

**Chapter 57**

**CITY SALES TAX**

Current as of 04-04-08

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**57.01 NATURE OF TAX.**

This Chapter shall be known and may be cited as DeKalb City Sales Tax. The tax herein imposed is in addition to all other taxes imposed by the City of DeKalb, the State of Illinois, or any other municipal corporation or political subdivision thereof.

**57.02 DEFINITIONS.**

For the purpose of this Chapter, when any of the following words or terms are used herein they shall have the meaning or construction ascribed to them in this Chapter.

"Sale at retail" means any transfer of the ownership of or title to, tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property, to the extent not first subjected to a use for which it was purchased, for a valuable

consideration; provided that the property purchased is deemed to be purchased for the purpose of resale despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or byproduct of manufacturing. For this purpose, slag produced as an incident to manufacturing pig iron or steel and sold is considered to be an intentionally produced byproduct of manufacturing. Transactions whereby the possession of the property is transferred but the seller retains the title as security for payment of the selling price shall be deemed to be sales. "Sale at retail" shall be construed to include any transfer of the ownership of, or title to tangible personal property to a purchaser, for use or consumption by any other person to whom such purchaser may transfer the tangible personal property without a valuable consideration, and to include any transfer, whether made for or without a valuable consideration, for resale in any form as tangible personal property unless made in compliance with Section 57.07 of this Chapter. Sales of tangible personal property, which property, to the extent not first subjected to a use for which it was purchased; as an ingredient or constituent, goes into and forms a part of tangible personal property subsequently the subject of a "sale at retail", are not sales at retail as defined in this Chapter. "Sale at retail" shall also be construed to include any City florist's sales transaction in which a purchase order is received in the City by a florist and the sale is for use or consumption, but the City florist has a florist outside of the City deliver the property to the purchaser or the purchaser's donee outside the City.

"Purchase at retail" means the acquisition of the ownership of or title to tangible personal property through a sale at retail.

"Purchaser" means any person who, through a sale at retail, acquires the ownership of, or title to, tangible personal property for a valuable consideration.

"Use" means the exercise by any person of any right to, or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of such property in any form as tangible personal property in the regular course of business, to the extent that such property is not first subjected to a use for which it was purchased, and does not include the use of such property by its owner for sales demonstration purposes; provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or byproduct of manufacturing. "Use" does not mean the interim use of tangible personal property by a retailer before he sells such tangible personal property and does not mean the physical incorporation of tangible personal property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, into other tangible personal property (a) which is sold in the regular course of business or (b) which the person incorporating such ingredient or constituent therein has undertaken at the time of such purchase to cause to be transported (i) in interstate commerce to destinations outside the State of Illinois or (ii) to destinations outside the City and within the State of Illinois.

"Selling price" means the consideration for a sale at retail valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but shall not include, (a) the proceeds of any mandatory service charge which is separately stated on customers' bills for purchase and consumption of food and beverages, if all of the proceeds of the service charge are in fact turned over to the employees who would normally have received tips had the service charge policy not been introduced or, (b) charges that are added to the price by the seller on account of the seller's duty to collect, from the purchaser, the tax imposed upon the purchaser under this Chapter or on account of a tax liability imposed upon the seller or the purchaser under any other ordinance of the City or of any other unit of local government or under any law of the State of Illinois upon or in connection with such sale,

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purchase or use. The phrase "like kind and character" shall be liberally construed (including but not limited to any form of motor vehicle for any other form of motor vehicle, or any kind of farm or agricultural implement for any other kind of farm or agricultural implement) while not including a kind of item which, if sold at retail by that retailer, would be exempt from tax hereunder as an isolated or occasional sale.

"Receipts" from sales of tangible personal property at retail with respect to any period of time means the aggregate selling price, as herein before defined, received by a seller during such period of time. In the case of charge and time sales, receipts include consideration only as and when payment are received by the seller, unless the retailer has an accrual or other system approved by the Illinois Department of Revenue for collection of State and Municipal Retailer's Occupation Tax, in which case such system may be approved by the Director.

"Retailer" means every person engaged in the business of making sales at retail as defined in this Chapter.

"Tax collector" means a "retailer" maintaining a place of business in the City or a retailer authorized by the Department to collect the tax herein imposed pursuant to Chapter 57.05 hereof.

"Retailer maintaining a place of business in the City", or any like term, shall mean and include any retailer:

1. Having or maintaining within the City, directly, or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within the City under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in the City, or,

2. Engaging in soliciting orders within the City from users by means of catalogues or other advertising, whether such orders are received or accepted within or without the City.

"City" means the City of DeKalb, Illinois.

"Department" means the Finance Department of the City.

"Director" means the Finance Director.

"Person" means any natural individual, firm, society, foundation, institution, partnership, association, joint stock company, joint adventure, public or private corporation, or a receiver, executor, trustee, conservator or other representative appointed by order of any court.

"Bulk Vending Machine" means a non-electrically operated vending machine, containing unsorted confections, nuts or other merchandise which, when a coin of a denomination not larger than one cent is inserted, are dispensed in equal portions, at random and without selection by the customer.

"Pollution control facilities" means any system, method, construction device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, reducing air or water pollution, as the term "air pollution" or "water pollution" is defined in the "Environmental Protection Act", enacted by the 76th General Assembly as amended, or for the primary purpose of treating pre-treating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant

or animal life, or to property.

"Low sulfur dioxide emission coal fueled device" means any device sold or used or intended for the purpose of burning, combusting or converting locally available coal in a manner which eliminates or significantly reduces the need for additional sulfur dioxide abatement that would otherwise be required under State or Federal air emission standards.

### **57.03 TAX IMPOSED.**

a) Except as provided in Chapter 57.04 every retailer of tangible personal property through a sale at retail in the City from August 1, 1987 through December 31, 2003 shall be liable for a tax on the sale of tangible personal property at the rate of three-fourth (3/4) of one percent (1%) and commencing January 1, 2004 through June 30, 2008 shall be liable for a tax on the sale of tangible personal property at the rate of one and one-quarter percent (1¼ %) and commencing July 1, 2008 and thereafter shall be liable for tax on the sale of tangible personal property at the rate of one and three-quarters per cent (1¾ %). Every person making sales of service in the City and transferring tangible personal property incident to the sale shall be liable for tax rate of three-fourth (3/4) of one percent (1%) through December 31, 2003 and commencing January 1, 2004 shall be liable for a tax on the sale of tangible personal property at the rate of one and one-quarter percent (1¼ %) through June 30, 2008; commencing July 1, 2008 and thereafter the tax on the such sales of tangible personal property shall be at the rate of one and three-quarters per cent (1¾ %). (65 ILCS 5/8-11-1 and 65 ILCS 5/8-11-5) (03-100, 08-21)

b) However, such tax is not imposed upon persons purchasing tangible personal property from retailers engaging in any business in interstate commerce or otherwise, which purchase, may not, under the Constitution and Statutes of the United States, be made the subject of taxation by this City. (84-93)

c) The tax imposed hereunder and the obligation to pay the same is upon the purchaser. The tax imposed hereunder shall be collected from the purchaser by the tax collector, as defined in Chapter 57.02 hereof, and remitted to the Department as provided herein. The tax collector shall be liable to the City for the amount of tax he is required to collect. Retailers shall collect the tax from purchasers by adding the tax to the selling price of tangible personal property, when sold for use, in the manner prescribed by the Department. Whenever possible the tax imposed by this Ordinance shall, when collected, be stated as a distinct item separate and apart from the selling price of the tangible personal property. The Department may adopt and promulgate reasonable rules and regulations for the adding of such tax by retailers to selling prices by prescribing bracket systems for the purpose of enabling such retailers to add and collect, as far as practicable, the amount of such tax.

d) The tax hereby imposed and not paid to a retailer pursuant to this Ordinance shall be paid to the Department directly by any person purchasing or using such property within the City pursuant to Chapter 57.08 hereof. If any Seller collects an amount (however designated) which purports to constitute taxes measured by receipts which are not subject to such tax, or if any seller, in collecting an amount (however designated) which purports to constitute taxes measured by receipts which are subject to tax under this Ordinance, collects more from the purchaser than the actual tax liability on the transaction, the purchaser shall have a legal right to claim a refund or such amount from such seller.

e) However, if such amount is not refunded to the purchaser for any reason, the seller is liable to pay such amount to the Department. This paragraph does not apply to an amount collected by the seller on receipts which are subject to tax under this Ordinance as long as such collection is made in compliance with the tax collection brackets prescribed by the Department in its rules and regulations.

#### **57.04 EXEMPTIONS.**

Purchases or uses of tangible personal property under the following circumstances shall not be subject to the tax imposed by the Ordinance:

a) purchase or use of such tangible personal property as newsprint and ink which was sold at retail for the primary purpose of conveying news (with or without other information).

b) purchase or use of such tangible personal property as (i) pollution control facilities or (ii) low sulfur dioxide emission coal fueled devices.

c) purchases or uses by any governmental body, or any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, or any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers or employees which is organized and operated primarily for the recreation of persons 55 years of age or older.

d) Purchases or uses of tangible personal property by interstate carriers for hire as rolling stock moving in interstate commerce or purchases or uses by lessors under leases of one year or longer executed or in effect at the time of purchase to interstate carriers for-hire for use of rolling stock moving in interstate commerce as long as so used by such interstate carriers-for-hire.

e) the temporary storage, in the City, of tangible personal property which is acquired outside this City and, which, subsequent to being brought into this City and stored here temporarily, is used solely outside this City or physically attached to, or incorporated into other tangible personal property that is used solely outside this City, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered is used solely outside this City.

f) The temporary storage in this City of building materials and fixtures which are acquired either in the City or outside this City by an Illinois registered combination retailer and construction contractor, and which such purchaser thereafter uses outside this City by incorporating such property into real estate located outside this City.

g) Where a business that is not operated in this City, but which does operate elsewhere is moved to the City, or opens up an office, plant or other business facility in the City, such business shall not be taxed on its use, in the City, of used tangible personal property which such business bought outside the City and used outside the City in the operation of such business for at least three (3) months before moving such used property to the City for use here.

h) Purchase or use of such tangible personal property as machinery and equipment which will be used by the purchaser, or a lessee of the purchaser, primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease, whether such sale or lease is made directly by the manufacturer or by some other persons, whether the materials used in the process are owned by the manufacturer or some other person as an incident to the sellers' engaging in the service occupation of producing machines, tools, dies, jigs, patterns, gauges or other similar items of no commercial value or special order for a particular purchaser.

i) The purchase of farm chemicals.

j) The purchase of farm machinery and equipment costing \$1,000 or more, both new and used, and including that manufactured on special order, certified by the purchaser to be used primarily for production agriculture, including any individual replacement part for such machinery and equipment, which part costs in excess of \$1,000, and including in this exemption such machinery and equipment purchased for lease and excluding from this exemption motor vehicles required to be registered pursuant to "The Illinois Vehicle Code".

k) The purchase of distillation machinery and equipment, sold as a unit or kit and assembled or installed by the retailer, which machinery and equipment is certified by the user to be used only for the production of ethyl alcohol that will be used for consumption as motor fuel or as a component of motor fuel for the personal use of such user and not subject to sale or resale.

l) The purchase of graphic arts machinery and equipment, both new and used, including that manufactured on special order or purchased for lease, certified by the purchaser to be used primarily for graphic arts production.

(m) The purchase of motor vehicles of the first division, as defined in Section 1-146 of the "Illinois Vehicle Code", which are used for automobile renting as defined in the "Automobile Renting Occupation and Use Tax Act".

n) The purchase of personal property by an Illinois County Fair Association for use in conducting, operating or promoting the County Fair.

o) Motor vehicles subject to the Illinois Replacement Vehicle Tax.

p) The purchase of personal property by a teacher- sponsored organization affiliated with an elementary or secondary school located in Illinois.

q) The purchase of any petroleum products if the seller is prohibited by federal law from charging tax to such purchaser.

r) The value of food stamps used to purchase food or other items of tangible personal property.

s) Sales of service. (08-21)

#### **57.05 CERTIFICATE OF REGISTRATION.**

a) Every retailer maintaining a place of business in the City shall obtain a certificate of registration as a tax collector from the Department prior to commencing such business or within 30 days after the effective date of this Ordinance, whichever occurs later.

b) The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail or a sale through a bulk vending machine does not constitute such person a retailer within the meaning of the Ordinance; provided that any person who is engaged in a business which is not subject to the tax collection obligation imposed by this Ordinance because of involving the sale of, or contract to sell real estate or a construction contract to improve real estate, but who, in the course of conducting such business transfers tangible personal property to users or consumers in the finished form in which it was purchased, and which

does not become real estate, under any provision of a construction contract or real estate sale or real estate sales agreement entered into with some other person arising out of, or because of some such business which is not subject to such collection obligation is a retailer, to the extent of the value of the tangible personal property so transferred. If, in such a transaction, a separate charge is made for the tangible personal property so transferred, the value of such property, for the purpose of this Ordinance, shall be the amount so separately charged, but not less than the cost of such property to the transferor, if no separate charge is made, the value of such property, for the purposes of this Ordinance, is the cost to the transferor of such tangible personal property.

c) A person who holds himself or herself out as being engaged (or who habitually engages) in selling tangible personal property at retail is a person engaged in the business of selling tangible personal property at retail hereunder with respect to such sales (and not primarily in a service occupation) notwithstanding the fact that such person designs and produces such tangible personal property on special order for the purchaser and in such a way as to render the property of value only to the purchaser, if such tangible personal property so produced on special order serves substantially the same function as stock or standard items of tangible personal property that are sold at retail.

d) Persons who engage in the business of transferring tangible personal property upon the redemption of trading stamps are retailers hereunder and shall collect and pay the tax imposed by the Ordinance on the basis of the retail value of the property transferred upon redemption of such stamps.

e) A person whose activities are organized and conducted primarily as a not-for-profit service enterprise, and who engages in selling tangible personal property at retail (whether to the public or merely to members and their guests) is a retailer with respect to such transactions, excepting only a person organized and operated exclusively for charitable, religious or educational purposes either:

1. to the extent of sales by such person to its members, students, patients or inmates of tangible personal property to be used primarily for the purposes of such person; or,

2. to the extent of sales by such person of tangible personal property which is not sold or offered for sale by persons organized for profit. The selling of school books and school supplies by schools at retail to students is not "primarily for the purposes of" the school which does such selling. The provisions of this paragraph shall not apply to, nor be subject to taxation: occasional dinners, socials or similar activities of a person organized and operated exclusively for charitable, religious or educational purposes, whether or not such activities are open to the public.

f) A person who is the recipient of a grant or contract under Title VII of the Older Americans Act of 1965, (P.L. 92-258) and serves meals to participants in the Federal Nutrition Program for the Elderly, in return for contributions established in amount by the individual participant pursuant to a schedule of suggested fees as provided for in the Federal Act, is not a retailer hereunder with respect to such transactions.

g) A person who is engaged in the business of leasing or renting motor vehicles to others and who, in connection with such business sell any used motor vehicle to a purchaser for his use and not for the purpose of resale, is a retailer engaged in the business of selling tangible personal property at retail under this Ordinance to the extent of the value of the vehicle sold. For the purpose of this Chapter, "motor vehicle" has the meaning prescribed in Section 1-157 of The Illinois Vehicle Code, as now or hereafter amended. (Nothing provided herein shall affect liability incurred under this Ordinance because of the sale at retail of such motor vehicle to a lessor).

h) Application for a certificate of registration shall be made to the Department upon forms furnished by it. Each such application shall be signed and verified by the applicant or a properly accredited agent, which in the case of a corporation shall include the president, any vice-president, the secretary, treasurer or some other properly accredited agent and shall state:

1. the name of the applicant;
2. his residence address and the address of his principal place of business;
3. the address of the principal place of business from which he engages in the business of selling tangible personal property at retail in the City and the addresses of all other places of business, if any (enumerating such addresses, if any, in a separate list attached to and made a part of the application), from which he engages in the business of selling tangible personal property at retail in the City;
4. the applicant's most recent gross receipts from the retail sale of tangible personal property whether or not incidental to the sale of service reported to the Illinois Department of Revenue;
5. the applicant's estimated receipts from sales of tangible personal property at retail in the City for the current calendar year; and,
6. such other information as the Department may reasonably require. If the applicant will sell tangible personal property at retail through vending machines, his application to register shall indicate the number of vending machines to be so operated; and thereafter, he shall notify the Department by January 31 of the number of vending machines which such person was using in his business of selling tangible personal property at retail on the preceding December 31.

i) Upon receipt of the application for a certificate of registration in proper form, and upon approval by the Department of the security furnished by the applicant, the Department shall issue to such applicant a certificate of registration.

j) If the person so registered states that he operates other places of business as a retailer in the City, the Department shall furnish him with a sub-certificate of registration for each such place of business. All sub-certificates of registration shall bear the same registration number as that appearing upon the certificate of registration to which such sub-certificates relate.

k) Where the same person engages in two or more businesses as a retailer in the City, which businesses are substantially different in character or engaged in under different trade names or engaged in under substantially dissimilar circumstances (so that it is more practicable, from an accounting, auditing or bookkeeping standpoint, for such business to be separately registered), the Department may require or permit such person (subject to the same requirements concerning the furnishing of security as those that are provided for herein before in this Chapter as to each application for a certificate of registration) to apply for and obtain a separate certificate of registration for each such business or for any of such businesses, under a single certificate of registration supplemented by related sub-certificates of registration.

l) Except as to motor vehicles and other items of tangible personal property which must be titled or registered under an Illinois law, but which cannot be so titled or registered without a tax receipt or exemption determination from the Illinois Department of Revenue, every retailer maintaining a place of business in the City shall, when collecting the tax as provided for in Chapter 57.03 of this Ordinance from the purchaser, give to the purchaser (if demanded by the purchaser) a receipt therefor in the manner and form prescribed by the



Department. Such receipt shall be sufficient to relieve the purchaser from further liability for the tax to which such receipt may refer. Each such retailer shall list with the Department the names and addresses of all his agents operating in the City and the location of any and all of his distribution or sales houses, offices or other places of business in the City.

#### **57.06 TAX RETURNS; PAYMENTS; COLLECTION FEES.**

Except as provided in this Chapter, every retailer required or authorized to collect the tax imposed by this Ordinance shall, on or before the last day of each calendar month, file a return for the preceding calendar month with the Department, stating:

1. The name of the retailer.
2. His residence address and the address of his principal business (if that is a different address) from which he engages in the business of selling tangible personal property in the City;
3. Total gross receipts received by him during the preceding calendar month from sales of tangible personal property in the City by him during such preceding calendar month;
4. Deductions allowed by law.
5. Total gross receipts minus deductions.
6. The amount of tax due;
7. The amount of penalty due, if any; and,
8. Such other reasonable information as the Department may require.

a) All payments to the City of taxes, interest or penalties authorized by this Ordinance shall be made by cash or check payable to the City of DeKalb, except that any retailer whose check is returned to the City because of insufficient funds may be required by the Director to make future payments by cashier's check or money order.

b) If the retailer's average monthly liability to the Department does not exceed \$25.00, the Department may authorize his returns to be filed on a semi-annual or annual basis. Such returns, as to form and substance shall be subject to the same requirements as monthly returns. (84-79)

c) Notwithstanding any other provision in this Ordinance concerning the time within which a retailer may file his return, in the case of any retailer who ceases to engage in a kind of business which makes him responsible for filing returns under this Ordinance, such retailer shall file a final return under this Ordinance with the Department not more than one month after discontinuing such business.

d) Where the same person has more than one business registered with the Department under separate registrations under this Chapter such person may not file each return that is due as a single return covering all such registered businesses, but shall file separate returns for each such registered business.

e) Refunds to purchasers made by the retailer during the preceding return period shall be allowed as a deduction under subdivision 4, in case the retailer had theretofore included the receipts from such sale in a

return filed by him and has remitted the tax imposed by this Ordinance, with respect to such receipts.

f) Where the retailer is a corporation, the return filed on behalf of such corporation shall be signed by the President, Vice-president, Secretary or Treasurer by the properly accredited agent of such corporation or by the chief executive officer or highest ranking manager.

g) Except as provided in this Chapter, the retailer filing the return under this Chapter shall, at the time of filing such return, pay to the Department the amount of tax imposed by this Ordinance less a discount of two percent (2%) per calendar year, which is allowed to reimburse the seller for the expenses incurred in collecting the tax, keeping records, preparing and filing returns, remitting the tax and supplying data to the Department on request. (87-65)

h) All such deposits shall be credited against the tax collector's liabilities under this Ordinance.

i) Notwithstanding the foregoing provisions of this Chapter, for the first twelve (12) month period this tax is in effect the Department may estimate what the amount of liability from any tax collector would have been for prior periods if the tax hereunder had been in effect for such periods and direct the frequency of remittance of the tax and filing of returns in accordance with the provisions of this Section on the basis of such estimates.

j) If any such payment or deposit provided for in this Chapter exceeds the tax collector's present and probable future liabilities under this Ordinance, the Department shall issue to the taxpayer no later than sixty (60) days after the date of payment, a credit memorandum, which may be submitted by the tax collector to the Department in payment of liability subsequently to be remitted by the tax collector to the Department or be assigned by the tax collector to a similar tax collector under this Ordinance, in accordance with reasonable rules and regulations to be prescribed by the Department.

k) The money received by the Department under the provisions of this Ordinance shall be deposited in the General Fund of the City.

l) The Department may require the tax collector to prepare and file with the Department on a form prescribed by the Department within sixty (60) days after filing the State income tax return for his fiscal year, an annual information return for such fiscal year. Such annual return to the Department shall include a statement of receipts as shown by the retailer's last State income tax return. If the total receipts of the business as reported in the State income tax return do not agree with the receipts reported to the Department for the same period, the retailer shall attach to his annual return a schedule showing a reconciliation of the two amounts and the reasons for the difference. The retailer's annual return to the Department shall also disclose any additional reasonable information which the Department deems would be helpful in determining the accuracy of the quarter-monthly, monthly, quarterly or annual returns filed by such seller, as provided for in this Chapter. The provisions of this Chapter concerning the filing of an annual information return do not apply to a retailer who is not required to file an income tax return with the United States Government.

m) If the annual information return required by this Chapter is not filed when and as required, the tax collector shall be liable for a penalty equal to 1/6 of 1% of the amount due from such tax collector under this Ordinance, during the period to be covered by the annual return for each month, or fraction of a month, until such return is filed as required; the penalty to be assessed and collected in the same manner as any other penalty provided for in this Ordinance.

n) The President, Vice-president, Secretary or Treasurer, chief executive officer, proprietor, owner or

highest ranking manager shall sign any return required to be filed under this Chapter to certify the accuracy of the information contained therein. Any person who willfully signs any such return containing false or inaccurate information shall be guilty of a violation of this Ordinance and punished accordingly. The return forms prescribed by the Department shall include a warning that the person signing such return may be liable for a penalty as provided by this Ordinance.

o) Any person engaged in the business of selling tangible personal property at retail as a concessionaire, peddler, solicitor, itinerant merchant or other type of seller at special events, art shows, flea markets and similar exhibitions or events may be required to make a daily or weekly report of the amount of such sales to the Department and to make a daily or weekly payment of the full amount of tax due. At the time such a business makes application to the City Clerk of the City of DeKalb, the City Clerk may impose this requirement and advise the Finance Department of such, when the City Clerk determines that there is a significant risk of loss of revenue to the City at such an exhibition or event. Such a finding shall be based on evidence that a substantial number of concessionaires or other sellers who are not residents of the City will be engaging in the business of selling tangible personal property at retail at the exhibition or event, or other evidence of a significant risk of loss of revenue to the City.

p) The City Clerk shall notify concessionaires and other sellers affected by the imposition of this requirement. In the absence of notification by the City Clerk, the concessionaires and other sellers shall file their returns as otherwise required in this Chapter.

q) With respect to motor vehicles and aircraft, every retailer selling this kind of tangible personal property shall file with the Department, upon a form to be prescribed and supplied by the Department, a separate return for each such item of tangible personal property which the retailer sells, except that where, in the same transaction, a retailer of motor vehicles transfers more than one motor vehicle to another motor vehicle retailer for the purpose of resale, such seller for resale may report the transfer of all the motor vehicles involved in that transaction to the Department on the same uniform invoice-transaction reporting return form. Such transaction reporting return in the case of motor vehicles shall be the same document as the Uniform Invoice referred to in Section 5-402 of The Illinois Vehicle Code and must show the name and address of the seller; the name and address of the purchaser; the amount of the selling price, including the amount allowed by the retailer for traded-in property; if any; the amount allowed by the retailer for the traded-in tangible personal property, if to the extent to which Chapter 57.02 of this Ordinance allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the selling price; the amount of tax due from the retailer with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale; a sufficient identification of the property sold; such other information as is required in Section 5-402 of The Illinois Vehicle Code, and such other information as the Department may reasonably require.

r) Such transaction reporting return in the case of aircraft must show the name and address of the retailer; the name and address of the purchaser; the amount of the selling price including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the traded-in tangible personal property; if any, to the extent to which Chapter 57.02 of this Ordinance allowed an exemption for a traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale, a sufficient identification of the property sold, and such other information as the Department may reasonably require. Such transaction reporting return shall be filed not later than 30 days after the date of delivery of the item that is being sold, but

may be filed by the retailer at any time sooner than that if he chooses to do so.

s) The transaction reporting return and tax remittance or proof of exemption from the tax that is imposed by this Ordinance may be transmitted to the Department by way of the State agency with which, or State officer with whom, the tangible personal property must be titled or registered (if titling or registration is required). With each such transaction reporting return, the retailer shall remit the proper amount of tax due (or shall submit satisfactory evidence that the sale is not taxable if that is the case) to the Department or its agents, whereupon the Department shall issue, in the purchaser's name, a tax receipt (or a certificate of exemption if the Department is satisfied that the particular sale is tax exempt). If the purchaser or user who would otherwise pay tax to the retailer, wants the transaction reporting return filed and the payment of tax or proof of exemption made to the Department before the retailer is willing to take these actions and such purchaser or user has not paid the tax to the retailer, such purchaser or user may certify to the fact of such delay by the retailer, and may (upon the Department being satisfied of the truth of such certification) transmit the information required by the transaction reporting return and the remittance for tax or proof of exemption directly to the Department and obtain his tax receipt or exemption determination, in which event the transaction reporting return and tax remittance (if a tax payment was required) shall be credited by the Department, but without the 2% discount provided for in this Chapter being allowed.

t) When the purchaser or user pays the tax directly to the Department, he shall pay the tax in the same amount and in the same form in which it would be remitted if the tax had been remitted to the Department by the retailer.

u) Any retailer filing a return under this Chapter shall also include (for the purpose of paying tax thereon) the total tax, if any, imposed upon him hereunder for the purpose or use of tangible personal property purchased by him at retail from a retailer, but as to which the tax imposed by this Ordinance was not collected by the retailer filing such return, and such retailer shall remit the amount of such tax to the Department when filing such return.

#### **57.07 RESALE NUMBER.**

a) If the purchaser is not registered with the Department as a tax collector, but claims to be a re-seller of the tangible personal property in such a way that the purchaser's purchase or use is not taxable under this Ordinance or under some other tax law which the Department may administer, such purchaser (except in the case of an out-of-City purchaser who will always resell and deliver the property to his customers outside the City) shall apply to the Department for a resale number. Such applicant shall state facts which will show the Department why such applicant is not liable for tax under this Ordinance or under some other tax law which the Department may administer and shall furnish such additional information as the Department may reasonably require.

b) Upon approval of the application, the Department shall assign a resale number to the applicant and shall certify such number to him. The Department may cancel any such number which is obtained through misrepresentation, or which is used to make a purchase or use tax-free when the purchase in fact is not a purchase for resale, or which no longer applies because of the purchaser's having discontinued the making of resales of the property. Except as provided herein above in this Chapter, no purchase or use shall be made tax-free on the grounds of the retailer's sale being a sale for resale unless the purchaser has an active registration number or resale number from the Department and furnishes that number to the retailer in connection with certifying to the retailer that any purchase or use by such purchaser is non-taxable because of the retailer's sale being a sale for resale.

### **57.08 PAYMENT BY PURCHASE - LESSOR.**

a) Except as to motor vehicles and aircraft, when tangible personal property is purchased from a retailer in the City or for use in the City by a purchaser who did not pay the tax imposed by this Ordinance to the retailer, and who does not file returns with the Department as a retailer under Chapter 57.06 of this Ordinance, such purchaser (by the last day of the month following the calendar month in which such purchaser makes any payment upon the selling price of such property) shall, except as provided in this Chapter file a return with the Department and pay the tax upon that portion of the selling price so paid by the purchaser during the preceding calendar month.

b) When tangible personal property is purchased by a lessor, under a lease for one year or longer, executed or in effect at the time of purchase to an interstate carrier for hire, who did not pay the tax imposed by this Ordinance to the retailer, such lessor (by the last day of the month following the calendar month in which such property reverts to the use of such lessor) shall file a return with the Department and pay the tax upon the fair market value of such property on the date of such reversion.

c) Such return shall be filed on a form prescribed by the Department and shall contain such information as the Department may reasonably require. Such return and payment from the purchaser shall be submitted to the Department sooner than the last day of the month after the month in which the purchase is made to the extent that they may be necessary in order to secure the title to a motor vehicle or the certificate of registration for an aircraft.

d) When a purchaser pays a tax imposed by this Ordinance directly to the Department, the Department (upon request therefor from such purchaser) shall issue an appropriate receipt to such purchaser showing that he had paid such tax to the Department. Such receipt shall be sufficient to relieve the purchaser from further liability for the tax to which such receipt may refer. A purchaser or user who is liable to pay tax directly to the Department only occasionally and not on a frequently recurring basis, and who is not required to file returns with the Department as a retailer under Chapter 57.06 of this Ordinance need not register with the Department. However, if such a purchaser or user has a frequently recurring direct tax liability to pay to the Department, such purchaser or user shall be required to register with the Department on forms prescribed by the Department and to obtain and display a certificate of registration from the Department. In this event, all of the provisions of Chapter 57.06 of this Ordinance concerning the filing of regular monthly, quarterly or annual tax returns and all of the provisions of this Ordinance concerning the requirement for registrants to post bond or other security with the Department, as the provisions now exist or may hereafter be amended, shall apply to such purchasers or users.

### **57.09 FILING; PENALTIES; SUIT FOR COLLECTIONS.**

a) In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under this Chapter, files a return and pays the tax, he shall also pay a penalty of 5% of the amount of the tax.

b) In case any person engaged in the business of selling tangible personal property at retail files the return at the time required by this Ordinance but fails to pay the tax, or any part thereof, when due, a penalty of 5% of the amount of the tax unpaid when due shall be added thereto.

c) In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax

liability under this Chapter, files a return but fails to pay the entire tax, a penalty of 5% of the full amount of tax shown by such return shall be added thereto.

d) In case any person engaged in the business of selling tangible personable property at retail fails to file a return, the Department shall determine the amount of tax due from him according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown in such determination. In making any such determination of tax due, it shall be permissible for the Department to show a figure that represents the tax due for any given period of 6 months instead of showing the amount of tax due for each month separately. Proof of such determination by the Department may be made at any hearing before the Department or in any legal proceeding by a reproduced copy of the Department's record relating thereto in the name of the Department under the certificate of the Director.

e) Such reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the amount of tax due, as shown therein. The Department shall issue the tax collector a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty of 20% thereof.

f) However, where the failure to file any tax return required under this Ordinance on the date prescribed therefor (including any extensions thereof) is due to reasonable cause, the penalties imposed by this Ordinance shall not apply.

g) In case of failure to pay the tax, or any portion thereof, or any penalty provided for in this Ordinance, or interest, when due, the Department may bring suit against the tax collector or the purchaser or user to recover the amount of such tax or portion thereof, or penalty or interest; or, if the tax collector or purchaser or user has died or become incompetent, may file a claim therefor against his estate; provided that no such suit with respect to any tax, or portion thereof, or penalty, or interest shall be instituted more than two years after the latter of (i) the date any proceedings in court for review thereof have terminated, or (ii) the time for the filing of such proceedings has expired without such proceedings being instituted, except with the consent of the person from whom such tax or penalty or interest is due; nor, except with such consent, shall such suit be instituted more than two years after the date any return is filed with the Department, in cases where the return constitutes the basis for the suit for unpaid tax, or portion thereof, or penalty provided for in this Ordinance, or interest; provided that the time limitation period on the Department's right to bring any such suit, shall not run during any period of time in which the order of any court has the effect of enjoining or restraining the Department from bringing such suit.

h) The collection of tax or penalty or interest by any means provided for herein shall not be a bar to collection by any other prosecution under this Ordinance.

i) In addition to any penalty provided for in this Ordinance any amount of tax which is not paid when due shall bear interest at the rate of 2% per month or fraction thereof from the date when such tax becomes past due until such tax is paid or a judgment therefor is obtained by the Department; provided however, that if the time for making or completing an audit of a tax collector's books and records is extended with the tax collector's consent, at the request of and for the convenience of the Department, beyond the date on which the statute of limitations upon the issuance of a notice of tax liability by the Department otherwise would run, no interest shall accrue during the period of such extension.

#### **57.10 RECORDS, AUDIT.**

a) Every person engaged in the business of selling tangible personal property at retail in the City shall keep records and books of all such sales, together with invoices, sales records, copies of bills of sale, inventories prepared as of December 31 of each year or otherwise annually as has been the custom in the specific trade and other pertinent papers and documents. Every person who is engaged in the business of selling tangible personal property at retail in the City and who, in connection with such business, also engages in other activities (including, but not limited to engaging in a sales of goods occupation) shall keep such additional records and books of all such activities as will accurately reflect the character and scope of such activities and the amount of receipts realized therefrom.

b) All books and records and other papers and documents which are required by the Ordinance to be kept shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.

c) To support deductions made on the tax return form, or authorized under this Ordinance, on account of receipts from isolated or occasional sales; on account of receipts from sales to governmental bodies or other exempted types of purchasers; on account of receipts from sales in interstate commerce; on account of receipts from any other kind of transaction that is not taxable under this Ordinance; entries in any books, records or other pertinent papers or documents of the tax collector, in relation thereto, shall be in detail sufficient to show the name and address of the collector's customer in each such transaction, the character of every such transaction, the date of every such transaction, the amount of receipts realized from every such transaction and such other information as may be necessary to establish the nontaxable character of such transaction under this Ordinance.

d) It shall be presumed that all purchases or uses of tangible personal property purchased at retail are subject to tax under this Ordinance until the contrary is established, and the burden of proving that a transaction is not taxable hereunder shall be upon the person who would be required to pay the tax or remit the tax to the Department, if such transaction is taxable. In the course of any audit or investigation or hearing by the Department with reference to a given tax collector or purchaser, if the Department finds that such person lacks documentary evidence needed to support the claim that no tax is due hereunder, the Department is authorized to notify such person in writing to produce such evidence, and such person shall have sixty (60) days, subject to the right of the Department to extend this period, either on request for good cause shown, or on its own motion from the date when such notice is sent by certified mail (or delivered if the notice is served personally) in which to obtain and produce such evidence for the Department's inspection; failing which, the matter shall be closed and the transaction shall be conclusively presumed to be taxable hereunder.

e) Books and records and other papers reflecting receipts received during any period with respect to which Department is authorized to issue notices of tax liability as provided by Chapter 57.09 and 57.10 of this Ordinance shall be preserved until the expiration of such period unless the Department, in writing shall authorize their destruction or disposal prior to such expiration.

#### **57.11 PROCESS; SERVICE.**

a) Any resident of the City who incurs liability under this Ordinance and who subsequently moved from the City or conceals his whereabouts, and any person who incurs tax liability under this Ordinance as a purchaser in the City and who moves from the City or conceals his whereabouts, shall be deemed thereby to appoint the City Clerk his agent for the service of process or notice in any judicial or administrative proceeding under this Ordinance. Such process or notice shall be served by the Department on the City Clerk by leaving, at the office of the City Clerk at least 15 days before the return day of such process or notice, by true and certified mail, postage prepaid, a like and true certified copy, with an endorsement thereon of the

service upon said City Clerk, addressed to such taxpayer or collector at his last known address.

b) Service of process of notice in the manner provided for in this Chapter, under the circumstances specified in this Chapter, shall be of the same force and validity as if served upon the taxpayer personally within the City. Proof of such service upon the taxpayer through the City Clerk as his agent and by mailing to the last known address of the taxpayer may be made in such judicial or administrative proceeding by the affidavit of the Director, or by his duly authorized representative who made such service, with a copy of the process or notice that was so attached to such affidavit.

## **57.12 RULES AND REGULATIONS.**

It shall be the duty of the Department to collect and receive the tax imposed by this Ordinance. The Department shall keep an accurate and separate account of all such tax payment received by it showing the name and address of the person remitting the tax and the date of each payment. The Director is hereby empowered to adopt and promulgate, and to enforce, rules and regulations relating to any matter pertaining to the administration and enforcement of the provisions of the Ordinance, including provisions for reexamination, correction and amendment of all returns. The Director, or any agent or employee designated in writing by him, is hereby authorized to examine the books, papers and records of any tax collector during regular business hours, in order to certify the accuracy of any return made, or if no return was made, to ascertain the tax imposed by this Ordinance.

## **57.13 ERROR; CLAIM FOR CREDIT; HEARING.**

a) Whenever it appears to a person paying or remitting the tax than an amount of tax, interest or penalty has been paid in error to the Department by him, whether such amount be paid through a mistake of fact or error of law, not later than three (3) years from the date upon which such payment was made, such person may file a claim for credit or refund with the Department on forms provided by said Department for that purpose.

b) Any credit or refund that is allowed under this Section shall bear interest at the rate of one-half of one (1/2 of 1%) percent per month of any fraction thereof, from the date when the erroneous payment was made to the Department, until a credit memorandum is issued or a refund is paid.

c) A claim for credit or refund shall be considered to have been filed with the Department on the date upon which it is received by the Department, and receipt of any claim for credit filed under this Chapter shall be acknowledged by the Director or any designated person on his behalf, said receipt to describe the claim in sufficient detail as to identify it, and to state the date upon which the claim was received by the Department.

d) As soon as practicable after a claim for credit or refund is filed, the Director, or his designate, shall examine the same and determine the amount of credit or refund due, if any, and shall issue a Notice of Tentative Determination of Claim and notify the claimant of such determination. If the claimant disagrees with the determination, he shall file a protest and challenge thereto within 20 days allowed, the Director or his designate, shall fix the time and place for a hearing thereon, giving notice to the claimant thereof, not less than 7 days prior thereto. At any hearing held herein provided, the Tentative Determination of Claim shall be prima facie correct and the burden shall be upon the claimant to prove that it is incorrect. Upon the conclusion of the hearing, a decision shall be made by the Director and notice thereof given to the claimant. In the event no protest or challenge to the Tentative Determination of Claim is filed within 20 days period herein above set forth, said notice shall thereafter become and operate as a final determination.



e) The Director may, in his discretion, issue a letter of credit to a claimant who may be able to use said credit in the foreseeable future, or a refund certificate in lieu of a credit memorandum on application by a person who cannot use said credit, or sell or assign the same. Refund certificates shall be numbered serially as they are issued and shall be paid in the order of their issuance from funds that are appropriated to the Department for that purpose.

#### **57.14 AMENDMENT; NOTICE; HEARING.**

a) If it shall appear to the Director, or his designee, that any person has violated any provision of this Ordinance or any rule or regulation promulgated hereunder, or if the amount of any tax payment is incorrect in that it does not include all taxes payable for such calendar quarter or period, or if the Director, or his designee, shall find that the collection of any taxes which have accrued but are not year due will be jeopardized by delay, and declares said taxes to be immediately due and payable, or if it shall appear to the Director, or his designee, that any person has, made any final assessment which did not include taxes payable for the periods involved, or if it appears to the Director, or his designee, that any person has, by reason of any act or omission or by operation of law, become liable for the payment of any taxes, interest or penalties not originally incurred by him, the Director, or his designee, may in any of the above events, determine and assess the amount of such taxes of deficiency, as the case may be, together with the interest and penalties due and unpaid, and immediately serve notice upon such person of such determination and assessment and make a demand for payment of the tax, together with interest and penalties thereon.

If the person incurring any such liability has died, such assessment may, at the discretion of the Director, or his designee, be made against his personal representative. Such determination and assessment by the Director, or his designee, shall be final at the expiration of twenty (20) days from the date of the service of such written notice thereof and demand for payment, unless such person shall have filed with the Director, or his designee, a written protest and a petition for a hearing, specifying its objections thereto. Upon the receipt of such petition within the twenty (20) days allowed, the Director, or his designee, shall set the time and place for a hearing and shall notify the petitioner. The Director, or his designee, may amend his determination and assessment at any time before it becomes final. In the event of such amendment the person affected shall be given notice thereof and an opportunity to be heard in connection therewith. At any hearing held as herein provided, the determination and assessment that has been made by the Director, or his designee, shall be prima facie correct and the burden shall be upon the protesting person to prove that it is incorrect. Upon the conclusion of such hearing a decision shall be made by the Director, or his designee, either canceling, increasing, modifying or affirming such determination or assessment and notice thereof given to the petitioner. Such notice shall contain a statement by the Director, or his designee, of the cost of the certification of the record computed at the rate of five cents (5¢) per one hundred (100) words, which cost shall be charged to the petitioner if the determination or assessment is affirmed. The record shall consist of the notices and demands caused to be served by the Director, or his designee, the written protest and petition for hearing, the testimony introduced at such hearing, the exhibits produced at such hearing, or certified copies thereof, the decisions of the Director, or his designee, and such other documents in the nature of pleading filed in the proceeding notice thereof given to the petitioner. Such notice shall contain a statement by the Director of the cost of the certification of the record computed at the rate of 5 cents per 100 words, which cost shall be charged to the petitioner if the determination or assessment is affirmed. The record shall consist of the notices and demands caused to be served by the Director, the written protest and petition for hearing, the testimony introduced at such hearing, the exhibits produced at such hearing, or certified copies thereof, the decisions of the Director and such other documents in the nature of pleading filed in the proceeding. (87-65)

b) Whenever any person shall fail to pay any tax as herein provided, the City Attorney shall, upon the

request of the Department, bring or cause to be brought, an action to enforce the payment of said tax on behalf of the City in any court of competent jurisdiction.

c) If the Mayor, after a hearing held by or for him, shall find that any person has willfully evaded payment or collection and remittance of the tax imposed by this Ordinance, he may suspend or revoke all City licenses held by such tax evader. Said person shall have an opportunity of be heard at such hearing, to be held not less than seven (7) days after notice is given to him of the time and place of the hearing to be held, addressed to him at his last known place of business. Pending notice, hearing and finding, any license issued by the City possessed by said person may be temporarily suspended. Any suspension or revocation of any license shall not release or discharge said person from his civil liability for the payment or collection and remittance of the tax, nor from prosecution for such offense.

#### **57.15 INVESTIGATION; HEARING; EVIDENCE.**

a) For the purpose of administering and enforcing the provisions of this Ordinance, the Department, or any officer or employee of the Department designated, in writing, by the Director thereof, may hold investigations and hearings concerning any matters covered by this Ordinance and may examine any books, papers, records or memoranda bearing upon the sales or purchases of services of any such person, may require the attendance of such person or of any person having knowledge of such business, and may take testimony and require proof for its information. In the conduct of any investigation or hearing, neither the Department nor any officer or employee thereof shall be bound by the technical rules of evidence, and no informality in any proceeding, or in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Department.

b) The Director, or any officer or employee of the Department authorized by the Director thereof, shall have power to administer oaths to such persons. The books, papers, records and memoranda of the Department, or parts thereof, may be proved in any hearing, investigation, or legal proceeding by a reproduced copy thereof, under the certificate of the Director. Such reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal proceeding.

#### **57.16 TESTIMONY; PERJURY.**

No person shall be excused from testifying or from producing any books, papers, records or memoranda in any investigation or upon any hearing, when ordered to do so by the Department or any officer or employee thereof, upon the grounds that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to a criminal penalty for, or on account of, any transaction made or thing concerning which he may testify or produce evidence, documentary or otherwise, before the Department or an officer or employee thereof; provided, that such immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

#### **57.17 SUBPOENAS; CONTEMPT.**

a) The Department or any officer or employee of the Department designated in writing, by the Director, shall at its or his own instance, or on the written request of any other party to the proceeding, issue subpoenas duces tecum requiring the production of books, papers, records or memoranda. All subpoenas and subpoenas duces tecum issued under the terms of this Ordinance may be served by any person of full age. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the circuit court of this

State; such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the department or any officer or employee thereof, such fees shall be paid in the same manner as other expenses of the Department, and when the witness is subpoenaed at the instance of any other party to any such proceeding the Department may require that the cost of service of the subpoena or subpoena duces tecum and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Department, in its discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena or subpoena duces tecum issued as aforesaid shall be served in the same manner as a subpoena issued out of court.

b) Any circuit of this State, or any judge thereof, upon the application of the Department or any officer or employee thereof, or upon the application of any other party to the proceeding, may, in its or his discretion, compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the Department or any officer or employee thereof conducting an investigation or holding a hearing authorized by this Ordinance, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before said court.

c) The Department or any officer or employee thereof, or any other party in an investigation or hearing before the Department, may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State, and to that end compel the attendance of witnesses, the production of books, papers, records or memoranda.

#### **57.18 PRIVACY.**

a) All information received by the Department from returns filed under this Ordinance or from any investigation conducted under this Ordinance, shall be confidential, except for official purposes, and any person who divulges any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law, shall be punished by a jail sentence not to exceed six (6) months or a fine not to exceed \$500.00, or both.

b) Nothing in this Ordinance prevents the Director, or his designee, from publishing or making available to the public the names and addresses of persons filing returns under this Ordinance, or reasonable statistics concerning the operation of the tax by grouping the contents of returns so the information in any individual return is not disclosed. (87-65)

c) Nothing in this Ordinance prevents the Director, or his designee, from divulging to the United States Government or the government of any state, or any officer of agency thereof, for exclusively official purposes, information received by the Department in administering this Ordinance, provided that such other governmental agency agrees to divulge requested tax information to the Department. (87-65)

d) The furnishing upon request of information obtained by the Department from returns filed under this Ordinance or investigations conducted under this Ordinance to the Liquor Control Commissioner for official use is deemed to be an official purpose within the meaning of this Chapter.

e) The furnishing upon request by the City's auditor or his authorized agents, for official use, of returns filed and information related thereto under this Ordinance is deemed to be an official purpose within the meaning of this Chapter.

#### **57.19 SERVICE OF NOTICES.**

Whenever notice is required by this Ordinance, such notice may be given by United States certified mail, addressed to the person concerned at his last known address, and proof of such mailing shall be sufficient for the purposes of this Ordinance. Notice of any hearing provided for by this Ordinance shall be so given not less than seven (7) days prior to the day fixed for the hearing. Following the initial contact of a person represented by an attorney, the Department shall not contact the person concerned but shall only contact the attorney representing the person concerned. All hearings provided for in this Ordinance shall be at the Department's office.

## **57.20 CORPORATIONS; OFFICERS.**

Any officer or employee of any corporation subject to the provisions of this Ordinance who has the control, supervision or responsibility of filing returns and collecting and making payment of the amount of tax herein imposed and who willfully fails to file such return or to collect and make such payment to the Department shall be personally liable for such amounts, including interest and penalties thereon, in the event that, after proper proceedings for the collection of such amounts, as provided in this Ordinance, such corporation is unable to pay such amounts to the Department; and the personal liability of such officer or employee as provided herein shall survive the dissolution of the corporation.

## **57.21 VIOLATIONS; PENALTIES.**

Any person found guilty of violating, disobeying, omitting, neglecting, or refusing to comply with, or resisting or opposing the enforcement of any of the provisions of this Chapter, except when otherwise specifically provided, upon conviction thereof shall be deemed to have committed a misdemeanor and punished by a fine of not less than Seventy Five Dollars (\$75.00) nor more than Five Thousand Dollars (\$5,000.00) and may be punished by incarceration in the DeKalb County Jail for a term not to exceed six (6) months under the procedures set forth in Section 1-2-1.1 of the Illinois Municipal Code (IL Rev. Stat. 1985, Ch. 24, Par. 1-2-1.1), and under the provisions of the Illinois Code of Criminal Procedure (IL Rev. Stat. 1985, Ch. 38, Par. 100-1, et. seq.), for the first offense, and not less than One Hundred Fifty Dollars (\$150.00), nor more than Five Thousand Dollars (\$5,000.00) for the second offense, and not less than Three Hundred Dollars (\$300.00) nor more than Five Thousand Dollars (\$5,000.00) for the third offense, and not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00) for the fourth and each subsequent offense, or five (5) times the amount of the tax imposed, if any, whichever is higher, for the second and each subsequent offense, and may be punished by incarceration in the DeKalb County Jail for a term not to exceed six (6) months under the procedures set forth in Section 1-2-1.1 of the Illinois Municipal Code (IL Rev. Stat. 1983, Ch. 24, Par. 1-2-1.1) and under the provisions of the Illinois Code of Criminal Procedure (IL Rev. Stat. 1983, Ch. 38, Par. 100-1 et. seq.). A separate and distinct offense shall be regarded as committed each day upon which said person shall continue any such violation, or permit any such violation to exist after notification thereof. (86-57, 87-65)

### **57.21-5 DEFENSES.**

The late payment of City Sales Tax, including interest and penalties, after the last date on which the same was due, shall not be a defense to the charge of failure to pay City Sales Tax or failure to file a City Sales Tax Return. (87-65)

## **57.22 SEVERABILITY.**

If any provision of this Ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity does not affect other provisions or applications of this

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Ordinance which can be given effect without the invalid application or provision, and to this end, each such invalid provision or invalid application of this Ordinance is severable, unless otherwise provided by this Ordinance. In particular, but without limitation, each provision creating an exception to or an exemption or exclusion from the imposition of the tax is severable. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had any such unconstitutional or otherwise invalid provision or application not been included. (84-65)