

ORDINANCE NO. 276

AN ORDINANCE LEVYING AND IMPOSING AN EXCISE TAX ON EVERY PURCHASE OF ELECTRICITY, METERED GAS AND BOTTLED GAS, IN THE CITY OF WEST MIAMI; FIXING THE RATE AND AMOUNT OF SUCH EXCISE TAX AND PROVIDING FOR THE COLLECTION THEREOF FOR AND IN BEHALF OF SAID CITY BY EVERY SELLER OF ELECTRICITY, METERED GAS AND BOTTLED GAS; PROVIDING FOR THE REMITTANCE OF SUCH COLLECTIONS TO SAID CITY AND FOR THE UTILIZATION BY SAID CITY OF THE REVENUES RESULTING THEREFROM; PROVIDING FOR THE ESTABLISHMENT AND MAINTENANCE OF APPROPRIATE ACCOUNTS AND RECORDS RELATING TO SUCH EXCISE TAX BY EVERY SUCH SELLER; DECLARING THE EXPENSES INCURRED BY EVERY SUCH SELLER IN EFFECTING THE PROVISIONS OF THIS ORDINANCE TO BE AN OPERATING EXPENSE TO BE RECOGNIZED IN FIXING RATES AND CHARGES FOR ELECTRIC, METERED GAS AND BOTTLED GAS; PRESCRIBING PENALTIES FOR VIOLATIONS OF THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR THE SEPARABILITY OF THE PROVISIONS THEREOF; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CITY CODE.

BE IT ENACTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WEST MIAMI, FLORIDA:

Section 1. That when used in this Ordinance:

- (a) The word "City" shall mean the City of West Miami, Florida.
- (b) The masculine pronoun shall include the feminine and neuter, and the singular shall include the plural;
- (c) The word "and" shall also mean "or", whenever the context or purpose so requires;
- (d) The word "person" shall mean and include any individual, firm, association, partnership or corporation;
- (e) The word "electricity" shall mean and include all electric current or energy for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the corporate limits of the City;

- (f) The words "metered gas" shall mean and include all types and kinds of natural and manufactured gas for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the corporate limits of the City;
- (g) The words "bottled gas" shall mean and include all types and kinds of natural, liquefied petroleum and manufactured gas for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the corporate limits of the City;
- (h) The word "purchase" shall mean and include every act or transaction whereby possession of, utilization of, control over or title to electricity, metered gas, and bottled gas, and the duty and obligation to pay therefor, become vested in the purchaser within the corporate limits of the City, but shall not pertain to nor include any such act or transaction when undertaken or performed by an agency of instrumentality of the government of the United States of America, the State of Florida, the County of Dade or the City;
- (i) The word "purchaser" shall mean and include every person legally liable for the payment of electricity, metered gas, and bottled gas delivered to him by a seller, unless such person is an agency or instrumentality of the government of the United States of America, the State of Florida, the County of Dade or the City;
- (j) The word "seller" shall mean and include every person delivering electricity, metered gas, and

bottled gas to any purchaser thereof.

(k) "Tax Collector of the City" shall mean the Mayor or any employee of the City designated by him to perform the functions thereof.

Section 2. That there is hereby levied and imposed by the City upon each and every purchase of electricity, metered gas, and bottled gas, included in or reflected by any bill rendered by the seller to the purchaser on and after the first day of October 1, 1966, an excise tax the amount whereof shall be determined and computed in accordance with the following schedules.

SCHEDULE A

TO BE USED WHEN THE SELLER, IN ACCORDANCE WITH HIS RULES AND REGULATIONS, RENDERS A BILL MONTHLY OR OFTENER TO THE PURCHASER TO COVER PURCHASES MADE DURING THE PERIOD OF TIME TO WHICH THE BILL IS APPLICABLE.

1. The amount of excise tax shall be:
Three per centum (3%) of the total amount, exclusive of governmental charges and taxes, shown on any such bill as being due and payable on account of such purchases.

SCHEDULE B

TO BE USED WHEN THE SELLER, IN ACCORDANCE WITH HIS RULES AND REGULATIONS, RENDERS A BILL BI-MONTHLY, QUARTERLY OR OTHERWISE LESS FREQUENTLY THAN MONTHLY, TO COVER PURCHASES MADE DURING THE PERIOD OF TIME TO WHICH THE BILL IS APPLICABLE.

1. The seller shall determine what part of the total amount, exclusive of governmental charges and taxes, shown on any such bill as being due and payable on account of such purchases is, under his rules and regulations, attributable to the purchases made during each of the monthly periods included within the total period of time covered by such bill;
2. Compute the amount of excise tax hereunder attributable to each such part of said total amount, as so determined, by employing, with respect to each such part, the method and procedure described in Schedule A for monthly bills;

3. The total amount of excise tax payable hereunder on account of any such bill shall be the arithmetical sum of all of the amounts of excise tax resulting from the computations made with respect to each such part as hereinbefore provided.

In the use and application of the foregoing schedules; purchases of electricity, metered gas, and bottled gas, shall be considered and treated as constituting and being distinct and unrelated classes of purchases, and in the event that more than one such class shall be shown upon the same bill, the amount of excise tax payable hereunder shall be determined and computed for each such class separately. The seller is hereby required and it shall be his duty hereunder to render to each purchaser bills covering all such purchases made, and the amount of such excise tax shall be entered and shown by the seller as a separate item on each such bill and shall become due and payable to the City whenever such bill becomes due and payable under the rules and regulations of the seller. Each such bill shall include purchases applicable to but one location, or to but one family or business where more than one family or business uses separate metered services at one location in the City. The purchaser is hereby required and it shall be his duty hereunder to pay such excise tax to the seller, as agent for the City, at the time of payment of each such bill, and in the event that the purchaser shall fail, neglect or refuse to pay such excise tax to the seller when such bill becomes due and payable, the seller is hereby empowered to discontinue forthwith to make any further sales or to render any further service to the purchaser until the total amount, including such excise tax, shown upon such bill shall have been paid in full. The seller is hereby authorized and required and it shall be his duty hereunder to collect such excise tax from such purchaser at the time of the payment of each such bill and to remit the same to the Tax Collector of the

City in accordance with the provisions of Section 3 of this Ordinance; provided, however, that the seller shall have the right and privilege of assuming and paying such excise tax himself in lieu of collecting the same from the purchaser; and provided further that when the seller shall fail or neglect to collect such excise tax from the purchaser as hereinbefore provided, the seller shall be deemed to have assumed such excise tax himself and shall thereupon become liable for the payment of the amount thereof to the City to the same extent as if such excise tax has been collected from the purchaser.

Where any of the services subject to the excise tax imposed here are furnished to a recognized Church of the State of Florida for use on Church property which is used exclusively for Church purposes, such Church shall be exempt from payment of the tax thereon as provided in Section 167.432 of the Florida Statutes.

Section 3. That every seller is hereby required to execute and file not later than the twentieth day of each month at the office of the Tax Collector of the City a sworn statement on a form prescribed by said office, setting forth the amount of such excise tax to which the City became entitled under the provisions of Section 2 of this Ordinance on account of bills paid by purchasers during the preceding fiscal month, and contemporaneously with the filing of said statement, shall pay said amount of such excise tax to said Tax Collector to be deposited to the credit of the General Fund of the City for utilization for such legal purposes as the Council of the City may from time to time determine.

Section 4. That every seller is hereby required to establish and to maintain appropriate accounts and records show-

ing in such detail as the Tax Collector of the City may prescribe the amount of such excise tax payable to the City under the provisions of Section 2 and 3 of this Ordinance, and such accounts and records shall be open to inspection by the Tax Collector or his duly authorized agent at all reasonable times. The Tax Collector is hereby authorized and empowered to promulgate from time to time such rules and regulations with respect to the establishment and maintenance of said accounts and records as he may deem necessary to carry into effect the purpose and intent of the provisions of Section 2 to 4, inclusive, of this Ordinance.

Section 5. That all reasonable expense incurred by a seller in making the collections and remittances and in fulfilling the duties prescribed by Sections 2 to 4, inclusive, of this Ordinance is hereby declared to be and to constitute an operating expense and shall be accorded full recognition as such in the establishment of rates and charges for rendering electric, metered gas, and bottled gas, service in the City.

Section 6. That it shall be unlawful and a violation of this Ordinance for any purchaser to evade the payment of such excise tax, or of any part thereof, or to fail or neglect to pay such excise tax within thirty (30) days after the same has become due and payable; or for any seller to fail or refuse to pay to the City all amounts of excise tax payable to the City by the seller hereunder, or to fail or refuse to file said monthly sworn statement, or to set forth any erroneous or false information therein with intent to defraud the City, or to refuse to permit the Tax Collector of the City or his duly authorized agent to examine the accounts and records to be kept as required by Section 4 of this Ordinance.

Section 7. That each violation of, or non-compliance

with any of the provisions of Section 2 to 4 inclusive, of this Ordinance shall be and constitute a separate offense and shall subject every person guilty thereof to all of the penalties prescribed in Section 8 of this Ordinance.

Section 8. Every person violating any of the provisions of this Ordinance shall, upon conviction thereof, be punished by a fine not to exceed the sum of Two Hundred Dollars (\$200.00), or by imprisonment in the City Jail for a term not to exceed Sixty (60) days, or by both such fine and imprisonment, in the discretion of the Municipal Judge.

Section 9. That if any section, part of section, sentence or clause of this Ordinance shall be adjudged to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of any other portion of said Sections, but shall be restricted and limited in its operation and effect to that specific portion of said Sections involved in the litigation in which such decision shall have been rendered.

Section 10. All provisions or parts of provisions of any ordinance of the City, insofar as they may be inconsistent with or in conflict with the provisions of this Ordinance, are hereby repealed.

Section 11. The effective date of this Ordinance shall be October 1, 1966.

Section 12. It is the intent of the Council and it is so enacted that this Ordinance shall be incorporated into the City Code and to this effect the sections hereof may be renumbered and relettered.

PASSED AND ADOPTED this 21st day of September, 1966.

ATTEST:


City Clerk


President, City Council

APPROVED:


Mayor