

AN ORDINANCE LEVYING A GROSS RECEIPT TAX, CREATING THE CITY OF MONTICELLO ADVERTISING AND PROMOTION FUND, AND THE CITY OF MONTICELLO ADVERTISING AND PROMOTION COMMISSION, AND FOR OTHER PURPOSES

WHEREAS, Arkansas Code Ann. § 26-75-601 et seq. authorizes Cities of the First Class to levy a three percent (3%) gross receipt tax upon the renting, leasing or otherwise furnishing of hotel and motel accommodations within the corporate limits of said cities, and to create a fund to be known as the City Advertising and Promotion Fund to be used exclusively for advertising and promoting the city, and to be managed by a City Advertising and Promotion Commission, and that

WHEREAS, the City of Monticello feels that it is in the best interest of the City to enact an ordinance implementing said act;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Monticello, Arkansas, as follows:

Section One- Definitions.

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

Advertising and tourist promotion shall mean any activity connected with tourism.

Gross receipts tax shall mean a tax of three percent (3%) upon the gross receipts or gross proceeds from renting, leasing or otherwise furnishing of motel or hotel accommodations and upon the gross receipts or gross proceeds of restaurants, cafes, cafeterias and other business establishments in the city.

Hotel or motel accommodations shall mean the renting, leasing or otherwise furnishing of accommodations in hotels or motels upon a day-to-day basis or a week-to-week basis. This shall not include the renting, leasing or furnishing of accommodations upon month-to-month tenancies or tenancies of a longer duration of thirty days or more.

Section Two. - Gross receipts tax.

(a) Effective June 1, 2011, a tax in the sum of three percent (3%) shall be levied in the city upon the gross receipts or gross proceeds from the renting, leasing, or otherwise furnishing hotel, motel, or short term condominium rental accommodations for sleeping, meeting, or party room facilities for profit, but such accommodations shall not include the rental or lease of such accommodations for periods of thirty (30) days or more.

(b) (1) The tax so levied shall be paid by the persons, firms, and corporations liable therefor and shall be collected by the Monticello Advertising and Promotion Commission or by its designated agent in the same manner and at the same

time as the tax levied by the Arkansas Gross Receipts Act of 1941, A.C.A. § 26-52-101 et seq.

(2) The person paying the tax shall report and remit it upon forms provided by the commission, and as directed by the commission. The rules, regulations, forms of notice, assessment procedures, and the enforcement and collection of the tax under the Arkansas Gross Receipts Act of 1941, A.C.A. § 26-52-101 et seq., and the Arkansas Tax Procedure Act, A.C.A. § 26-18-101 et seq., shall, so far as practicable, be applicable with respect to the enforcement and collection of the tax levied herein. However, the administration and enforcement, and all actions, shall be by, and in the name of, the commission through the proper commission officials or agents. The commission shall have the authority to sue and be sued in its name.

(c)(1) In the administration of this section, the commission, through its officials or agents, for the purpose of determining the accuracy of a submission or fixing any liability, may make an examination or investigation of the place of business, the tangible personal property, equipment, and facilities, and the books, records, papers, vouchers, accounts, and documents of any taxpayer or other person. Every taxpayer or other person and his agents and employees shall exhibit to the commission, its officials or agents, these places and items and facilitate any examination or investigation. No taxpayer shall be subjected to unnecessary examination or investigation, and only one (1) inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the commission, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

(2) The commission may compel the production of such records and materials by summons. A summons may be served by any commission official or agent.

(3) In the administration of this section, the commission may conduct hearings, compel by summons the attendance of witnesses, testimony, and the production of books, records, papers, or other data of any person or taxpayer, administer oaths, and examine under oath any person regarding the business of any taxpayer concerning any matter incident to the administration of this section. The investigation may extend to any person the commission determines has access to information which may be relevant to the examination or investigation.

(4) When any summons requiring the production of records as described in subdivision (c)(1) hereinabove is served on a third-party record keeper, written notice of the summons shall be mailed to the taxpayer that his records are being summoned, at least fourteen (14) days prior to the date fixed in the summons as the day for the examination of the records. Notice to the taxpayer is sufficient if it is mailed by certified mail to the last address on record with the commission.

(5) When the commission conducts a hearing pursuant to subdivision (c)(3) hereinabove, it shall honor any reasonable request by any taxpayer to issue a summons on the taxpayer's behalf. In such case the taxpayer shall bear the cost of producing the records the taxpayer requests be summoned.

(6) The commission may apply to the circuit court with jurisdiction for an order compelling the production of the summoned records and failure to comply with an order for production may be punished as contempt of court.

(7) The refusal to permit the commission, its officials or agents, to examine books, records, and other documents pursuant to subsection (1) or as summoned in subsection (c)(2), shall be unlawful and a misdemeanor.

(d) A taxpayer who fails to timely report or pay the tax due under this section shall pay a penalty equal to five (5) percent of the unpaid tax amount per month, not to exceed a total assessment of thirty-five (35) percent of the unpaid tax. Simple interest on unpaid taxes shall be assessed at the rate of ten (10) percent per annum.

(e) The commission may assess unpaid or unreported tax within three (3) years of the date the tax is due.

(f) The commission may issue certificates of indebtedness certifying that the person or business named therein is indebted to the commission for the amount established by the commission as due.

(g) (1) Within thirty (30) days of notice to the taxpayer that the taxpayer owes unpaid tax and/or penalties and interest, or in any case the taxpayer claims an overpayment of tax and/or penalties and interest, taxpayer may request review by the commission. At the option of the taxpayer, the review may be limited to a review of documents and records submitted by the taxpayer, or may include a hearing. The review of documents and records and any hearing will be conducted by a hearing officer designated by the commission.

(2) The hearing officer will set the time and place of the hearing and provide the taxpayer with reasonable notice thereof. At the hearing the taxpayer may be represented by an authorized representative and may present evidence in support of his position. A record shall be made of the hearing and preserved. After the hearing the hearing officer will render a written decision and provide copies to the taxpayer and the commission. The taxpayer dissatisfied with the hearing officer's decision shall have ten (10) days to request in writing that the commission review the decision. If the commission declines to revise the hearing officer's decision or the taxpayer does not seek commission review, the taxpayer may seek judicial review of the decision.

(3) Within thirty (30) days of the issuance of notice and demand for payment of a deficiency in tax established by a final determination of the hearing officer or commission, the taxpayer may seek judicial relief from the final determination by either:

(A) Paying under protest the amount of the deficiency, plus penalty and interest determined to be due, and filing a suit to recover that amount within one (1) year from the date of payment under protest; or

(B) (i) Filing with the commission a bond in double the amount of the tax deficiency due and filing suit within thirty (30) days thereafter to stay the effect of the commission's determination.

(ii) The bond shall be subject to the condition that the taxpayer shall file suit within thirty (30) days after filing the bond, shall faithfully and diligently prosecute the suit to a final determination, and shall pay any deficiency found by the court to be due and any court costs assessed against him.

(iii) A taxpayer's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by this subsection, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs.

(C) The method provided in this section is the exclusive method for seeking relief from a written decision of the commission establishing a deficiency in tax.

(h)(1) If a taxpayer does not timely and properly pursue his remedies seeking relief from a decision of the commission and a final assessment is made against the taxpayer, or if the taxpayer fails to pay the deficiency assessed upon notice and demand, then the commission shall, as soon as practicable thereafter, issue to the circuit clerk of the county in which the taxpayer's business is located, a certificate of indebtedness certifying that the person named therein is indebted to the commission for the amount of the tax established by the commission as due.

(2) The circuit clerk shall record the certificate of indebtedness upon the circuit court judgment docket as provided in A.C.A. § 26-75-603(e)(2). The entry of the certificate of indebtedness shall have the same force and effect as the entry of a judgment rendered by the circuit court. This entry shall constitute the commission's lien upon the title of any real and personal property of the taxpayer in the county where the certificate of indebtedness is recorded.

(3) The certificate of indebtedness authorized by this subsection shall continue in force for ten (10) years from the date of recording and shall automatically expire after the ten-year period has run. Actions on the lien arising from the certificate of indebtedness shall be commenced within ten (10) years after the date of recording of the certificate, and not afterward.

(4) The commission shall have all remedies and may take all proceedings for the collection of the tax which may be taken for the recovery of a judgment at law.

Section Three - Taxable businesses.

The Monticello Advertising and Promotion Commission shall prepare and maintain a current list of the business establishments in the city subject to the tax levied by this division.

Section Four - Creation of advertising, promotion fund.

(a) There is hereby created a fund to be known as the Monticello Advertising and Promotion Fund. All taxes, interest, penalties and costs collected pursuant to Section 2 hereof shall be credited to said fund. All revenues received by the advertising and promotion commission shall be "special revenues, and shall be deposited by the advertising and promotion commission in such bank account or accounts as may be designated by said commission.

(b) All monies credited to the fund shall be used by the commission for advertising and promoting the city and its environs or for the construction, reconstruction, extension, equipment, improvement, maintenance, repair, and

operation of a convention center or for the operation of tourist promotion facilities in the city, and facilities necessary for, supporting, or otherwise pertaining to, a convention center, for funding of the arts, for the operation of theme parks, family entertainment facilities, or other tourist-oriented facilities as determined by the advertising and promotion commission not inconsistent with Arkansas enabling statutes. Such funds shall not be used for general capital improvements within the city; for the costs associated with the general operation of the city; or for general subsidy of any civic groups or the chamber of commerce. However, said advertising and promotion commission may contract with such groups to provide to the commission actual services that are connected with tourism events or conventions. The authorization and limitations contained herein shall be reasonably construed so as to provide funds for promoting and encouraging tourism and conventions while not allowing such special revenues to be utilized for expenditures that are normally paid from general revenues of the city.

Section Five - Commission created.

(a) The Monticello Advertising and Promotion Commission is hereby created. Said commission shall be composed of seven (7) members, each of whom shall reside within the corporate city limits or within the County of Drew, and as follows:

(1) Four (4) members shall be owners or managers of businesses in the tourism industry, at least three (3) of whom shall be owners or managers of hotels or motels;

(2) Two (2) members of the commission shall be members of the governing body of the city and selected by the governing body and shall serve at the will of the governing body; and

(3) One (1) member shall be from the public at-large.

(b) Vacancies of the commission in any of the four (4) tourism industry positions provided for in (a)(1) of Section Four, whether resulting from expiration of a regular term or otherwise, shall be filled by appointment made by the remaining members of the commission, with the approval of the governing body of the city.

(c) The initial tourism industry members of said Commission, as well as the City Council members, shall be selected by the City Council, and the At-Large member shall be appointed by the Mayor of the City of Monticello, all appointments being subject to the approval of the Monticello City Council. Any appointments of the tourism industry and at-large members of said Commission shall be for the terms of seven (7) years; provided, however, the first tourism industry members appointed to said Commission shall serve for specified terms of one, two, three, or four years respectively. Successor members shall be appointed for the full term of seven years.

(d) Each commissioner shall file the oath required by law in the State of Arkansas of public officials. Each commissioner shall furnish to the City of Monticello a Five Thousand and No/100 Dollars (\$5,000.00) surety bond that will serve to insure the City against misappropriation or mishandling of funds. The

surety on said bond shall be a reputable surety corporation. The premium on said bond shall be paid from the City of Monticello Advertising and Promotion Fund.

(e) Any commissioner appointed under the provision of this ordinance may be removed upon a two-third (2/3) vote of the Monticello City Council.

Section Six - Organization of commission; powers and duties.

(a) The commissioners shall elect officers, and adopt such rules, regulations, and procedures as they deem necessary and appropriate for the proper operation of the commission.

(b) The commission shall operate pursuant to authority vested therein by Title 26, Chapter 75, Subchapter 6 of the Arkansas Code, as amended; and shall utilize all revenues collected in the city advertising and promotion fund for purposes not inconsistent with said statutes and local ordinances.

(c) The commission shall make quarterly reports to the mayor and city council, reporting in full on the operations of the commission, including an accounting of receipts and disbursements; and shall submit to the mayor and city council an annual audit prepared by a recognized independent auditing firm.

Section Seven- Conflicts.

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section Eight- Severability.

The provisions of this Ordinance are hereby declared to be severable. If any provision shall be held to be invalid or to be inapplicable to any persons or circumstances, such invalidity or inapplicability shall not affect the remainder of the provisions of this Ordinance.

Section Nine- Emergency.

It has been found, and it is hereby declared, that the City badly needs additional revenues for the advertising and promotion of the City and for the development of a convention center; that this Ordinance and the tax levied by it are the only reasonable means available for the alleviation of these needs; and that the advertisement and promotion of the City and the development of a convention center are essential to the continued development of the City to the welfare of the inhabitants thereof. This Ordinance, therefore, being necessary for the preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance shall take effect and be in force from and after its adoption.

ADOPTED on this 02 day of MAY, 2011.

Andrea T. Chambers
City-Clerk-Treasurer

APPROVED on this 02 day of MAY, 2011.

William Marshall
Mayor

CERTIFICATION

STATE OF ARKANSAS)
COUNTY OF DREW)

I, the undersigned Andrea Chambers, hereby certify that I am the City Clerk-Treasurer of Monticello, Arkansas, that the attached and foregoing constitutes a true and complete copy of the Ordinance duly adopted by the City Council of Monticello in a regular meeting held on the 02 day of MAY, 2011 and that such Ordinance appears in the written minutes of said meeting, of which minutes I am the official custodian.

WITNESS HEREUNTO my hand and the official seal of the City of Monticello on this 02 day of MAY, 2011.

Andrea T. Chambers
Andrea Chambers, City Clerk-Treasurer

(SEAL)