

ORDINANCE NO. 91-04

AN ORDINANCE OF THE CITY OF WEST MIAMI, FLORIDA, AMENDING SECTIONS 14-11, 14-12, AND 14-13, ARTICLE II, PUBLIC SERVICE TAX, CHAPTER 14, OF THE CODE OF WEST MIAMI, FLORIDA, BY PROVIDING DEFINITIONS OF TELECOMMUNICATIONS SERVICES; PROVIDING FOR PUBLIC SERVICE TAX OF SIX PERCENT (6%) ON TELECOMMUNICATION SERVICES; PROVIDING SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES OR PARTS THEREOF IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND, PROVIDING EFFECTIVE DATE.

WHEREAS, Chapter 166.231, Florida Statutes authorizes municipalities to impose a public service tax on the purchase of telecommunication services; and

WHEREAS, the City Commission of the City of West Miami has determined it to be in the public interest to impose such a public service tax;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST MIAMI, FLORIDA:

Section 1. Section 14-11, Definitions, Article II, Public Service Tax, Chapter 14, of the Code of West Miami, Florida, as used in this article, shall be amended to read as follows:

Sec. 14-11. Definitions.

As used in this article:

Bottled gas means and includes 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 city.

Electricity means and includes all electric current or energy for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the city.

Fuel adjustment charge means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

Fuel oil means and includes all types of liquid petroleum products normally used for lighting, heating, cooking, power or any other purpose, delivered to any purchaser thereof within the city.

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 city.

Purchase means and includes every act or transaction whereby possession of, utilization of, control over or title to electricity, metered gas, bottled gas, or fuel oil, and the duty and obligation to pay therefor, become vested in the purchaser within the city, but shall not pertain to nor include any such act or transaction when undertaken or performed by an agency or instrumentality of the government of the United States of America, the State of Florida, the County of Dade or the city.

Purchaser means and includes every person legally liable for the payment for electricity, metered gas, bottled gas, or fuel oil 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.

Seller means and includes every person delivering electricity, metered gas, bottled gas, or fuel oil to any purchaser thereof.

Tax collector of the city shall mean the city manager or any employee of the city designated by him to perform the functions thereof. (Code 1965, Sec.22-10; Ord. No.383,Sec.1,920-78)

Telecommunication services means any such services as defined in Florida Statutes, Section 203.012, including but not limited to:

(a) Local telephone service, toll telephone service, telegram or telegraph service, teletypewriter or computer exchange service, or private communication service; or

(b) Cellular mobile telephone or telecommunication service; or specialized mobile radio, and pagers and paging service, including but not limited to "beepers" and any other form of mobile and portable one-way or two-way communications; but does not include services or equipment incidental to telecommunication services enumerated in this paragraph, such as maintenance of customers' premises equipment, whether owned by the customer or not, or equipment sales or rentals for which charges are separately stated, itemized, or described on the bill, invoice, or other tangible evidence of the provisions of such service.

Telecommunication services defined herein under subparagraph (b)

hereof, shall be taxed only on the monthly recurring customer service charges excluding variable usage charges.

Telecommunication services provider means a business entity licensed by the Federal Communications Commission, the Florida Public Service Commission, or both, to provide one or more kinds of telecommunication services.

Taxable telecommunication services purchase means and includes all purchases of telecommunication services provided within the city, which service originates and terminates in the State of Florida. If a telecommunication services provider does not have the technological means to determine if a purchase is provided within the city, the telecommunication services provider shall calculate the taxable telecommunication services purchase based upon the total amount billed for telecommunication services to a telephone or telephone number, a telecommunications number or device, or a customer's billing address located within the municipality. Excluded from the definition are public telephone charges collected on site, charges for any foreign exchange service or any private line service (except when such services are used or sold as a substitute for any telephone company switched service or dedicated facility by which a telephone company provides a communication path), access charges, and any customer access line charges paid to a local telephone company.

Section 2. Section 14-12, Tax levied and imposed, Article II, Chapter 14, of the Code of West Miami, Florida, shall be amended to read as follows:

Sec. 14-12. Tax levied and imposed.

There is hereby levied and imposed by the City upon each and every purchase of electricity, metered gas, bottled gas, fuel oil, and telecommunication services as authorized by Section 166.231, Florida Statutes, included in or reflected by any bill rendered by the seller to the purchaser on and after the first day of October 1978, a public service 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 more often to the purchaser to cover purchases made during the period of time to which the bill is applicable.

(1) The amount of public service tax shall be six percent (6%) 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; provided, however, that the tax on fuel oil shall be 2.4 cents per gallon.

(2) The tax on electricity authorized under this section shall not be levied and collected on the first fifty (50) kilowatt hours per billing period purchased for residential use. Such exemption shall apply to each separate residential unit, regardless of whether such unit is on a separate or central meter and shall be passed on to each individual tenant.

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 public service 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; provided that the fifty (50) kilowatt hours exemption shall be allowed for each inclusive period.
- (3) The total amount of public service tax payable hereunder on account of any such bill shall be the arithmetical sum of all of the amounts of tax resulting from the computations made with respect to each such part as herein provided.

Section 3. Section 14-13, Purchases of different services to be treated distinctly, Article II, Chapter 14, of the Code of West Miami, Florida, shall be amended to read as follows:

Sec. 14-13. Purchases of different services to be treated distinctly.

In the use and application of the foregoing schedules, purchases of electricity, metered gas, bottled gas, fuel oil and telecommunication service 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 public service tax payable hereunder shall be determined and computed for each such class separately.

Section 4. Sec. 14-14. Billing and collection of tax from purchaser, Article II, Chapter 14 of the Code of West Miami, Florida, shall be amended to read as follows:

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 public service 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 public service 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 14-16 of this article; provided that when the seller shall fail or neglect to collect such excise tax from the purchaser as herein before 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 public service tax has been collected from the purchaser.

Section 5. Sec. 14-15. Exemption for churches, Article II, Chapter 14 of the Code of West Miami, Florida, shall be amended to read as follows:

Where any of the services subject to the public service 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 166.231, Florida Statutes.

Section 6. Sec. 14-16. Statement and payment by seller to City, Article II, Chapter 14 of the Code of West Miami, Florida, shall be amended to read as follows:

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 public service tax to which the city became entitled under the provisions of Section 14-12 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 public service 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 Commission of the City may from time to time determine.

Section 7. Sec. 14-17. Accounts and records of sellers, Article II, Chapter 14 of the Code of West Miami, Florida, shall be amended to read as follows:

Every seller is hereby required to establish and to maintain appropriate accounts and records showing in such detail as the tax collector of the City may prescribe the amount of such public service tax payable to the City under the provisions of this article, 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

Section 10. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

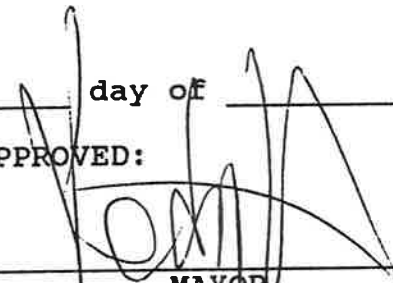
Section 11. If any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

Section 12. It is the intention of the City Commission that the provisions of this ordinance shall become and be made a part of the West Miami Code; and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section, article" or such other appropriate word or phrase in order to accomplish such intentions.

Section 13. This Ordinance shall take effect immediately upon passage.


PASSED AND ADOPTED this _____ day of _____, 1991.

APPROVED:



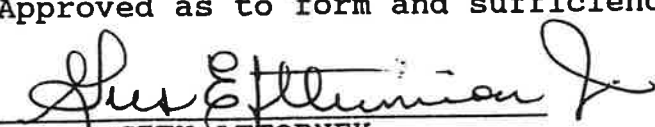
MAYOR

ATTEST:



CITY CLERK

Approved as to form and sufficiency



CITY ATTORNEY

said accounts and records as he may deem necessary to carry into effect the purpose and intent of the provisions of this article.

Section 8. Se. 14-18. Costs of compliance declared operating expenses, Article II, Chapter 14 of the Code of West Miami, Florida, shall be amended to read as follows:

Any reasonable expense incurred by a seller in making the collections and remittances and in fulfilling the duties prescribed by this article 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, bottled gas, and fuel oil service in the City.

Section 9. Sec. 14-19. Violations enumerated, Article II, Chapter 14 of the Code of West Miami, Florida, shall be amended to read as follows:

It shall be unlawful and a violation of this article for any purchaser to evade the payment of such public service tax, or of any part thereof, or to fail or neglect to pay such public service 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 public service 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 14-17.