

**Chapter 117. Tax on Gross Receipts Derived from Short-Term Lease or Rental of Heavy Equipment**

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**§117.01 DEFINITIONS**

- (A) **Customer** shall mean any person that leases or rents heavy equipment on a short-term lease or rental basis.
- (B) **General Statutes** shall refer to the North Carolina General Statutes and any reference to a particular section thereof shall include the same as may be from time to time amended, modified, supplemented, revised, or superseded.
- (C) **Gross receipts** shall mean the total lease or rental price charged to a customer for the short-term lease or rental of heavy equipment, excluding sales taxes and excluding the taxes imposed by this Ordinance.
- (D) **Lease or rental** shall mean a transfer, for consideration, of the use but not the ownership of the heavy equipment to another for a period of time.
- (E) **Person** shall mean any individual, trustee, executor, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, company, firm or other legal entity.
- (F) **Short-term lease or rental** shall mean any lease or rental, whether written or verbal, which is made to the same person for a period of less than three hundred sixty-five (365) continuous days.
- (G) **Tax Collector** shall mean the Mecklenburg County Director of Revenue Collections.
- (H) **Taxpayer** shall mean any person liable for the collection, reporting and payment of the taxes imposed by this Ordinance.
- (I) **Heavy equipment** shall mean the following: Earthmoving, construction or industrial equipment that is mobile, weighs at least one thousand five hundred (1,500) pounds and meets any of the descriptions listed below in this subdivision. The term includes an attachment for heavy equipment, regardless of the weight of the attachment.
  - (1) It is a self-propelled vehicle that is not designed to be driven on a highway.
  - (2) It is industrial-lift equipment, industrial material handling equipment, industrial electrical generation equipment or a similar piece of industrial equipment.

### **§117.02 LEVY OF TAX**

A tax is hereby imposed and levied in an amount equal to eight-tenths of one percent (0.8%) of the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail; provided that the place of business from which the heavy equipment is delivered is located in the Town of Matthews. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person under N.C.G.S. 105-163.010. The tax authorized by this ordinance applies to gross receipts that are subject to tax under G.S. 105-164.4(a)(2).

### **§117.03 ADMINISTRATION**

The Tax Collector, as agent for the Town Finance officer, shall administer and collect the taxes levied herein from every person engaged in the business of short-term leasing or rental of heavy equipment and the Tax Collector may promulgate additional rules and regulations necessary for implementation of the taxes. In addition to the provisions herein, the levy and collection of the taxes herein imposed shall be administered in the same manner as the sales and use tax as provided in Articles 5 and 9, Chapter I of Chapter 105 of the General Statutes. In the event a change in the General Statutes relating to any provisions in this Ordinance is made by the State Legislature, such change shall be made applicable in this Ordinance without formal adoption thereof by the Town Board of Commissioners.

### **§117.04 COLLECTION**

Every person engaged in the business of the short-term lease or rental of heavy equipment to customers shall collect at the time of the lease or rental tax herein levied, place the tax so collected in a segregated account and thereafter remit such tax to the Tax Collector in accordance with the provisions of this Ordinance., the taxpayer shall include a provision in each short-term lease or rental agreement stating that the eight-tenths of one percent (0.8%) of the total lease or rental price, excluding sales tax, is being charged as a tax on gross receipts. The amount of the tax shall be stated separately from the lease or rental amount and shall be shown separately on the taxpayer's records. The customer shall pay the tax to the taxpayer as trustee for and on account of the Town of Matthews. The taxpayer shall be liable for the collection thereof and for its payment to the Tax Collector and the taxpayer's failure to charge or to collect said tax from the customer shall not affect such liability. The taxes collected under this Ordinance are not subject to sales tax. The taxes collected under this Ordinance belong to the Town of Matthews and are not subject to creditor liens against the taxpayer.

### **§117.05 REPORT AND PAYMENT OF TAX**

The taxes levied hereby are due and payable when a return is required to be filed. The taxpayer or the taxpayer's agent must sign the return. Returns of taxpayers are due to the Tax Collector quarterly and are due by the last day of the month following the end of the calendar quarter. A return filed for this purpose is not a public record as defined by Section 132-1 of the General Statutes and information contained in a return may not be disclosed except as required by law. The return may be filed by personal delivery to the Tax Collector or by United States mail. Returns submitted by mail shall be deemed to be filed as of the date shown on the postmark affixed by the United States Postal Service. If no date is shown on the postmark, or if the postmark is not affixed by the United States Postal Service, the return shall be deemed to be filed when received in the office of the Tax Collector (a return having a metered stamp does not satisfy the postmark requirement unless there is also a postmark by the United States Postal Service). The burden of proof shall be on the taxpayer to show that the return was timely filed.

### **§117.06 TAXPAYER TO KEEP RECORDS**

The taxpayer shall keep and preserve suitable records of the gross receipts received by such taxpayer in the conduct of business and such other books or accounts as may be necessary to determine the amount of the tax for which such taxpayer is liable under the provisions of this Ordinance. It shall be the duty of the taxpayer to keep and preserve for a period of three (3) years all such records of gross receipts and other books and accounts described. All records, books and accounts herein described shall be for examination at all reasonable hours during the day by the Tax Collector or his duly authorized agent.

**§117.07 TAX COLLECTOR TO PROVIDE FORMS**

The Tax Collector shall design, prepare, print and make available to all taxpayers operating within the municipal boundaries of the Town of Matthews forms and instructions for filing returns to ensure a full collection of and an accounting for taxes due. The failure of any taxpayer to obtain or receive forms shall not relieve such taxpayer from the payment of the tax at the time and in the manner provided.

**§117.08 SITUS**

The transaction giving rise to the tax herein levied shall be deemed to have occurred at the place of business from which the heavy equipment is delivered.

**§117.09 ASSESSMENT PROCEDURE**

If the Tax Collector discovers that any return or tax is due from a taxpayer, the taxpayer shall be notified in writing of the failure to file and of the proposed assessment, if known, by the Tax Collector. The assessment may be made on the best information of the Tax collector. A proposed assessment is presumed to be correct. The notice shall be delivered either in person or by United States mail sent to the taxpayer's last known address. The notice is presumed to have been received by the taxpayer unless the taxpayer makes an affidavit to the contrary within 90 days after the notice was mailed. If the taxpayer makes this affidavit, the time limitations for a request for hearing as hereafter provided, apply as if the notice had been delivered on the date the taxpayer makes the affidavit. A taxpayer who objects to the proposed assessment or to the requirement to file a return is entitled to a hearing upon written request within 30 days after the date the notice was mailed, or within 30 days after the date of personal delivery. If no request for a hearing is timely made, the proposed assessment becomes final without further notice. If a taxpayer files a timely request for hearing, the Tax Collector shall set a hearing date within 90 days and notify the taxpayer at least 10 days prior to the hearing date. Within 90 days after the hearing the Tax Collector shall notify the taxpayer of the final decision. The taxpayer may then appeal the decision as set forth in Sub-Section 11 of this Ordinance. The Tax Collector shall have no authority to waive or compromise any interest or penalty imposed by this Ordinance.

**§117.10 PENALTIES, INTEREST AND REMEDIES**

The provisions with respect to penalties, interest and remedies applicable Subchapter VII (Local Government Sales and Use Tax) of Chapter 105 of the General Statutes, as contained in Article 5 and Article 9, Subchapter I, chapter 105 thereof, shall be applicable in like manner to the tax levied and collected under this Ordinance, to the extent that the same are not inconsistent with the provisions hereof. Without limiting the foregoing, and subject to any changes in the General Statutes with respect to penalties, interest and remedies, the following shall be applicable with respect to the levy and collection of the taxes imposed herein:

(A) Any taxpayer who fails to file a return on the date it is due, determined with regard to any extension of time for filing, shall pay a penalty equal to five percent (5%) of the amount of the tax if the failure to file is for not more than one (1) month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or Five and 00/100 Dollars (\$5.00), whichever is greater.

(B) Any taxpayer who fails to pay the tax levied herein when due, without intent to evade the tax, shall pay a penalty equal to ten percent (10%) of the tax, except that the penalty shall in no event be less than Five and 00/100 (\$5.00).

(C) Taxes shall be payable at par or face amount if paid on or before the filing date as set forth in Subsection 5. Taxes paid after the filing date will be delinquent and shall be subject to interest charges. Interest shall accrue at the rate of three-fourths of one percent (3/4%) a month or fraction thereof until the principal amount of the taxes, the accrued interest and any penalties are paid.

(D) When the bank upon which any uncertified check tendered to the Tax Collector in payment of taxes, penalties or interest returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Tax

Collector shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of One and 00/100 Dollar (\$1.00) and a maximum of One Thousand and 00/100 (\$1,000.00).

(E) Any taxpayer who willfully attempts, or any person who aids or abets any taxpayer to attempt in any manner to evade or defeat a tax imposed herein or its payment shall, in addition to other penalties provided by law, be guilty of a Class H Felony.

(F) Any taxpayer required to collect, withhold, account for and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 Misdemeanor.

(G) Any taxpayer required to pay any tax, to make a return, to keep any records or supply any information who willfully fails to pay the tax, make the return, keep the records or supply the information at the time or times as required by law or rules issued pursuant thereto shall, in addition to other penalties provided by law, be guilty of a Class 1 Misdemeanor.

(H) The Tax Collector shall have the remedies set forth in Sections 242 or 368 of Chapter 105 of the General Statutes in enforcing the collection of taxes imposed herein and any other remedies authorized by law.

### **§117.11 APPEALS**

The Board of Commissioners of the Town of Matthews, exercising the powers of the Secretary of Revenue in collecting sales and use taxes, designates the Mecklenburg County Manager, or his designee, to act as deputy for the purpose of compromising or forgiving for good cause shown any penalty or additional tax imposed herein and for conducting any hearings and making decisions to determine the validity of a tax imposed by the Tax Collector. If a taxpayer claims that a tax, additional tax, penalty or interest is excessive, a notice of appeal must be filed by the taxpayer within thirty (30) days after the final notice of the Tax Collector is mailed or personally delivered to the taxpayer as provided in Subsection 9 of this Ordinance. The final decision of the deputy shall be made and mailed or delivered to the taxpayer within thirty (30) days after the hearing. The taxpayer shall pay the tax, additional tax, penalty or interest without prejudice to any defense the tax payer has. The taxpayer may file suit for a refund in the Superior court of Mecklenburg County pursuant to the provisions of Section 267 of Chapter 105 of the General Statutes.

### **§117.12 SEVERABILITY**

If any section, clause or provision of this Ordinance shall be found to be invalid, the validity of the remaining sections, clauses or provisions shall not be affected thereby.

### **§117.13 AUTHORITY**

This Ordinance is enacted pursuant to the provisions of G.S. §160A-215.2.  
(Ord. 1689, passed 5-11-09)