical Goods Stores	150.00
44619. All Other Health & Personal Care Stores	75.00
<i>Exception:</i> 446191. Food (Health) Supplement Stores	65.00
447. Gasoline Stations	
4471. Gasoline Stations	50.00 ^a
<i>Exception:</i> 44711. Gasoline Stations with Convenience Stores	IS ^{1b}
	<i>^a plus 10.00 per dispenser</i>
	<i>^b plus 20.00 per pump</i>

NAICS CLASSIFICATION**annual tax rate**

448. Clothing and Clothing Accessories Stores	IS ¹
<i>Exception:</i> 44815. Clothing Accessories Stores	65.00
451. Sporting Goods, Hobby, Book, and Music Stores	IS ¹
4512. Book, Periodical & Music Stores	IS ¹
<i>Exceptions:</i> 451212. News Dealers & Newsstands	75.00
452. General Merchandise Stores	IS ¹
453. Miscellaneous Store Retailers	
4531. Florists	75.00
4532. Office Supplies, Stationery & Gift Stores	IS ¹
<i>Exception:</i> 453229. Curio Shops (Rock Shops)	50.00
4533. Used Merchandise Stores	50.00
<i>Exception:</i> 45331. Used Merchandise Stores (Antique Shops)	75.00
4539. Other Miscellaneous Store Retailers	
45391. Pet & Pet Supplies Stores	65.00
45392. Art Dealers	50.00
45393. Manufactured (Mobile) Home Dealers	175.00
45399. All Other Miscellaneous Store Retailers	50.00
<i>Exception:</i> 453991. Tobacco Stores	75.00
454. Nonstore Retailers	
4541. Electronic Shopping & Mail-Order Houses	125.00
4542. Vending Machine Operators	50.00
4543. Direct Selling Establishments	
45431. Fuel Dealers	100.00 ^a
45439. Other Direct Selling Establishments	50.00 ^b

^a plus 10.00 per route truck

^b each salesman, plus 10.00 for each additional salesman

Sector 48-49. Transportation and Warehousing.

481. Air Transportation	75.00
482. Rail Transportation	75.00
483. Water Transportation	75.00
484. Truck Transportation	50.00 ^a

^a plus 20.00 for each truck over one

NAICS CLASSIFICATION**annual tax rate**

485. Transit and Ground Passenger Transportation

Establishments in sub-sector 485 are exempt from the business license and occupation tax code but are regulated by the Transportation Code (HSC §13-1-1 et seq).

487. Scenic and Sightseeing Transportation

100.00

Exceptions: 4871. Establishments in industry group 4871 are exempt from the business license and occupation tax code but are regulated by the Transportation Code (HSC §13-1-1 etseq).

4872. Amphibian vehicles (ducks) are exempt from the business license and occupation tax code but are regulated by the Transportation Code (HSC §13-1-1 etseq).

488. Support Activities for Transportation

100.00

491. Postal Service (Contractors or Sub-Contractors to U.S. Postal Service)

Exempt

492. Couriers and Messengers

100.00

493. Warehousing and Storage

50.00

Sector 51. Information.

511. Publishing Industries

75.00

Exception: 51111. Newspaper Publishers (daily)

500.00

512. Motion Picture and Sound Recording Industries

5121. Motion Picture & Video Industries

300.00 ^a400.00 ^b

5122. Sound Recording Industries

100.00

^aup to 700 seats

^bover 700 seats

NAICS CLASSIFICATION**annual tax rate**

513. Broadcasting and Telecommunication	
5131. Radio & Television Broadcasting	
51311. Radio Broadcasting	250.00
51312. Television Broadcasting	500.00
5132. Cable Networks & Program Distribution	500.00
<i>Exception: 51322. Cable & Other Program Distribution</i>	Exempt ^a
5133. Telecommunications	
51331. Wired Telecommunications Carriers	Exempt ^a
51332. Wireless Telecom Carriers (exc Satellite)	75.00
51333. Telecommunications Resellers	Exempt ^a
51334. Satellite Telecommunications	75.00
51339. Other Telecommunications	75.00

^a *Cable and telecommunications companies paying a franchise tax pursuant to a city franchise agreement are exempt from occupation tax.*

514. Information Services and Data Processing Services	200.00
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Sector 52. Finance and Insurance.

522. Credit Intermediation and Related Activities	
5221. Depository Credit Intermediation	1,000.00 ^a
5222. Nondepository Credit Intermediation	300.00
<i>Exception: 522298. All Other Nondepository Credit Intermediation</i>	200.00
5223. Activities Related to Credit Intermediation	300.00
<i>Exception: 52239. Other Credit Intermediation</i>	125.00

^a*for the main bank, plus 100.00 for each of the first five (5) additional branches, plus 75.00 for each additional branch over five*

523. Securities, Commodity Contracts, and Other Financial Investments and Related Activities	200.00 ^a
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^a*plus 75.00 for each account executive*

524. Insurance Carriers & Related Activities	Exempt ^a
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^a*Establishments primarily engaged in the business of insurance subject to the state insurance premium tax as defined by A.C.A. §26-57-604 and A.C.A. §26-57-605. Businesses in this classification shall not be assessed an occupation or business license tax by the City of Hot Springs.*

NAICS CLASSIFICATION**annual tax rate**

525. Funds, Trusts, and Other Financial Vehicles Exempt ^a

^a*non profit*

Sector 53. Real Estate and Rental and Leasing.

531. Real Estate

5311. Lessors of Real Estate

53111. Lessors of Residential Buildings & Dwellings 4.00 ^a
(Five (5) or more housing units)

53112. Lessors of NonresBldg (excMiniwarehouse) 15.00 ^b

53113. Lessors of Miniwarehouse& Self Storage Units 50.00

53119. Lessors of Other Real Estate Property 50.00 ^c

Exception: 531191. Flea Markets 5.00 ^b

5312. Offices of Real Estate Agents & Brokers 100.00 ^d

5313. Activities Related to Real Estate 100.00 ^d

^a*for 1 room; 5.00 - 2 rooms; 6.00 - 3 rooms, 7.00 - 4 or more*

^b*per space*

^c*up to 20 spaces, then 2.00 per space in mobile home parks*

^d*plus 25.00 per broker, agent, appraiser, manager or sales person in each establishment excluding the principal broker, appraiser or manager.*

532. Rental and Leasing Services 100.00

Exception: 5321. Automotive Equipment Rental & Leasing 250.00

Sector 54. Professional, Scientific & Technical Services.

541. Professional, Scientific & Technical Services

5411. Legal Services

54111. Offices of Lawyers 200.00 ^a

54112. Offices of Notaries 35.00

54119. Other Legal Services 35.00

Exception: 541191. Title Abstract & Settlement Offices 150.00

5412. Accounting/Tax Prep/Bookkeep/Payroll Services 100.00

Exception: 541211. Offices of Certified Public Accountants 200.00 ^b

5413. Architectural, Engineering & Related Services

54131. Architectural Services 150.00 ^c

54132. Landscape Architectural Services 150.00 ^c

54133. Engineering Services 200.00 ^d

54134. Drafting Services 50.00

54135. Building Inspection Services 75.00 ^e

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54136. Geophysical Surveying & Mapping Services	75.00 ^f
54137. Surveying/Mapping (exc Geophysical) Services	75.00 ^f
54138. Testing Laboratories	100.00
5414. Specialized Design Services	100.00
5415. Computer Systems Design & Related Services	100.00
5416. Management, Sci& Tech Consulting Services	100.00
5417. Scientific R&D Services	100.00
5418. Advertising & Related Services	175.00
<i>Exception:</i> 54187. Advertising Material Distribution Services	75.00
5419. Other Professional/Scientific/Technical Service	60.00
<i>Exception:</i> 54194. Veterinary Services	125.00 ^g

^a*per attorney*^b*per CPA*^c*per architect*^d*per engineer*^e*per inspector*^f*per surveyor*^g*per veterinarian*

Sector 55. Management of Companies and Enterprises. 100.00

Sector 56. Administrative and Support Waste Management and Remediation Services.

561. Administrative and Support Services	
5611. Office Administrative Services	100.00
5612. Facilities Support Services	100.00
5613. Employment Services	75.00
5614. Business Support Services	75.00
<i>Exception:</i> 56144. Collection Agencies	175.00
5615. Travel Arrangement & Reservation Services	50.00
5616. Investigation & Security Services	Exempt ^a
<i>Exception:</i> 561613. Armored Car Services	200.00
561622. Locksmiths	75.00
5617. Services to Buildings & Dwellings	
56171. Exterminating & Pest Control Services	75.00 ^b
56172. Janitorial Services	50.00
56173. Landscaping Services	50.00
56174. Carpet & Upholstery Cleaning Services	50.00
56179. Other Services to Buildings & Dwellings	50.00
5619. Other Support Services	125.00

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^aBusinesses in industry group 5616 shall not be assessed an occupation or business license tax by the City of Hot Springs; however, such businesses must register with the city tax collector and may be issued a revocable business permit without fee. As evidence of exclusion from payment of an occupation tax, such businesses shall present, upon registration, a current license issued by the Arkansas Board of Private Investigators and Private Security Agencies.

^bplus 5.00 per employee over five (5)

562. Waste Management and Remediation Services 75.00

Sector 61. Educational Services. 100.00 ^a

^a Not for profit establishments, organizations and public schools in Sector 61 are exempt from the business license and occupation tax code.

Sector 62. Health Care and Social Assistance.

621. Ambulatory Health Care Services	
6211. Offices of Physicians	250.00 ^a
6212. Offices of Dentists	200.00 ^b
6213. Offices of Other Health Practitioners	
62131. Offices of Chiropractors	150.00 ^a
62132. Offices of Optometrists	150.00 ^a
62133. Offices of Other Mental Health Practitioners	125.00 ^c
62134. Offices of PT/OT/Speech Therapy & Audiology	25.00 ^d
62139. All Other Health Practitioners= Offices	25.00
6214. Outpatient Care Centers	250.00
6215. Medical & Diagnostic Laboratories	100.00
6216. Home Health Care Services	25.00
6219. Other Ambulatory Health Care Services	125.00
<i>Exception: Ambulance Services</i>	Exempt ^e

^a per doctor

^b per dentist

^c per practitioner

^d per office

^e Establishments engaged in the provision of emergency and non-emergency ambulance service shall be permitted and regulated by the Board of Directors pursuant to the Municipal Ambulance Licensing Act (A.C.A. §14-266-101 et seq)

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622. Hospitals <i>^aper bed</i>	4.00 ^a
623. Nursing and Residential Care Facilities	
6231. Nursing Care Facilities	1.00 ^a 1.50 ^b
6232. Residential Mental Retardation/Health Facilities	1.00 ^a 1.50 ^b
6233. Community Care Facilities for the Elderly	3.00 ^c
6239. Other Residential Care Facilities	3.00 ^c
<i>^a1 to 50 beds, per bed</i>	
<i>^b50 beds and over, per bed</i>	
<i>^cper unit</i>	
624. Social Assistance and Child Care	100.00
<i>Exception:</i> Not-for-profit establishments and organizations in Sector 62 are exempt from the business license and occupation tax code.	

Sector 71. Arts, Entertainment and Recreation.

711. Performing Arts, Spectator Sports and Related Industries	
7111. Performing Arts Companies	50.00
<i>Exception:</i> 71111. Theater Companies & Dinner Theaters	150.00 ^a
7112. Spectator Sports	250.00
<i>Exception:</i> Any franchise granted pursuant to the "Arkansas Horse Racing Law" (A.C.A. §23-110-101 etseq)	
7113. Promoters of Entertainment Events	150.00
7114. Agents/Managers for Artists & Other Public Figures	125.00
7115. Independent Artists, Writers & Performers	125.00
<i>^a plus Restaurant Rate³</i>	
712. Museums, Historical Sites and Like Institutions	75.00
<i>Exception:</i> Not for profit establishments and organizations in sub sector 712 are exempt from the business license and occupation tax code.	

NAICS CLASSIFICATION**annual tax rate**

713. Amusement, Gambling and Recreation Industries	
7131. Amusement Parks & Arcades	
71311. Amusement & Theme Parks	5.00 ^a
71312. Amusement Arcades	5.00 ^b
7132. Gambling Industries	n/a ^c
7139. Other Amusement & Recreation Industries	
71391. Golf Courses	75.00 ^d
	175.00 ^e
<i>Exception: 713919. Country Clubs</i>	100.00 ^f
71393. Marinas	100.00
71394. Fitness & Recreational Sports Centers	50.00
71395. Bowling Centers	15.00 ^g
71399. All Other Amusement & Recreation Industries	75.00

^aper attraction or concession^bper machine^cGambling Industries are regulated by the Arkansas State Constitution and implementing legislation.^d9-hole courses^e18-hole courses^fplus 1.00 for each full member, or .50 for each social member^gper lane**Sector 72. Accommodation and Food Service.**

721. Accommodation	
7211. Traveler Accommodation	4.00 ^a
7212. RV Parks & Recreational Camps	50.00
7213. Rooming & Boarding Houses	3.00 ^b

^aper room^bper rental unit (5 or more rooms only)

722. Food Services and Drinking Places	
7221. Full Service Restaurants	RR ³
7222. Limited-Service Eating Places	
no on-premises dining	50.00
on-premises dining up to 35 seats and/or spaces	75.00
on-premises dining exceeding 35 seats and/or spaces	RR ³ plus 250.00
<i>Exceptions: 722212. Cafeterias</i>	RR ³
722213. Snack & Nonalcoholic Beverage Bars	50.00

NAICS CLASSIFICATION**annual tax rate**

7223. Special Food Services	
72231. Food Service Contractors	100.00
72232. Caterers	100.00
72233. Mobile Food Services	50.00
7224. Drinking Places (Alcohol Beverages)	50.00 ^a

^aplus applicable alcohol permit

Sector 81. Other Services (except Public Administration).

811. Repair and Maintenance (R&M)	
8111. Automotive R&M	60.00 ^a
	75.00 ^b
81112. Automotive Body/Paint/Interior & Glass Repair	75.00 ^c
<i>Exception:</i> 811122. Automotive Glass Replacement Shops	50.00
81119. Other Automotive R&M	
811191. Automotive Oil Change & Lubrication Shops	50.00
811192. Carwashes	100.00 ^d
	50.00 ^e
811198. All Other Automotive R&M	50.00
8112. Electronic & Precision Equipment R&M	125.00
8113. Commercial Equipment (exc Auto & Elec) R&M	75.00
8114. Personal & Household Goods R&M	75.00
<i>Exception:</i> 81143. Footwear & Leather Goods Repair	50.00

^awith no employees

^bwith one or more employees

^cplus 10.00 per employee over one

^dautomatic, plus 50.00 per bay over one

^emanual, plus 10.00 per bay over one

812. Personal and Laundry Services	
8121. Personal Care Services	50.00
<i>Exception:</i> 81219. Other Personal Care Services	35.00
8122. Death Care Services	175.00 ^a
<i>Exception:</i> 81222. Cemeteries and Crematories	125.00
8123. Drycleaning& Laundry Services	
81231. Coin-Operated Laundries & Drycleaners	50.00 ^b
	75.00 ^c
81232. Drycleaning& Laundry Services (exc Coin-Op)	15.00 ^d
81233. Linen & Uniform Supply	120.00 ^e

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NAICS CLASSIFICATION**annual tax rate**

8129. Other Personal Services	
81291. Pet Care (except Veterinary)	75.00
81292. Photofinishing	75.00
81293. Parking Lots & Garages	2.00 ^f
81299. All Other Personal Services	35.00
<i>Exception:</i> 812990. Bail Bondsmen Establishments	200.00

^aplus 25.00 for each family car and hearse

^bup to fifteen (15) washing machines

^cover fifteen (15) washing machines

^dper press, plus 10.00 per coat and pant air finishing machine

^eor 20.00 per truck, whichever is greater

^fper space

813. Religious, Grant-making, Civic, Professional and Similar Organizations Exempt ^a

^a Not for profit establishments and organizations in sub-sector 813 are exempt from the business license and occupation tax code.

814. Private Households Exempt ^a

^a Individuals in sub-sector 814 are exempt from the business license and occupation tax code.

Sector 92. Public Administration. Exempt ^a

^a Establishments and organizations in sub-sector 92 are exempt from the business license and occupation tax code.

Sector 99. Classifications Unique to the City of Hot Springs.

991. Transient Sales	
9911. General Transient Sales Within a Permanent Structure	75.00 per set-up/sales event

Persons or establishments engaged in the direct retail sale of general merchandise, except as defined in category 9912, and who conduct such sales on a temporary or transient basis but within the confines of a permanent building or structure for which a certificate of occupancy is in force.
(Ord. No. 5197, § 1, 7/7/03)

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NAICS CLASSIFICATION**annual tax rate**

9912. Transient Sales Within a Permanent Structure 100.00 ^a

Persons and establishments engaged in buying and selling such items as old gold, jewelry, antiques, etc., (excepting sanctioned trade shows) who conduct such sales on a temporary or transient basis but within the confines of a permanent building or structure for which a certificate of occupancy is in force (do not prorate).

9913. Transient Sales Outside a Permanent Structure 300.00 ^b
500.00 ^c

The aforesaid license fee shall be non-refundable and may not be prorated. These businesses are regulated by HSC §4-10-1 et seq.

^a *per day*

^b *one to seven days - 300.00*

^c *eight to thirty days - 500.00*

(Ord. No. 5215, § 1, 8/18/03)

992. Sexually Oriented Businesses
9921. Adult Bookstores 500.00

Businesses which are primarily engaged in the retail sale of adult-type reading materials, pictures and other related literature.

9922. Adult Cabaret 1,500.00

Establishments engaged in adult entertainment including but not limited to topless clubs.

Establishments in this subsector are regulated by HSC §16-8-1 et seq.

993. Thoroughbred Racing Businesses
9931. Parimutuel Equipment 1,200.00

Establishments engaged in renting parimutuel equipment.

9932. Thoroughbred Racing Protective Association 250.00

NAICS CLASSIFICATION**annual tax rate**

9933. Tip Sheets

200.00 ^a

Any person, firm or corporation engaged in the business of publishing a tip sheet for distribution within the city, regardless of whether the publisher's place of business is within or outside the city limits and regardless of the means by which published. Tip sheet sales are regulated by HSC §5-3-22.

^a*each tip sheet published*

994. Food Service

9941. Large Meeting or Attendance Restaurant Facility

1,500.00 ^a

A restaurant(s) within a facility housing parimutuel wagering as authorized by law, and, either itself or through one or more independent contractors, complies with all of the following: (a) Actually serves full and complete meals and food on the premises; (b) Has one (1) or more places for food service on premises with a combined seating capacity for not less than five hundred (500) people; (c) Employs a sufficient number and kind of employees to serve meals and food on the premises capable of handling at least five hundred (500) people; and (d) Serves alcoholic beverages on premises at one (1) or more places only on days that meals and food are served at one (1) or more places on premises.

9942. Mobile Concession Stands

50.00

Any for profit food service establishment classified as a "mobile food unit" or "seasonal operation" by the Arkansas State Board of Health which is licensed, regulated and approved by the Board of Health (do not prorate).

^a*plus applicable alcohol permit*

995. Miscellaneous.

9951. Fortune Tellers

100.00

Persons engaged in fortune-telling, clairvoyants, practitioners of palmistry, horoscope readers, card readers or similar trade.

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NAICS CLASSIFICATION**annual tax rate**

9952. Fireworks Sales Establishments primarily engaged in the retail sale of fireworks as permitted and restricted by the Hot Springs Fire Prevention Code. These businesses are regulated by HSC §15-7-5.	75.00
9953. Spas Institutions operating primarily for the hot water bathing of patrons.	5.00 ^a
9954. Tourist Attractions Miscellaneous establishments which operate tourist attractions for the entertainment of visitors and which are not otherwise classified in Sector 71.	50.00 ^b 125.00 ^c
9955. Seasonal Parking Lots Establishments primarily engaged in the seasonal parking of automobiles on open air lots. Businesses in this classification are regulated by HSC §16-1-11 et seq.	1.50 ^d

^a per tub^b employing up to 3 persons^c employing more than 3 persons^d per space**¹MANUFACTURER'S SCALE:**

Less than two (2) employees,	\$35.00
Two (2) to five (5) employees,	\$75.00
More than five (5) but less than ten (10),	\$125.00
Ten (10) to fifteen (15),	\$150.00
Fifteen (15) to twenty (20),	\$175.00

²INVENTORY SCALE:

\$50.00 for the first	\$1,000.00
\$9.00 per \$1,000.00 for next	\$9,000.00
\$5.00 per \$1,000.00 for next	\$490,000.00
\$3.00 per \$1,000.00 for all inventory over	\$500,000.00

³RESTAURANT RATE:

35 chairs and/or stools,	\$75.00
36 to 75 chairs and/or stools an additional	\$25.00
76 to 100 chairs and/or stools an additional	\$25.00
over 100 an additional	\$25.00

5-3-10. Classifications having variable tax basis; duty of taxpayer.

(a) All business classifications which shall have variable tax basis such as those used in accordance with average inventory, average number of employees, number of delivery trucks and similar variable factors shall be furnished a form from the City Manager or his designee's office during the month of December in the year preceding the accrual date of the tax. Said form shall be completed by the taxpayer and shall be returned to the City Manager or his designee's office by December 31 of said year.

(b) It shall be unlawful for any person, firm or corporation to willfully make a false report to the city of Hot Springs relative to any provision or requirement of this chapter as affects the obligation for paying a privilege tax or the amount thereof. Any person, firm or corporation violating this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in an amount of not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars. (\$250.00). (Ord. No. 3836, § 12, 1/14/86)

5-3-11. Periodic audits authorized.

The City Manager or his designee shall have the right to check and/or audit the stocks, inventory, records, books, including documents showing the inventory reported to the state and federal governments for income tax purposes of any person, firm or corporation subject to the privilege tax as provided in this chapter. The refusal by any person, firm or corporation to allow the City Manager or his designee to make such checks, examinations and/or audits is hereby declared to be a misdemeanor, and upon conviction shall be fined in an amount of not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00). (Ord. No. 3836, § 13, 1/14/86)

5-3-12. Persons operating more than one business.

(a) Any person, firm or corporation engaging in more than one business shall be classified in accordance with each business or profession operated, and he shall be required to pay a privilege tax for each such business, occupation or profession. (Ord. No. 3836, § 14, 1/14/86)

(b) Any person, firm or corporation which conducts business at multiple locations such that each location or outlet is a separate business operation, even if under a single business name or ownership, shall pay a privilege tax for each such location from which business is transacted. (Ord. No. 4400, § 1, 6/6/94)

5-3-13. Issuance of city license; posting, transfer.

It shall be the duty of the City Manager or his designee, upon receipt of the amount of the privilege tax hereby provided, to issue a license to the person, firm or corporation liable therefor, which license shall reflect the amount of the tax, the period of time covered, the name of the person, firm or corporation to whom issued, and the nature of the business, occupation or profession involved. Each license, when issued, shall be posted in a conspicuous place where such business, occupation or profession is carried on. Such license shall not be transferable, and such shall be reflected by such license. (Ord. No. 3836, § 15, 1/14/86)

5-3-14. Review and appeal procedures.

(a) The board of directors is hereby granted the power to hear complaints from any taxpayer affected by the terms of this ordinance in regard to either:

- (1) The amount of privilege or occupation tax assessed by this ordinance in regard to the particular classification in which the taxpayer is classified, or
- (2) Complaints regarding a mis-classification of the taxpayer.

(b) An aggrieved taxpayer who feels that the tax rate for his business classification is excessive, or that he has been mis-classified in accordance with the business, occupation, profession, or calling in which he is actually engaged, may file a written complaint with the Hot Springs City Manager or his designee. The City Manager or his designee shall place the matter on the board of directors' meeting agenda in accordance with the board's agenda rules and procedures. The aggrieved taxpayer shall then appear in person and present all relevant facts concerning his complaint. After the complaining party and appropriate city officials have been heard, the board shall then, by majority vote, either:

- (1) Determine that the rate set for the business classification involved be reduced, increased or remain the same, or that
- (2) The taxpayer receive a different business classification than the one currently imposed.

Under no circumstances, however, shall the board reduce or increase a rate in regard to an isolated taxpayer without taking full cognizance of all other persons within a given business classification. Any such rate adjustments shall be by ordinance amending the occupation tax ordinance to be considered at a subsequent meeting of the board of directors.

(c) The above procedure set out for the review of complaints in regard to this ordinance shall be the exclusive method of review available. (Ord. No. 5552, §1, 3/19/07)

(d) It is the intent of the board of directors in the classification of the businesses that multiple classifications for a given business apply only where more than one actual trade or profession is carried on by a person, firm or corporation within the corporate limits of this city. Multiple business classifications shall not apply to persons, firms or corporations who engage in occupations which are related through custom and usage with the principal business or profession or those which are incidental thereto. In line with this policy, the board of directors is hereby empowered to review any complaint from any aggrieved taxpayer in regard to multiple business classifications, and if it is found that the person, firm or corporation has a classification for a business or profession which is customarily carried on by this business or profession in accordance with the usage of his trade or profession, the board of directors shall be empowered to remove such classifications that are found to be cumulative. (Ord. No. 5552, §2, 3/19/07)

5-3-15. Reserved.**5-3-16. Transfer of business.**

Every person operating a business who shall lease or otherwise transfer to any other party any part of his business, shall file with the city collector on or before December 31 of each year, or at the time of leasing or transferring, a list of all such transferees. Each such lessee or transferee shall be liable for the business, occupation or profession of such lessee or transferee. (Ord. No. 3836 § 19, 1/14/86)

5-3-17. Failure to pay tax; penalty prescribed.

The fine or penalty for violating any provisions of occupation tax ordinance shall, upon conviction in the Hot Springs District Court, or any other court of competent jurisdiction, be such fines and penalties as established by the general penalty clause for the Hot Springs Code of Ordinances as may now or hereafter be enacted by the Hot Springs Board of Directors. (Ord. No. 5552, §4, 3/19/07)

5-3-18. License revocation-Nuisance.

If any holder of an occupation license is found by the City Manager or his designee to be in violation of the provisions of this section or to be maintaining a nuisance or unsanitary premises or to be engaging in or permitting disorderly conduct on the premises where the business of such licensee is conducted, the City Manager or his designee is hereby authorized to serve notice on the licensee of the city's intention to revoke such license. Unless the licensee has filed a notice for review with the City Manager or his designee within ten (10) days of receipt of such notice, the City Manager or his designee shall proceed to revoke such license. If the notice of review is filed, the review shall be conducted by the board of review with final judgment determining revocation resting with the board of directors. (Ord. No. 4399, § 1, 6/6/94)

5-3-19. Reserved.**5-3-20. Authority to establish rules and regulations.**

The Hot Springs City Manager or his designee shall be allowed to adopt such rules and regulations pertaining to the administration and collection of occupation taxes as provided for by this chapter as are not inconsistent with the other provisions of this chapter. (Ord. No. 3836, § 22, 1/14/86)

5-3-21. Occupation tax-Retail fireworks stands.

Any retail fireworks establishments operating in accordance with the provisions of Ordinance No. 4691 shall pay the appropriate annual occupation tax. (Ord. No. 4691, § 2, 12/15/97)

Cross reference-Retail fireworks sales restrictions, § 15-7-5.1.

Editor's Note: (Ord. 6222, 1/16/18) changed the wording from "City Manager or his designee" from "City Clerk".

5-3-22. Sale of published tip sheets.

(a) *Definition.* For the purposes of this section, a *tip sheet* is defined as a publication consisting primarily of recommended handicapping of horses entered in races at Oaklawn Park and other such racetracks.

(b) *Annual tax imposed.* Any person, firm or corporation engaged in the business of publishing a tip sheet for distribution within the city, regardless of whether the publisher's place of business is within or outside the city limits, is hereby assessed an annual occupation tax in the sum of two hundred dollars (\$200.00) for each tip sheet published payable to the city.

(c) *Inspection.* The city clerk's receipt for payment of the taxes levied herein shall be available for inspection by the city clerk or by any law enforcement officer at all times during which the person, firm or corporation subject to payment of taxes engages in the publication or sale of tip sheets.

(d) *Daily filing.* Every person, firm or corporation engaged in the publication of tip sheets shall file a copy of each day's tip sheet by 1:00 p.m. with the city clerk and the chief of police. (Ord. No. 4053, §§ 1--4, 2/20/90)

5-3-23. Arkansas Louisiana Gas Company occupation tax.

Cross reference-See §5-5-1.

5-3-24. Arkansas Power and Light Company occupation tax.

Cross reference-See § 5-5-2.

5-3-25. Southwestern Bell Telephone Company occupation tax.

Cross reference-See § 5-5-3.

5-3-26. Resort Cable Television Company occupation tax.

Cross reference-See § 5-5-4.

CHAPTER 4**SALES TAX****5-4-1. Local sales tax.**

Pursuant to Act 25 of 1981 (1st Ex. Sess.), as amended, there is hereby levied a sales and use tax at the rate of one percent (1%) on the receipt from the sale at retail or on the sale price or lease or rental price on the storage, use or other consumption of all taxable items within the City of Hot Springs, which property is subject to the Arkansas Gross Receipts Tax Act of 1941 (Act. 386 of 1941, as amended) and the Arkansas Compensating Tax Act of 1949 (Act 487 of 1949, as amended). (Ord. No. 3969, § 1, 9/19/88)

5-4-1.1. Maximum tax.

The tax levied herein shall be collected only to a maximum of \$25.00 on each single transaction, as provided in Act 802 of 1983. (Ord. No. 3969, § 2, 9/19/88)

5-4-1.2. Single transaction.

“Single transaction” is defined according to the nature of the goods purchased as follows:

- (a) When two or more devices in which, upon which or by which any person or property is, or may be, transported or drawn, including but not limited to on-road vehicles, whether required to be licensed or not, off-road vehicles, farm vehicles, airplanes, water vessels, motor vehicles, or nonmotorized vehicles, and mobile homes, or sold to a person by a seller, each individual unit, whether part of a “fleet” sale or not, shall be treated as a single transaction for the purpose of the public safety sales and use tax.
- (b) The charges for utility services, which are subject to the taxes levied under this ordinance, and which are furnished on a continuous service basis, whether such services are paid daily, weekly, monthly or annually, for the purposes of the public safety sales and use tax, shall be computed in daily increments, and each such daily charge increment shall be considered to be a single transaction for the purposes of the public safety sales and use tax.
- (c) For sales of building materials and supplies to contractors, builders or other persons, a single transaction, for the purposes of the public safety sales and use tax, shall be deemed to be any single sale which is reflected on a single invoice, receipt or statement, on which an aggregate sales and use tax figure has been reported and remitted to the state.

(d) When two or more items of major household appliances, commercial appliances, major equipment and machinery are sold, each individual unit shall be treated as a single transaction for the purposes of the public safety sales and use tax.

(e) For groceries, drug items, dry goods and other tangible personal property and/or services not otherwise expressly covered in this section, a single transaction shall be deemed to be any single sale which is reflected on a single invoice, receipt or statement, on which an aggregate sales tax figure has been reported and remitted to the state.

The above definition of "single transaction" shall apply to and amend all previous local sales and use tax ordinances which are collected by the State of Arkansas Department of Finance and Administration including Ordinance No. 3969 of 1988 (General Purpose 1%), Ordinance No. 4457 of 1995 (Civic Center 2%), and Initiated Ordinance No. 4761 of 1998 (Public Safety 2%).

(Ord. No. 4892, § 2, 8/7/00)

Editor's note - Ordinance No. 4892 was referred to the general election held November 7, 2000, and was approved by a vote of 7,053 For and 5,612 Against.

5-4-1.3.Special election.

A special election shall be held within the city of Hot Springs on the question of the adoption of a one percent (1%) local sales and use tax within the city, on November 8, 1988. The ballot title to be used at such election shall be as follows:

FOR adoption of a one percent (1%) local sales and use tax within the city of Hot Springs.....8,027

AGAINST adoption of a one percent (1%) local sales and use tax with the city of Hot Springs....5,577

Pursuant to Act 25 of 1981 (1st Ex. Sess.), as amended, this ordinance shall not be effective until after the special election provided for herein has been held. (Ord. No. 3969, § 4, 5, 9/19/88)

Editor's note-The election referred to in § 5-4-4 was held on 11/8/88 and the ordinance approved by the voters by a vote of 8,027 for and 5,577 against.

Cross reference-Advertising and promotion tax, § 5-2-2.

5-4-2. Public safety sales and use tax - Ordinance to levy and assess 1/2% sales tax.

Be it enacted by the people of the City of Hot Springs, State of Arkansas, an ordinance to levy and assess a permanent one half of one percent (2 %) sales tax in addition to all other City and State excise taxes levied or assessed upon the gross proceeds or gross receipts derived from all sales to any person taxable under the sales tax law of Arkansas as follows: One-half of one percent (2 %) on the gross receipts from the sale at retail within the city of all items which are subject to the Arkansas Gross Receipts Tax Act of 1941, as amended (A.C.A. §26-52-101, et seq.), and the imposition of an excise (or use) tax on the storage, use or other consumption within the city of tangible personal property subject to the Arkansas Compensating Tax Act of 1949, as amended (A.C.A. §26-53-101, et seq.), at a rate of one-half of one percent (2 %) of the sale price of the property or, in the case of leases or rentals, of the lease or rental price (collectively, the “Public Safety Sales and Use Tax”). (Ord. No. 4781, § 1-A, 2/1/99)

5-4-2.1. Public safety sales and use tax - Purpose.

The public safety sales and use tax shall supplement, not supplant, the fire and police budgets. The public safety sales and use tax shall only be used in addition to the current level of funding for the fire and police within the City of Hot Springs. The revenue gain from the one-half of one percent (2%) public safety sales and use tax would be allocated sixty percent (60%) for the Hot Springs police needs and forty percent (40%) for Hot Springs fire needs as more specifically described herein. The portion of the fire and police budget from the city’s general fund shall be no less than the current level and the sales tax revenues derived from the additional one-half of one percent (2%) public safety sales and use tax shall be deposited in the limited-purpose tax fund known as the “Public Safety Tax Fund” to be earmarked and expended only for the following purposes:

To supplement and to create a separate pay scale for both the Police and the Fire Departments making those agencies competitive in the state and region; the pay scales will not overlap between ranks and create a separation between the ranks in both departments; to create a differential between new hires and certified officers and firefighters; to add police officers and firefighters to both departments to provide the increase needed support personnel for both departments and a separate pay scale for them according to their job description and salary averages for their positions throughout the state and region; to create a home storage fleet for all police officers with at least one (1) year of service providing that they live in the county and within ten (10) miles of the city limits with the fleet storage plan being phased in over a three (3) year period until all eligible officers are assigned a vehicle; for the fire department to use a portion of the tax to update all equipment, add necessary equipment needed to protect the citizens and be able to retire aged equipment as it becomes obsolete or more costly to maintain than its value; to each year, reserve a portion of the tax income ten percent (10%) for capital improvements to either department as needed; and to provide that any and all raises to salaries or additional personnel in the future will come from the public safety tax and/or the general fund. (Ord. No. 4781, § 1-B, 2/1/99, Ord. No. 5594, §1, 8/20/07)

Editor’s note-Initiated Ord. 4761 was approved at the general election on 11/3/98, by a vote of 4914 For and 4685 Against. The initiated ordinance was amended by Ord. 4781 to clarify certain definitions and to add a definition of single transaction and by Ord. No. 4892 clarifying the inclusion of a use tax.

5-4-2.2. Use tax.

Under the authority of the authorizing legislation, there is hereby levied, assessed and imposed a permanent one half of one percent (2 %) use tax in addition to all other city and state excise taxes levied or assessed upon the gross proceeds or gross receipts derived from all sales to any person taxable under the sales tax law of Arkansas as follows: an excise (or use) tax on the storage, use or other consumption within the city of tangible personal property subject to the Arkansas Compensating Tax Act of 1949, as amended (A.C.A. §26-53-101, et seq.), at a rate of one-half of one percent (2 %) of the sale price of the property or, in the case of leases or rentals, of the lease or rental price (“use tax”). The use tax shall be levied and collected only on the first \$2,500 for each single transaction. (Ord. No. 4892, § 1, 8/7/00)

Editor’s note –Ord. No. 4892 was referred to general election held 11/7/00 and approved by a vote of 7,053 For and 5,612 Against.

5-4-2.3. Single transaction.

Single transaction is defined according to the nature of the goods purchased as follows:

- (a) When two or more devices in which, upon which or by which any person or property is, or may be, transported or drawn, including but not limited to on-road vehicles, whether required to be licensed or not, off-road vehicles, farm vehicles, airplanes, water vessels, motor vehicles, or non-motorized vehicles, and mobile homes, or sold to a person by a seller, each individual unit, whether part of a “fleet” sale or not, shall be treated as a single transaction for the purpose of the public safety sales and use tax.
- (b) The charges for utility services, which are subject to the taxes levied under this ordinance, and which are furnished on a continuous service basis, whether such services are paid daily, weekly, monthly or annually, for the purposes of the public safety sales and use tax, shall be computed in daily increments, and each such daily charge increment shall be considered to be a single transaction for the purposes of the public safety sales and use tax.
- (c) For sales of building materials and supplies to contractors, builders or other persons, a single transaction, for the purposes of the public safety sales and use tax, shall be deemed to be any single sale which is reflected on a single invoice, receipt or statement, on which an aggregate sales and use tax figure has been reported and remitted to the state.

(d) When two or more items of major household appliances, commercial appliances, major equipment and machinery are sold, each individual unit shall be treated as a single transaction for the purposes of the public safety sales and use tax.

(e) For groceries, drug items, dry goods and other tangible personal property and/or services not otherwise expressly covered in this section, a single transaction shall be deemed to be any single sale which is reflected on a single invoice, receipt or statement, on which an aggregate sales tax figure has been reported and remitted to the state.

The above definition of “single transaction” shall apply to and amend all previous local sales and use tax ordinances which are collected by the State of Arkansas Department of Finance and Administration including Ordinance No. 3969 of 1988 (General Purpose 1%), Ordinance No. 4457 of 1995 (Civic Center 2%), and Initiated Ordinance No. 4761 of 1998 (Public Safety 2%). (Ord. No. 4892, § 2, 8/7/00)

Editor's note - Ordinance No. 4892 was referred to the general election held November 7, 2000, and was approved by a vote of 7,053 For and 5,612 Against.

CHAPTER 5
UTILITY FRANCHISE FEE**5-5-1. Centerpoint Energy Arkla.**

Centerpoint Energy Arkla (formerly Arkansas Louisiana Gas Company) shall pay to the City of Hot Springs, Arkansas, a franchise fee for the privilege of operating within the corporate limits of this city a sum equivalent to 4.25 percent of its gross revenues received by the company for the operation of the system within this city. Payment of this fee shall be made on a quarterly basis not less than thirty (30) days following the expiration of the quarter for which the payment is made. The 4.25 percent utility franchise fee imposed herein shall not apply to the industrial accounts of Centerpoint Energy Arkla. Industrial accounts are those establishments that are primarily engaged in the process of making a product from raw materials or prepared component parts. In those instances where the classification of a particular account is in question, the city manager or his/her designee shall determine the proper classification. Centerpoint Energy Arkla shall maintain on file with the city a listing of all city industrial accounts excluded from said fee pursuant to this section. (Ord. 5559, §3, 5/7/07)

5-5-2. Entergy Arkansas, Inc.

(a) *Franchise grant.* The city of Hot Springs (hereinafter called Grantor) hereby grants to Entergy Arkansas, Inc. (formerly Arkansas Power and Light Company), its successors and assigns (hereinafter called Grantee), the exclusive right, privilege and authority within the present and all future expansion of the corporate limits of the city:

- (1) to sell, furnish, transmit and distribute electric power and energy to Grantor and to all inhabitants and consumers within said limits, and
- (2) to construct, maintain, operate and extend a system for such purposes and to enter on, under and upon and use any and all of the streets, alleys, avenues, bridges and other public grounds and ways belonging to, or under the control of Grantor, for the purpose of erecting, maintaining, repairing, replacing and operating poles, wires, anchors, stubs, transformers, substations, cables, conduits and other related facilities, appliances and apparatus which are necessary for, or useful in, the furnishing, sale, transmission or distribution of said electric service (hereinafter called facilities). (Ord. 5558, §3, 5/7/07)

(b) *Service provision.* Grantee shall, and does by acceptance hereof, agree to provide to the city and its inhabitants adequate and reasonable electric service as a public utility and the facilities necessary to provide such service. Grantor, in recognition of the large and continuing investment necessary for Grantee to perform its obligations hereunder, and the need and duty to promptly construct its facilities, as defined above, required to serve customers, in all areas and zones of the city, consents to the construction of such facilities as defined in (a) in all such areas and zones, and Grantor agrees to protect by ordinance, regulation and otherwise, to the fullest extent permitted by law, and except as otherwise limited herein, the grants of rights and privileges to Grantee set forth in (a) from interference with, or duplication by, other persons, firms or corporations seeking to engage in the sale or distribution of electric energy.

(c) *Facility location.* All facilities of Grantee which may be located on public ways, places and public property, as authorized herein, shall be located so as to not unreasonably obstruct public use and travel. All of Grantee's facilities shall be constructed, operated and maintained in accordance with standards at least equivalent to the standards prescribed by the National Electrical Safety Code. Grantee, its successors and assigns, shall replace and repair, at its own expense, all excavations, holes or other damage caused or done by it to public streets, ways, places and public property in the construction, operation and maintenance of its facilities.

(d) *Hazard removal.* The Grantee, its successors and assigns, is hereby given the right to trim, cut or remove trees, shrubbery or growth on or in public ways, places and public property which interfere or offer hazards to the operation of Grantee's facilities used or useful for the rendition of electric service, and, further, Grantee is hereby given the right, authority and permission to trim, cut and remove portions of trees, shrubbery or growth growing on private property but overhanging or encroaching on public ways, places and public property which interfere or offer hazards to the construction, operation and maintenance of Grantee's facilities.

(e) *Term.* The rights, privileges and authority hereby granted shall exist and continue from the date of passage of this ordinance, and thereafter, until terminated in accordance with provisions of §44 of Act 324 of the 1935 Acts of the State of Arkansas, as presently enacted or hereafter amended.

(f) *Rates.* The rates which are to be charged by Grantee for electric service hereunder shall be those which are now lawfully approved or prescribed, and as said rates may, from time to time, be amended by Grantee in accordance with law or by any regulatory authority having jurisdiction thereof.

(g) *Damage or injury.* In the construction, operation, and maintenance of its facilities, said Grantee shall use reasonable and proper precaution to avoid damage or injury to persons or property and shall hold and save harmless the said Grantor from damage, injury, loss or expense caused by the negligence of the Grantee, or its agents, servants or employees, in constructing, operating and maintaining said facilities or in repaving or repairing any streets, avenues, alleys, bridges or other public grounds.

(h) *Maintenance.* The Grantee shall endeavor at all times to keep its facilities in a reasonable state of repair, and to conform to such practices and install such appliances and equipment as may be in keeping with the customary usage and practice in cities of similar size in this state during the time this franchise shall remain in force.

(i) *Franchise fee.* During the life of this franchise, the Grantee shall pay to Grantor each year, a franchise fee in an amount equal to: Four and twenty-five hundredths percent (4.25%) of the preceding calendar year's gross residential and commercial electric revenues as paid to the Grantee by residential and commercial electric revenues as paid to the Grantee by residential and commercial customers located within the corporate limits of the city. Payments shall be made by the Grantee to the Grantor in approximately equal quarterly installments. Residential and commercial electric revenues are those revenues so classified pursuant to Grantee's uniform classification standards. Grantor shall have the right to examine and verify, from the records of the Grantee, any data relating to the gross revenues of Grantee from customers on which said franchise fee is due. In the event of a controversy between the Grantor and Grantee as to the amount of gross revenues received by Grantee in the city upon which said fee is due, such controversy shall be referred to the Arkansas Public Service Commission, or such successor regulatory agency which may have jurisdiction over the Grantee, for final determination, and the decision of said commission shall be binding upon both parties hereto.

It is expressly agreed and understood by the Grantor and Grantee that the aforesaid payment shall constitute and be considered as complete payment and discharge by the Grantee, its successors and assigns, of all licenses, fees, charges, impositions or taxes of any kind (other than automobile license fees, special millage taxes, general ad valorem taxes and other general taxes applicable to all citizens and tax payers) which are now or might in the future be imposed by the Grantor under authority conferred upon the Grantor by law. In the event such other fee or fees are imposed by Grantor, the obligation of the Grantee set forth in 5-5-2(i) hereof, to pay the city the sum of four and twenty-five hundredths percent (4.25%) annually of the gross residential and commercial revenues shall immediately terminate. (Ord. 5558, §9, 5/7/07)

The 4.25% utility franchise fee imposed herein shall not apply to the industrial accounts of Arkansas Power and Light Company. Industrial accounts are those establishments that are primarily engaged in the process of making a product from raw materials or prepared component parts. In those instances where the classification of a particular account is in question, the city manager or his/her designee shall determine the proper classification. AP&L shall maintain on file with the city a list of all city industrial accounts excluded from said fees pursuant to this section. (Ord No. 4027, § 1, 9/18/89)

(j) *Street lights.* Electric service furnished the Grantor for street lighting and other purposes shall be paid for by the Grantor in accordance with the applicable rate schedules of the Grantee now on file and/or as they may in the future be filed by the Grantee and approved by the Arkansas Public Service Commission or other regulatory authority having jurisdiction. The Grantee shall have the privilege of crediting any amount due Grantor with any unpaid balances due said Grantee for electric service rendered to said Grantor.

(k) *Private use.* Nothing herein shall be construed to prohibit any person, firm or corporation from owning and operating facilities for generating, distributing, or furnishing electric energy for his or its own use or the use of his or its tenants, all of which facilities and use are wholly on the same premises owned by such person, firm or corporation.

(l) *Contract.* Upon written acceptance by Grantee, this ordinance shall constitute a contract between Grantor and the Grantee, and its successors and assigns. (Ord. No. 2847, §§ 2-8, §§10-12, 12/6/65, Ord. No. 5558, §§1, 9, 5/7/07)

5-5-3. Southwestern Bell Telephone Company (AT&T Arkansas).

(a) *Franchise grant.* The Southwestern Bell Telephone Company L.P., d/b/a AT&T Arkansas (formerly The Southwestern Bell Telephone Company) its successors and assigns (herein referred to as "telephone company") shall continue to operate its telephone system and all business incidental to or connected with the conducting of a telephone business and system in the city. The plant construction and appurtenances used in or incident to the giving of telephone service and to the maintenance of a telephone business and system by the telephone company in said city shall remain as now constructed, subject to such changes as may be considered necessary by the city in the exercise of its inherent powers and by the telephone company in the conduct of its business, and said telephone company shall continue to exercise its right to place, remove, construct and reconstruct, extend and maintain its said plant and appurtenances as the business and purpose for which it is or may be incorporated may from time to time require, along, across, on, over, through, above and under all the public streets, avenues, alleys and the public grounds and places within the limits of said city as the same from time to time may be established. (Ord. No. 5557, §3, 5/7/07)

(b) *Franchise fee.* AT&T Arkansas shall pay to the city a sum equal to 4.25 percent of the telephone company's basic local exchange access line charges collected within the corporate limits of the city for the preceding year. Said sum will be paid in quarterly installments due within 30 days following the expiration of the quarter for which payment is made. (Ord. No. 5557, §4, 5/7/07)

(c) *Payments in lieu of fees.* The payments herein required shall be in lieu of all other licenses, charges, fees or impositions (other than the usual general or special ad valorem taxes) which may be or have been imposed by the city under ordinances (including ordinances 1078 and 559) or other authority conferred by law. The telephone company shall have the privilege of crediting such sums with any unpaid balance due said company for telephone services rendered or facilities furnished to said city.

(d) *Wire movement.* The telephone company on the request of any person shall remove or raise or lower its wires temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the party or parties requesting the same, and the telephone company may require such payment in advance. The telephone company shall be given not less than 48 hours advance notice to arrange for such temporary wire charges.

(e) *Line maintenance.* Permission is hereby granted to the telephone company to trim trees upon and overhanging streets, alleys, sidewalks and public places of said city so as to prevent the branches of such trees from coming in contact with the wires and cables of the telephone company, all the said trimming to be done under the supervision and direction of any city official to whom said duties have been or may be delegated.

(f) *Restrictions.* Nothing in this ordinance contained shall be construed to require or permit any electric light or power wire attachments by the city or for the city. If light or power attachments are desired by the city or for the city, then a separate non-contingent agreement shall be a prerequisite to such attachments.

(g) *Non-exclusive privilege.* Nothing herein contained shall be construed as giving to the telephone company any exclusive privileges, nor shall it affect any prior or existing rights of the telephone company to maintain a telephone system within the city.

(h) *Term.* The said telephone company shall have 60 days from and after its passage and approval to file its written acceptance of this ordinance with the city clerk, and upon such acceptance being filed, this ordinance shall be considered as taking effect and being in force from and after the date of its passage and approval by the mayor. The ordinance shall continue in effect and be in force until terminated by the city or the telephone company as of the end of any year after giving 90 days notice of intention to terminate. (Ord. No. 2985, § 1, 3--9, 4/14/69, Ord. No. 3723, §2, 11/1/83)

5-5-4. Resort Television Cable Company.

A non-exclusive cable television franchise is hereby granted to Resort Television Cable Company, Inc., in accordance with the terms and conditions as enumerated within the attached cable television franchise agreement.

Editor's note-Ord. No. 5730,7/21/09, approved a non-exclusive franchise agreement with Resort Television Cable Company. This agreement imposes a franchise fee in the amount of 3% upon Resort Television Cable Company in lieu of an occupation tax. The agreement is on file in the office of the city clerk. Ord. No. 6171, 11/15/16, amended Ord. No. 5730, which imposes a franchise fee in the amount of 5% upon Resort Television Cable Company in lieu of an occupation tax.

Cross reference-§ 3-2-1 et seq., procedures and standards for the regulation of cable television.

5-5-5. E. Ritter Communications Holdings, Inc.

The City of Hot Springs granted to Ritter Communications, a nonexclusive license to construct, maintain, extend, and operate its facilities along, across, upon, or under any Public Right-of-Way for the purpose of supplying Telecommunication Services to the consumers or recipients of such service located within the corporate boundaries of the City, for a term of 10 years, subject to the terms and conditions of the Agreement. Ritter Communications shall pay to the City franchise fees beginning with the calendar year immediately following its generation of Gross Revenues, an amount equal to the percentage of Gross Revenues as defined in this Agreement.

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The rate shall be 4.25% of telecommunications services revenues and 4.25% of video service revenues, unless or until agreed otherwise between the parties or otherwise changed by law, and shall be ratified annually by the City as appropriate. (Ord. 6275, 4/16/19)

Editor's note-Ord. No. 6275,4/16/19, approved a non-exclusive franchise agreement with Ritter Communications. The Agreement is on file at the City Clerk's Office.