

## Chapter 98

### TAXATION\*

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## ARTICLE I. IN GENERAL

**Secs. 98-1—98-25. Reserved.**

## ARTICLE II. SALES TAX

### Sec. 98-26. Title.

This article shall be known and may be cited as the "McAlester Sales Tax Ordinance."  
(Code 1974, § 27-16)

### Sec. 98-27. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Generally.* The definitions of words, terms and phrases contained in the Oklahoma Sales Tax Code (68 O.S. § 1350 et seq.), are hereby adopted by reference and made a part of this article.

*Oklahoma Sales Tax Code.* Reference to the Oklahoma Sales Tax Code means such code as set out in 68 O.S. art. 13 (68 O.S. § 1350 et seq.), as amended.

*Tax collector* means the department of the city government or the official agency of the state duly designated according to law or contract authorized by law to administer the collection of the tax levied by this article.  
(Code 1974, § 27-19)

**Cross reference**—Definitions generally, § 1-2.

### Sec. 98-28. Purpose.

It is hereby declared to be the purpose of this article to provide revenues for the support of the functions of the municipal government of the city.  
(Code 1974, § 27-18; Ord. No. 2068, § 1, 6-10-97)

### Sec. 98-29. Levy.

(a) *Citations and codification.* This section shall be known and may be cited as the City of McAlester Three-Quarter Cent Sales Tax Ordinance of 2015, and the same shall be codified and incorporated into the Code of Ordinances of the City of McAlester, Oklahoma (the "city").

(b) *Tax imposed.* There is hereby imposed an excise tax of three-quarter percent, in addition to any and all other excise taxes now in force; said excise tax to be levied upon the gross proceeds or gross receipts derived from all sales taxable under the Oklahoma Sales Tax Code.

(c) *Purpose of revenues.* It is hereby declared to be the purpose of this section and the excise tax levied hereunder is to provide revenues to be used by the city, or any public trust having the city as beneficiary thereof, for the purpose of funding street construction, repairs, maintenance, and improvements, as well as related infrastructure improvements within the project areas.

(d) *Effective date and no stated termination date.* The provisions of this section and the collection of the excise tax referenced herein shall become effective on and after January 1, 2016, subject to approval by a majority of the qualified electors of the City of McAlester, Oklahoma, voting on the same in the manner prescribed by law. The provisions of this section and the collection of the excise tax referenced herein shall be unlimited in duration.

(e) *Subsisting state permits.* All valid and subsisting permits to do business issued by the Oklahoma Tax Commission pursuant to the Oklahoma Sales Tax Code are, for the purposes of this section, hereby ratified, confirmed and adopted in lieu of any requirement for an additional city permit for the same purpose.

(f) *Payment of tax.* The tax herein levied shall be paid to the tax collector at the time and in the manner and form prescribed for payment of the state sales tax under the state tax law of the State of Oklahoma.

(g) *This tax in addition to taxes currently levied; administrative procedures.* The tax levied hereby is in addition to any and all other excise taxes levied or assessed by the city pursuant to existing city ordinances (the "existing ordinances"); provided, however, that those provisions, if any, of said existing ordinances relating to definitions; tax collector defined; classification of taxpayers - permit to do business; subsisting state permits; the portion of tax rate - sales subject to tax, pertaining to sales subject to tax (not rate of tax);

the provisions of said existing ordinances regarding exemptions and other exempt transfers; the provisions of said existing ordinances regarding tax due when - returns - records; the portion of said existing ordinances regarding tax constituting debt; vendor's duty to collect tax; returns and remittances - discounts; interest and penalties - delinquency; Waiver of interest and penalties; erroneous payments - claim for refund; fraudulent returns; and records confidential shall apply to the excise tax levied and assessed by the ordinance codified herein. For purposes of this section, references in said existing ordinances, to specific provisions of the Oklahoma Statutes shall be deemed to be references to said statutory provisions, as amended.

(h) *Amendments.* The people of the City of McAlester, Oklahoma, by their approval of the ordinance codified in this section at the election hereinabove provided for, hereby authorize the city by ordinance duly enacted to make such administrative and technical changes or additions in the method and manner of administration and enforcing this section as may be necessary or proper for efficiency and fairness or in order to make the same consistent with the Oklahoma Sales Tax Code, as amended, except that the rate of the tax herein provided for shall not be changed without approval of the qualified electors of the city as provided by law.

(i) *Provisions cumulative.* The provisions hereof shall be cumulative and in addition to any and all other taxing provisions of city ordinances.

(j) *Severability.* The provisions of this section are severable, and if any part or provision hereof shall be adjudged invalid by any court of competent jurisdiction, such adjudication shall not affect or impair any of the remaining parts or provisions hereof.

(Code 1974, § 27-22; Ord. No. 1576, § 1, 7-24-79; Ord. No. 1983, § 1, 6-23-92; Ord. No. 2038, § 1, 6-27-95; Ord. No. 2068, § 2, 6-10-97; Ord. No. 2084, § 1, 7-14-98; Ord. No. 2153, § 1, 6-25-02; Ord. No. 2159, § 1, 10-19-02; Ord. No. 2431, §§ 1—10, 8-14-12; Ord. No. 2453, §§ 1—10, 3-12-13; Ord. No. 2541, §§ 1—10, 7-21-15)

**State law references**—Sales tax authorized, 68 O.S. § 2701; sales subject to tax, 68 O.S. § 1354.

### **Sec. 98-30. Exemptions.**

There is hereby specifically exempted from the tax levied by this article the gross receipts or gross proceeds and the transfers of tangible personal property exempted from the Oklahoma Sales Tax Code (68 O.S. § 1350 et seq.).

(Code 1974, §§ 27-23—27-25)

**State law reference**—Exemptions for state sales tax, 68 O.S. §§ 1355—1360.

### **Sec. 98-31. When due and payable.**

The tax levied under this article shall be due and payable at the time prescribed for payment of the state sales tax under the Oklahoma Sales Tax Code (68 O.S. § 1350 et seq.).

(Code 1974, § 27-26)

**State law reference**—When state tax due and payable, 68 O.S. § 1365.

### **Sec. 98-32. Manner of paying.**

The tax levied under this article shall be paid to the tax collector in the form and manner provided for payment of the state sales tax under the Oklahoma Sales Tax Code (68 O.S. § 1350 et seq.).

(Code 1974, § 27-27)

**State law reference**—Payment of state tax, 68 O.S. § 1365.

### **Sec. 98-33. Classification of taxpayers.**

For the purpose of this article, the classification of taxpayers under this article shall be as prescribed by state law for purposes of the Oklahoma Sales Tax Code (68 O.S. § 1350 et seq.).

(Code 1974, § 27-21)

**State law reference**—Taxpayers classified, 68 O.S. § 1363.

### **Sec. 98-34. Collection by vendors.**

(a) The tax levied under this article shall be paid by the consumer or user to the vendor, and it shall be the duty of each and every vendor in this city to collect from the consumer or user, the full amount of the tax levied by this article, or an amount equal as nearly as possible or practicable to the average equivalent thereof.

(b) Vendors shall add the tax imposed under this article, or the average equivalent thereof, to the sales price or charge and, when added, such

tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the vendor until paid, and shall be recoverable at law in the same manner as other debts.

(c) A vendor who willfully or intentionally fails, neglects or refuses to collect the full amount of the tax levied by this article, or willfully or intentionally fails, neglects or refuses to comply with the provisions or remits or rebates to a consumer or user, either directly or indirectly, and by whatsoever means, all or any part of the tax herein levied, or makes in any form of advertising, verbally or otherwise, any statement which infers that he is absorbing the tax, or paying the tax for the consumer or user by an adjustment of prices or at a price including the tax, or in any manner whatsoever, shall be deemed guilty of an offense. (Code 1974, § 27-28)

**State law reference**—Similar provisions, 68 O.S. § 1361.

**Sec. 98-35. Returns, remittances and discounts generally.**

Returns and remittances of the tax levied and collected under this article shall be made to the tax collector at the time and in the manner, form and amount as prescribed for returns and remittances required by the Oklahoma Sales Tax Code (68 O.S. § 1350 et seq.), and remittances of taxes collected under this article shall be subject to the same discount as may be allowed by such code for collection of state sales taxes.

(Code 1974, § 27-29)

**State law references**—Remittances, 68 O.S. § 1362; discounts, 63 O.S. § 1367.

**Sec. 98-36. Penalty and interest on delinquencies; forfeiture of discount.**

(a) The city hereby adopts and makes a part hereof 68 O.S. § 217, and the interest and penalties at the rates and in the amounts as therein specified are hereby levied and shall be applicable in cases of delinquency in reporting and paying the tax levied by this article; provided that, the failure or refusal of any taxpayer to make and transmit the reports and remittances of tax in the time and manner required by this article shall cause such tax to be delinquent. In addition, if

delinquency continues for a period of five days, the taxpayer shall forfeit his claim to any discount allowed by this article.

(b) The interest or penalty or any portion thereof accruing by reason of a taxpayer's failure to pay the tax levied by this article may be waived or remitted in the same manner as provided for such waiver or remittance as applied in the administration of the state sales tax provided in 68 O.S. § 220, and to accomplish such purposes, the applicable provisions of such section are hereby adopted by reference and made a part hereof. (Code 1974, § 27-30)

**Sec. 98-37. Failure to make reports and remittances; false or fraudulent reports.**

In addition to all civil penalties provided by this article, the willful failure or refusal of any taxpayer to make reports and remittances required by this article, or the making of any false and fraudulent report for the purposes of avoiding or escaping payment of any tax or portion thereof rightfully due under this article shall be an offense punishable as prescribed by section 1-8 of this Code.

(Code 1974, § 27-31)

**Sec. 98-38. Money due under article constitutes superior claim; collection by suit.**

Taxes, penalties and interest due under this article shall at all times constitute a prior, superior and paramount claim as against the claims of unsecured creditors, and may be collected by suit as any other debt.

(Code 1974, § 27-32)

**State law references**—Authority of city to enforce payment of taxes by civil action, 68 O.S. § 2703; lien for municipal taxes, 68 O.S. § 2704.

**Sec. 98-39. Refund of erroneous payments.**

Refund of erroneous payment of the sales tax levied by this article may be made to any taxpayer making such erroneous payment in the same manner and procedure, and under the same limitations of time, as provided for administration of the state sales tax as set forth in 68 O.S. § 227,

and to accomplish such purposes, the applicable provisions of such section are hereby adopted by reference and made a part hereof.  
(Code 1974, § 27-33)

**Sec. 98-40. Confidentiality of records.**

The confidential and privileged nature of the records and files concerning the administration of the city sales tax is legislatively recognized and declared, and to protect the same the provisions of 68 O.S. § 205, and each subsection thereof, are hereby adopted by reference and made fully effective and applicable to the administration of the city sales tax as if herein set forth in full.  
(Code 1974, § 27-34)

**Sec. 98-41. Amendments to article.**

The people of the city by their approval of this article at an election hereby authorize the city council, by ordinances duly enacted, to make such administrative and technical changes or additions in the method and manner of administration and enforcing this article as may be necessary or proper for efficiency and fairness, except that the rate of the tax provided for in this article shall not be changed without approval of the qualified electors of the city as provided by law.  
(Code 1974, § 27-35)

**Sec. 98-42. Provisions of article cumulative.**

The provisions of this article shall be cumulative and in addition to any and all other taxing provisions of city ordinances.  
(Code 1974, § 27-36)

**Sec. 98-43. Article does not require city permit to do business in addition to state permit.**

All valid and subsisting permits to do business issued by the state tax commission pursuant to the Oklahoma Sales Tax Code (68 O.S. § 1350 et seq.) are, for the purposes of this article, hereby ratified, confirmed and adopted in lieu of any requirement for an additional city permit for the same purpose.  
(Code 1974, § 27-20)

**State law reference**—Permits to do business, 68 O.S. § 1364.

**Secs. 98-44—98-65. Reserved.**

**ARTICLE III. USE TAX**

**Sec. 98-66. Short title.**

This article shall be known and may be cited as "City of McAlester Use Tax Ordinance."  
(Code 1974, § 27-50)

**State law reference**—Local use tax, 68 O.S. § 1411.

**Sec. 98-67. Definitions.**

The definitions of words, terms and phrases contained in 68 O.S. art. 14 (68 O.S. § 1401 et seq.) are hereby adopted by reference and made a part of this article. In addition thereto, the following words and terms shall be defined as follows:

*Transaction* means sale.

(Code 1974, § 27-52)

**Cross reference**—Definitions generally, § 1-2.

**Sec. 98-68. Tax collector.**

The term "tax collector" as used in this article means the department of the municipal government or the official agency of the state, duly designated according to law or contract authorized by law, to administer the collection of the tax levied in this article.  
(Code 1974, § 27-53)

**Sec. 98-69. Purpose.**

It is hereby declared to be the purpose of this article to provide revenues for the support of the functions of the municipal government of the city, and any and all revenues derived hereunder may be expended by the governing body of the city for any purpose for which funds may be lawfully expended as authorized.  
(Code 1974, § 27-51)

**Sec. 98-70. Excise tax on storage, use or other consumption of tangible, personal property levied.**

There is hereby levied and there shall be paid by every person storing, using or otherwise consuming within the municipality tangible, personal property purchased or brought into this municipality, an excise tax on the storage, use or

other consuming within the municipality of such property at the rate of three and one-quarter percent of the purchase price of such property. Such tax shall be paid by every person storing, using or otherwise consuming, within the municipality, tangible, personal property purchased or brought into the municipality. The additional tax levied hereunder shall be paid at the time of importation or storage of the property within the municipality and shall be assessed to only property purchased outside Oklahoma; provided, that the tax levied herein shall not be levied against tangible, personal property intended solely for use outside the municipality, but which is stored in the municipality pending shipment outside the municipality or which is temporarily retained in the municipality for the purpose of fabrication, repair, testing, alteration, maintenance or other service. Any person liable for payment of the tax authorized herein may deduct from such tax any local or municipal sales tax previously paid on such goods or services; provided, that the amount deducted shall not exceed the amount that would have been due if the taxes imposed by the municipality had been levied on the sale of such goods or services.

(Code 1974, § 27-56; Ord. No. 2089, § 1, 9-22-98; Ord. No. 2242, § 1, 9-12-06)

**State law reference**—Tax authorized, 68 O.S. § 1411.

**Sec. 98-70.1. Additional one-half of one percent excise tax.**

(a) Section 98-70, as amended, hereby is further amended to provide for the levy of an additional one-half of one percent excise tax authorized thereby until July 1, 2018.

(b) It hereby is declared to be the purpose of the revenues provided by the one-half of one percent excise tax not to exceed one-half thereof, to provide revenues for the purpose of financing the acquisition, construction and equipment of educational facilities on behalf of the city by the McAlester Public Works Authority (the "authority"), and paying the principal of and interest on indebtedness incurred on behalf of said city for said purpose by the authority and the balance to provide revenue for economic development by said authority and paying the principal of and interest on indebtedness incurred by the author-

ity for said purpose. The incurring of said indebtedness in the principal amount of not to exceed \$16,000,000.00 by the authority is hereby approved and competitive bidding thereon is waived. Said one-half of one percent sales tax shall cease to be collected on July 1, 2018. In the event of the incurring of any such indebtedness, this section shall not be subject to repeal until the said indebtedness shall have been paid.

(c) This section shall become and be effective on and after March 5, 2003, and only after approval by a majority of the qualified electors of the City of McAlester, Oklahoma, voting on separate propositions, one relating to a one-fourth of one percent excise tax for education and the other relating to a one-fourth of one percent excise tax for economic development, and approving either or both of the same in the manner prescribed by law. In the event only one proposition is approved, only a one-fourth of one percent excise tax shall be levied for the approved purpose.

(Ord. No. 2241, §§ 1—3, 9-12-06)

**Sec. 98-71. Exemptions.**

The provisions of this article shall not apply:

- (1) In respect to the use of an article of tangible, personal property brought into the city by a nonresident individual visiting in this city for his personal use or enjoyment while within the city.
- (2) In respect to the use of tangible, personal property purchased for resale before being used.
- (3) In respect to the use of any article of tangible, personal property on which a tax, equal to or in excess of that levied by both 68 O.S. art. 14 (68 O.S. § 1401 et seq.) and the city use tax ordinance, has been paid by the person using such tangible, personal property in the city, whether such tax was levied under the laws of Oklahoma or some other state or municipality of the United States. If any article of tangible, personal property has already been subjected to a tax by Oklahoma or any other state or municipality in respect to its sale or use, in an amount less than the tax imposed by both 68 O.S. art. 14

(68 O.S. § 1401 et seq.) and the city use tax ordinance, the provisions of this article shall also apply to it by a rate measured by the difference only between the rate provided by both the 68 O.S. art. 14 (68 O.S. § 1401 et seq.) and the city use tax ordinance, and the rate by which the previous tax upon the sale or use was computed. No credit shall be given for taxes paid in another state or municipality, if that state or municipality does not grant like credit for taxes paid in Oklahoma and this city.

- (4) In respect to the use of machinery and equipment purchased and used by persons establishing new manufacturing or processing plants in the city, and machinery and equipment purchased and used by persons in the operation of manufacturing plants already established in the city. This exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property subject to taxation under the sales tax code of the city. The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such.
- (5) In respect to the use of tangible, personal property now specifically exempted from taxation under the sales tax code of the city.
- (6) In respect to the use of any article of tangible, personal property brought into the city by an individual with intent to become a resident of this city where such personal property is for such individual's personal use or enjoyment.
- (7) In respect to the use of any article of tangible personal property used or to be used by commercial airlines or railroads.
- (8) In respect to livestock purchased outside Oklahoma and brought into this city for feeding or breeding purposes, and which is later resold.

(Code 1974, § 27-57)

**Sec. 98-72. Time when due; returns and payment.**

The tax levied by this article is due and payable at the time and in the manner and form prescribed for payment of the state use tax under 68 O.S. art. 14 (68 O.S. § 1401 et seq.).

(Code 1974, § 27-58)

**Sec. 98-73. Tax constitutes debt.**

Such taxes, penalty and interest due under this article shall at all times constitute a prior, superior and paramount claim as against the claims of unsecured creditors, and may be collected by suit as any other debt.

(Code 1974, § 27-59)

**Sec. 98-74. Collection of tax by retailer or vendor.**

Every retailer or vendor maintaining places of business both within and without the state, and making sales of tangible, personal property from a place of business outside this state for use in this city shall at the time of making such sales collect the use tax levied by this article from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the tax commission, if the tax commission shall, by regulation, require such receipt. Each retailer or vendor shall list with the tax commission the name and address of all his agents operating in this city and location of any and all distribution or sales houses or offices or other places of business in this city.

(Code 1974, § 27-60)

**Sec. 98-75. Classification of taxpayers.**

For the purposes of this article, the classification of taxpayers under this article shall be as prescribed by state law for purposes of 68 O.S. art. 14 (68 O.S. § 1401 et seq.).

(Code 1974, § 27-54)

**Sec. 98-76. Subsisting state permits.**

All valid and subsisting permits to do business issued by the tax commission pursuant to 68 O.S. art. 14 (68 O.S. § 1401 et seq.) are for the purpose

of this article hereby ratified, confirmed and adopted in lieu of any requirement for an additional municipal permit for the same purpose.  
(Code 1974, § 27-55)

**Sec. 98-77. Collection of tax by retailer or vendor not maintaining place of business within state or both within and without state; permits.**

The tax commission may, in its discretion, upon application, authorize the collection of the tax levied in this article by any retailer or vendor not maintaining a place of business within this state but who makes sales of tangible personal property for use in this city and by the out-of-state place of business of any retailer or vendor maintaining places of business both within and without the state and making sales of tangible, personal property at such out-of-state place of business for use in this city. Such retailer or vendor may be issued, without charge, a permit to collect such taxes by the tax commission in such manner and subject to such regulations and agreements as it shall prescribe. When so authorized, it shall be the duty of such retailer or vendor to collect the tax upon all tangible, personal property sold to his knowledge for use within this city. Such authority and permit may be cancelled when at any time the tax commission considers that such tax can more effectively be collected from the person using such property in this city. However, in all instances where such sales are made or completed by delivery to the purchaser within this city by the retailer or vendor in such retailer's or vendor's vehicle, whether owned or leased (not by common carrier), such sales or transactions shall continue to be subject to applicable municipal sales tax at the point of delivery and the tax shall be collected and reported under taxpayer's sales tax permit number accordingly.  
(Code 1974, § 27-61)

**Sec. 98-78. Revoking permits.**

Whenever any retailer or vendor not maintaining a place of business in this state, or both within and without this state, and authorized to collect the tax levied in this article, fails to comply with any of the provisions of this article or the Okla-

homa Use Tax Code or any order, rule or regulation of the tax commission, the tax commission may, upon notice and hearing as provided for in 68 O.S. § 1408, by order revoke the use tax permit, if any, issued to such retailer or vendor, and if any such retailer or vendor is a corporation authorized to do business in this state may, after notice and hearing as above provided, cancel the corporation's license to do business in this state and shall issue a new license only when such corporation has complied with the obligations under this article, 68 O.S. art. 14 (68 O.S. § 1401 et seq.), or any order, rule or regulation of the tax commission.

(Code 1974, § 27-62)

**Sec. 98-79. Remunerative deductions allowed vendors or retailers of other states.**

Returns and remittances of the tax herein levied and collected shall be made to the tax commission at the time and in the manner, form and amount as prescribed for returns and remittances required by 68 O.S. art. 14 (68 O.S. § 1401 et seq.); and remittances of tax collected under this article shall be subject to the same discount as may be allowed by such code for the collection of state use taxes.

(Code 1974, § 27-63)

**Sec. 98-80. Interest and penalties; delinquency.**

The city hereby adopts and makes a part of this article 68 O.S. § 217, and the interest and penalties at the rates and in the amounts as therein specified are hereby levied and shall be applicable in cases of delinquency in reporting and paying the tax levied by this article. The failure or refusal of any retailer or vendor to make and transmit the reports and remittances of tax in the time and manner required by this article shall cause such tax to be delinquent. In addition, if such delinquency continues for a period of five days, the retailer or vendor shall forfeit his claim to any discount allowed under this article.

(Code 1974, § 27-64)

**Sec. 98-81. Waiver of interest and penalties.**

The interest or penalty or any portion thereof accruing by reason of a retailer's or vendor's failure to pay the municipal tax levied in this article may be waived or remitted in the same manner as provided for said waiver or remittance as applied in administration of the state use tax provided in 68 O.S. § 220, and to accomplish the purposes of this section the applicable provisions of such 68 O.S. § 220 are hereby adopted by reference and made a part of this article. (Code 1974, § 27-65)

**Sec. 98-82. Erroneous payments; claim for refund.**

Refund of erroneous payment of the municipal use tax levied in this article may be made to any taxpayer making such erroneous payment in the same manner and procedure, and under the same limitations of time, as provided for administration of the state use tax as set forth in 68 O.S. § 227, and to accomplish the purpose of this section, the applicable provisions of 68 O.S. § 227 are hereby adopted by reference and made a part of this article. (Code 1974, § 27-66)

**Sec. 98-83. Fraudulent returns.**

In addition to all civil penalties provided by this article, the willful failure or refusal of any taxpayer to make reports and remittances herein required, or the making of any false and fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this article shall be an offense, and upon conviction thereof the offending taxpayer shall be punished as provided in section 1-8. (Code 1974, § 27-67)

**Sec. 98-84. Records confidential.**

The confidential and privileged nature of the records and files concerning the administration of the municipal use tax is legislatively recognized and declared, and to protect the same provisions of 68 O.S. § 205 and each subsection thereof, is

hereby adopted by reference and made fully effective and applicable to administration of the municipal use tax as is herein set forth in full. (Code 1974, § 27-68)

**Sec. 98-85. Provisions cumulative.**

The provisions of this article shall be cumulative, and in addition to any and all other taxing provisions of the municipal ordinances. (Code 1974, § 27-69)

**Secs. 98-86—98-105. Reserved.**

**ARTICLE IV. HOTEL TAX**

**Sec. 98-106. Definitions.**

Unless a different meaning clearly appears from the context, for the purposes of this chapter, the following words and phrases shall have the meanings given herein:

*Hotel* shall mean any building or buildings, trailer or other facility in which three or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures. The term shall include hotels, apartment hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, trailer houses, trailer motels, dormitory space where bed space is rented to individuals or groups, apartments not occupied by "permanent residents", as that term is hereinafter defined, and all other facilities where rooms or sleeping facilities or space are furnished for a consideration. As defined herein, "hotel" shall not include hospitals, sanitariums or nursing homes.

*Occupancy* shall mean the use or possession or the right to the use or possession of any room or rooms in a hotel.

*Occupant* shall mean a person who, for a consideration, uses, possesses or has the right to the use or possession of any room or rooms in a hotel under any lease, concession, permit, right of access, license to use, or other agreement, or otherwise.

*Operator* shall mean any person operating a hotel in this city, included, but not limited to, the

owner, proprietor, lessee, sublessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel.

*Person* shall mean an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of the above acting as a unit.

*Rent* shall mean the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.

*Return* shall include any return filed or required to be filed as herein provided.

*Room* shall mean any room or rooms of any kind in any part or portion of a hotel which is available for, let for the use of, or possessed for the purpose of lodging or sleeping.

*Tax collector* shall mean the city treasurer or such other department of city government duly designated by the city council, to administer the collection of the tax herein levied.

(Ord. No. 2130, § 3, 4-24-01; Ord. No. 2061, § 1, 2-11-03)

### **Sec. 98-107. Imposition of tax; exemptions.**

(a) There is hereby levied an excise tax of six percent upon the gross proceeds or gross receipts derived from the rent from every occupancy of a room or rooms in a hotel in this city, except that the tax shall not be imposed where the rent is less than at the rate of \$5.00 per day. This excise tax shall be in addition to any existing sales tax imposed by the city or the state.

(b) Reserved.

(c) The Government of the United States, state governments or any agencies or divisions thereof, may file an application for refund of tax paid directly by the treasury of either government by sending proof of payment of the hotel tax to the City Treasurer of the City of McAlester, Okla-

homa. Upon receipt of appropriate documentation that the tax has been paid, the treasurer shall cause a refund of taxes to be made to the appropriate government agency or division.

(d) The tax to be collected shall be stated and charged separately from the rent and shall be shown separately on any record thereof at the time when the occupancy is arranged or contracted and charged for, and upon every evidence of occupancy or any bill, statement or charge made for such occupancy issued or delivered by the operator. The tax shall be paid by the occupant to the operator as trustees for and on account of the city, and the operator shall be liable for the collection thereof and for the payment of the tax. The operator and any officer of any corporate operation shall be personally liable for the tax collected or required to be collected under this title, and the operator shall have the same right in respect to collecting the tax from the occupant or in respect to nonpayment of the tax by the occupant as if the tax were a part of the rent for the occupancy payable at the same time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that he may have in the event of nonpayment of rent by the occupant; provided, however, that the city shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

(e) Such taxes, penalty and interest due hereunder shall at all times constitute a prior, superior and paramount claim as against the claim of unsecured creditors and may be collected by suit as any other debt.

(f) Where the occupant has failed to pay and the operator has failed to collect a tax as imposed by this chapter, then, in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the city, and it shall be the duty of the occupant to file a return thereof with the tax collector and to pay the tax imposed thereon to the tax collector, within 15 days after such tax was due.

(g) The tax collector may, whenever he deems it necessary for the proper enforcement of this chapter, provide by regulation that the occupant

shall file returns and pay directly to the tax collector the tax herein imposed at such times as returns are required to be filed and payment over made by the operator.

(h) The tax imposed by this section shall be paid upon any occupancy on or after August 1, 2001, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to August 1, 2001. Where rent is paid, charged, billed or falls due on either weekly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period after August 1, 2001, and such payment, bill, charge or rent due shall be apportioned on the basis of the ratio of the number of days falling within such portion to the total number of days covered thereby. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the tax collector may, by regulation, provide for credit or refund of the amount of such tax upon application as provided herein.

(i) For the purpose of the proper administration of this chapter, and to prevent evasion of the tax hereby imposed, it shall be presumed that all rentals are subject to the tax until facts to the contrary are established; and the burden of providing that a rent for occupancy is not taxable hereunder shall be upon the operator or the occupant.

(j) No operator shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this chapter is not considered as an element in the rent charged to the occupant.

(Ord. No. 2130, § 4, 4-24-01; Ord. No. 2061, §§ 2, 3, 2-11-03; Ord. No. 2503, § 2, 6-10-14)

#### **Sec. 98-108. Records to be kept.**

Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon in such form as the tax collector may, by regulation, require. Such records shall be available for inspection and examination at any time upon demand by the tax collector or a duly authorized agent or employee of the city, and shall be preserved for a

period of three years, except that the tax collector may consent to their destruction within that period or may require that they be kept longer. (Ord. No. 2130, § 5, 4-24-01)

#### **Sec. 98-109. Returns.**

(a) Every operator, on or before the 15th day of each month, shall file with the tax collector a return of occupancy and of rents and of the taxes payable thereon for the preceding calendar month. The date of filing shall be the date of delivery to the tax collector.

(b) The tax collector may permit or require returns to be made by shorter or longer periods and upon such dates as he may specify. The form of return shall be prescribed by the tax collector and shall contain such information as he may deem necessary for the proper administration of this code. The tax collector may require amended returns to be filed within 20 days after notice, containing the information specified in the notice.

(c) If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face, the tax collector shall take the necessary steps to enforce the filing of a return or an amended return.

(Ord. No. 2130, § 6, 4-24-01)

#### **Sec. 98-110. Payment of tax.**

At the time of filing a return of occupancy and of rents, each operator shall pay to the city the taxes imposed upon the rents included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this chapter. All taxes for the period for which a return is required shall be due and payable on or before the date fixed for the filing of the return for such period, without regard to whether a return is filed or whether the return correctly filed shows the amount of rents and the taxes due. If any operator has twice failed to pay taxes on or before the date fixed for payment of such taxes or if any operator refuses to pay the taxes or if the tax collector has reasonable grounds for belief that the operator is about to cease business or leave the state or remove or dissipate assets, or if, for any similar reason he deems it necessary to protect revenues due hereunder, the

tax collector may require an operator to file with the city either a performance and payment bond, as detailed herein, or in lieu of this bond, an escrow account or an irrevocable letter of credit as detailed herein. The performance bond, irrevocable letter of credit or escrow account shall be provided as follows:

- (1) A performance and payment bond in a form acceptable to the city, naming the operator as obligee thereof, executed by a surety acceptable to the city and authorized to do business in the state, in a sum equal to the city-wide average daily room rental rate, to be ascertained by the tax collector, times the number of rooms available for rent within the hotel multiplied by a factor of 30 times four percent; or
  - (2) An irrevocable letter of credit in a form acceptable to the city, executed by the operator and a federally insured financial institution acceptable to the city, providing for a sum equal to the city-wide average daily room rental rate, to be ascertained by the tax collector, times the number of rooms available for rent within the hotel multiplied by a factor of 30 times four percent; or
  - (3) An escrow account held by the city in a sum equal to the city-wide average daily room rental rate, to be ascertained by the tax collector, times the number of rooms available for rent within the hotel multiplied by a factor of 30 times four percent.
- (Ord. No. 2130, § 7, 4-24-01)

**Sec. 98-111. Assessment and determination of tax.**

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be assessed by the tax collector from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, types of accommodations and services, number of employees, or other factors. Written notice of such assessments shall be given to the person liable for the collection and payment

of the tax. Such assessment shall finally and irrevocably fix and determine the tax, unless the person against whom it is assessed, within 90 days after the giving of such assessment, shall apply in writing to the council of the city for a hearing, or unless the tax collector, at his discretion, shall reassess the same. After such hearing, the council of the city shall give written notice of its determination to the person against whom the tax is assessed. If the taxes and interest due are not paid within ten days of assessment or reassessment by the tax collector or determination by the council, in addition to the taxes and interest, the operator shall pay a penalty equal to ten percent of the taxes due.

(Ord. No. 2130, § 8, 4-24-01)

**Sec. 98-112. Refunds.**

(a) In the manner provided in this section, the tax collector shall refund or credit any tax erroneously, illegally or unconditionally collected if written application to the tax collector for such refund shall be made within two years from the date of payment thereof. For like causes, and in the same period, a refund may be so made upon the initiative and the order of the tax collector. Whenever a refund is made, the reasons therefore shall be stated in writing. Such application may be made by the person upon whom such tax was imposed and who has actually paid the tax. Such application may also be made by the person who has collected and paid such tax to the city, provided that the application is made within two years of the payment by the occupant to the operator; but no refund of money shall be made to the operator until he shall first establish to the satisfaction of the tax collector, under such regulations as the tax collector may prescribe, that he has repaid to the occupant the amount for which the application for refund is made. The tax collector, in lieu of any refund required to be made, may allow credit therefore on payments due from the applicant.

(b) An application for a refund or credit made, as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of, and the tax collector may receive evidence with respect thereto. After making his determination, the tax collector shall give notice

thereof to the applicant. Such determination shall be final unless the applicant, within ten days after such notice of determination, shall apply in writing to the council for a hearing. After such hearing, the council shall give written notice of its determination to the applicant.

(c) A person shall not be entitled to revision, refund or credit of a tax under this section if he has had a hearing or an opportunity for a hearing as provided in this chapter and has failed to avail himself of the remedies therein provided.

(Ord. No. 2130, § 9, 4-24-01)

### **Sec. 98-113. Notices.**

Notices provided for under this chapter shall be deemed to have been given when such notices have been delivered personally to the operator or deposited in the United States mail to the last known address of the operator.

(Ord. No. 2130, § 10, 4-24-01)

### **Sec. 98-114. Remedies exclusive.**

The remedies provided by ordinance shall be exclusive remedies available to any person for the review of tax liability imposed by this division.

(Ord. No. 2130, § 11, 4-24-01)

### **Sec. 98-115. Proceedings to recover tax.**

#### (a) *Civil remedies.*

- (1) Whenever any operator, occupant or other person shall fail to collect and/or pay over any tax, or to owe any tax, penalty or interest imposed by this chapter as herein provided, the tax collector may file notice of liens on behalf of the city against the real estate upon which the hotel is located and/or against all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by the person owing the tax pursuant to 68 O.S. § 2701, and 68 O.S. § 2704.
- (2) The liens shall, upon proper filing, attach to the real estate and/or personal property then owned or thereafter acquired by the debtor, whether such property is used by the debtor in the operation of business

or is under the authority of an assignee, trustee, or receiver for the benefit of creditors, from the date such taxes are due and payable as allowed by 68 O.S. § 2704.

- (3) The tax collector shall notify the person owing the tax by personal service or by certified mail that the city will file such liens if any delinquent lodging taxes, interest and/or penalties are not paid within 15 days of receiving such notice.
- (4) The tax collector may also request the city attorney to institute an action in personam and in rem to enforce payment and collect any delinquent lodging taxes, penalties and/or interest.

(b) *Criminal penalties.* In addition to all civil penalties provided by this chapter, the willful failure or refusal of any operator, occupant or other person to make reports and/or remittances as herein required or the making of any false and fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this chapter shall be an offense and upon conviction thereof the offending operator, occupant or other person shall be punished by a fine of not more than the penalty set out in section 1-8 of this Code, excluding costs.

(Ord. No. 2130, § 12, 4-24-01)

### **Sec. 98-116. General powers of the tax collector.**

In addition to all other powers granted to the tax collector, he is hereby authorized and empowered to:

- (1) Make, adopt and amend rules and regulations appropriate to the carrying out of the provisions of this chapter for the purposes thereof;
- (2) Extend, for cause shown, the time for filing any return for a period not exceeding 60 days; and for cause shown, to waive, remit or reduce penalties or interest;
- (3) Delegate his functions hereunder to a deputy or other employee or employees of the city;

- (4) Assess, reassess, determine, revise and readjust the taxes imposed by this chapter; and
  - (5) Prescribe methods for determining the taxable and non-taxable rents.
- (Ord. No. 2130, § 13, 4-24-01)

**Sec. 98-117. Administration of oaths and compelling testimony.**

(a) The tax collector, or employees or agents of the city duly designated and authorized by him, shall have the power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The tax collector shall have the power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of his duties hereunder and of the enforcement of this chapter, and to examine them in relation thereto.

(b) Any person who shall refuse to testify or to produce books or records, or who shall testify falsely in any material matter pending before the tax collector shall be guilty of an offense punishable by a fine of not more than the penalty set out in section 1-8 of this Code, excluding costs.

(Ord. No. 2130, § 14, 4-24-01)

**Sec. 98-118. Discount, delinquent taxes.**

(a) At the time of filing the returns required under this chapter with the tax collector, the operator shall remit therewith to the tax collector, except as hereinafter provided, 97 percent of the tax due under the provisions of this chapter; provided that the tax is delivered to the tax collector before the 15th of the month for the preceding calendar month's return, or if transmitted by mail, that the date of postmark by the U. S. Postal Service is before the 15th day of the month for the preceding month's return. In the event that payment of any tax due is not made before the 15th of the month, the operator forfeits his claim to the three percent discount and must remit to the tax collector 100 percent of the taxes due. If the filing of the return and remittance of the taxes due are received by the tax collector after the 15th day of the month, the taxes are

then delinquent and the operator shall pay, in addition to 100 percent of the taxes due, interest and penalties as prescribed in subsection 98-119(a).

(b) The discount granted by this section shall remunerate the operator for keeping tax records, filing reports and remitting the tax when due as required by this chapter.

(Ord. No. 2130, § 15, 4-24-01)

**Sec. 98-119. Interest and penalties.**

(a) If an operator fails to file a return or remit the taxes due prior to the 15th day of the month, the operator shall pay, in addition to 100 percent of the taxes due, the following interest and penalties:

- (1) One and one-half percent interest per month on the total amount of taxes due from the 15th day of the month to the date of filing; and
- (2) A penalty of ten percent of the total amount of the taxes due.

(b) In addition to the penalties provided herein, the following persons shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not more than the penalty set out in section 1-8 of this Code, excluding costs:

- (1) Any operator or occupant who willfully fails to file a return as required by this chapter, or who files or causes to be filed, or makes or causes to be made, or causes to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this chapter which is willfully false;
- (2) Any operator who willfully fails to file a bond required by this chapter or who willfully fails to file a registration certificate and such data in connection therewith as the tax collector may require, by regulation or otherwise, or who fails to display or surrender the license as required by this chapter, or who assigns or transfers such license;
- (3) Any operator who willfully fails to charge separately from the rent the tax herein

imposed, or who willfully fails to state such tax separately on any evidence of occupancy and on any bill, statement or receipt of rent issued or employed by the operator, or who willfully fails or refuses to collect tax from the occupant;

- (4) Any operator who willfully refers or causes reference to be made to this tax in a form or manner other than that required by this chapter; and
- (5) Any operator who willfully fails to keep the records required by this chapter.

(c) The affidavit of the tax collector to the effect that a tax has not been paid, that a return, bond, or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof.

(Ord. No. 2130, § 16, 4-24-01)

#### **Sec. 98-120. Confidential records.**

The confidential and privileged nature of the records and files concerning the administration of this tax is legislatively recognized and declared, and to protect the same, the provisions of 68 O.S. § 205, and each subsection thereof, are hereby adopted by reference and made fully effective and applicable to administration of this tax as if they were herein set forth in full.

(Ord. No. 2130, § 17, 4-24-01)

#### **Sec. 98-121. Amendments.**

The people of the city shall by their approval of this chapter at the election herein provided, authorize the city council by ordinance duly enacted, to make such changes or additions in the method and manner of administration and enforcing this chapter as may be necessary or proper for efficiency and fairness, except that the rate of the tax herein provided shall not be changed without approval of the qualified electors of the city as herein provided.

(Ord. No. 2130, § 18, 4-24-01)

#### **Sec. 98-122. Provisions cumulative.**

The provisions hereof shall be cumulative and in addition to any and all other taxing provisions of the city.

(Ord. No. 2130, § 19, 4-24-01)

#### **Sec. 98-123. Purpose of revenues.**

It is hereby declared to be the purpose of this division to provide revenues for the following specific purposes, and no others, to-wit:

- (1) All taxes collected pursuant to the provisions of this article shall be set aside and used exclusively for the purpose of encouraging, promoting and fostering the convention and tourism development of the City of McAlester. Examples of authorized purposes include, but are not limited to:
  - a. Acquiring sites for and/or constructing, enlarging and maintaining convention centers and/or visitor information centers;
  - b. Advertising and promotional programs to attract tourists and participants to sports and arts and humanity events; and
  - c. Building, restoring, preserving and promoting parks or historic sites or museums that will attract tourists.

(Ord. No. 2130, § 20, 4-24-01; Ord. No. 2503, § 3, 6-10-14)