

## **OCCUPANCY TAX ORDINANCE NO. 1 OF 1996**

AN ORDINANCE LEVYING AND IMPOSING A TAX OF THREE (3) PERCENT ON THE PRICE CHARGED FOR THE OCCUPANCY OF HOTEL ROOMS, MOTEL ROOMS AND OVERNIGHT CAMPING FACILITIES WITHIN CALCASIEU PARISH; PROVIDING FOR THE COLLECTION AND ENFORCEMENT OF THAT TAX; AND PROVIDING FOR THE EFFECTIVE DATE OF THAT TAX

WHEREAS, the Louisiana Legislature, at its 1995 Regular Session, adopted Act Number 47 authorizing a transfer of the authority to levy occupancy taxes from local governing bodies to parish visitors, tourist and convention bureaus; and

WHEREAS, the Southwest Louisiana Convention & Visitors Bureau wishes to take advantage of that authority; and

WHEREAS, in order to assure the public that this action will not result in any increase in the tax rate, the Southwest Louisiana Convention and Visitors Bureau intends to levy the tax effective on the repeal of the corresponding occupancy tax by Calcasieu Parish.

NOW, THEREFORE, BE IT ORDAINED by the Southwest Louisiana Convention & Visitors Bureau that, under the authority provided by Act 47 of the 1995 Regular Session of the Louisiana Legislature, there hereby is levied and imposed an occupancy tax of three (3) percent upon the price charged for the occupancy of hotel rooms, motel rooms and overnight camping facilities within Calcasieu Parish, Louisiana.

BE IT FURTHER ORDAINED, that, under the authority provided by Act 47 of the 1995 Session of the Louisiana Legislature, there hereby is adopted the following Ordinance for the collection and enforcement of that tax.

BE IT FURTHER ORDAINED, that the tax herein proposed shall become effective on January 1, 1996, provided that, prior to that date, the Calcasieu Parish Police Jury adopts an ordinance rescinding and repealing its occupancy tax.

## **DIVISION 1 - OCCUPANCY TAX**

### **Sec. 1-01 Definitions.**

As used in this division, the following words and phrases have the following ascribed meanings unless the context clearly indicates otherwise.

Bureau means the Southwest Louisiana Convention & Visitors Bureau, a political subdivision of the State of Louisiana whose boundaries are coterminous with those of Calcasieu Parish, Louisiana.

Collector means (a) the treasurer of the Bureau and his representative or (b) the duly authorized agents designated by the Bureau for the collection of the tax imposed by this division.

Complimentary Room means a hotel room, motel room or company facility to which a person exercises, or is entitled to exercise, occupancy but for which occupancy no rental or fee is charged.

Dealer means every person who owns or operates a Hotel.

Distrain or distrain means the right to levy upon and seize and sell, or the levying upon and seizing and selling of, any property or rights to property of a delinquent Dealer not exempt from seizure under the laws of the State of Louisiana, by the Collector for the purpose of satisfying the tax, interest, penalties or other charges due under the provisions of this division.

Government Rate means the maximum amount for which employees of the State of Louisiana may be reimbursed for hotel expenses in Calcasieu Parish, Louisiana, as established by the Commission of Administration pursuant to La. R.S. 39:231 or its successor provision.

Hotel means any establishment, public or private, engaged in the business of furnishing or providing rooms and overnight camping facilities intended or designed for dwelling, lodging or sleeping purposes to transient guests which establishment consists of two or more guest rooms but which does not include any hospital, convalescent or nursing home or sanitarium or any hotel-like facility operated by or in connection with a hospital or medical clinic providing rooms exclusively for patients and their families.

Occupant means a transient guest of a Hotel.

Person, except as provided below, shall include any individual, firm, co-partnership, joint venture, association, corporation, co-operative, estate, trust, business trust, receiver, syndicate, any parish, city, municipality, state or public board, public commission or public or semi-public corporation, bureau or other political subdivision or any board, agency, university, school, college, instrumentality or other group or combination acting as a unit. For the purposes of the payment of the tax imposed by this division, the person shall not include this state or any parish, city and parish, municipality, district or other political subdivision thereof or any agency, board, commission or instrumentality of this state or its political subdivisions, (*hereafter collectively "governmental entity"*); provided, however, that this exclusion shall not apply to an Occupant unless the Occupant can provide satisfactory proof that he or she is on official business for the governmental entity and unless the Sales Price as hereafter defined is paid by direct billing of the governmental entity or with a check drawn on the account of the governmental entity or with a credit card in the name of the governmental entity.

Sales Price means the gross price charged by a Dealer for a Hotel room or overnight camping facility.

Tax means the tax imposed by this Division.

### **Sec. 1-02.1 Imposition of Occupancy Tax**

- (a) There hereby is levied, from and after January 1, 1996, a tax on the occupancy of hotel rooms, motel rooms and overnight camping facilities at the rate of three (3) percent of the Sales Price of the hotel room, motel room, or overnight camping facility.

- (b) The Tax shall be collected from Occupants by Dealers and shall be paid at the time and in the manner hereafter provided.
- (c) The Tax shall be in addition to all other taxes, whether excise, license, privilege or property taxes, levied by the Bureau.

**Sec. 1-02.2 Imposition of Complimentary Room Tax**

- (a) There hereby is levied, from and after October 1, 1998, a tax on the occupancy of Complimentary Rooms for Hotel owned, owned in part, or operated, directly or indirectly, or any combination thereof, by a company, which has, or which owns or owns in part, directly or indirectly, a company which has a license to conduct gambling activities on a river boat pursuant to Chapter 4 of Title 27 of La. R.S. 27:41 et seq. or its successor provision.
- (b) The tax shall be collected from occupants by Dealers and shall be paid at the time and in the manner hereafter provided.
- (c) The tax shall be in addition to all other taxes, whether excise, license, privilege or property taxes, levied by the Bureau.

**Sec. 1-03 Collection of Tax.**

- (a) The collection of the Tax shall be done by the Collector in the name of the Bureau. All Dealers shall collect and remit the tax to the Collector.
- (b) The initial Collector shall be the Calcasieu Parish School Board's Tax Department.
- (c) The Bureau may enter into a cooperative endeavor agreement with the governing authority of Calcasieu Parish or with any public entity authorized to collect sales or use taxes for the collection of the Tax. That cooperative endeavor agreement shall contain such terms and conditions as the Bureau deems appropriate and may provide for the payment of a reasonable collection fee.

**Sec. 1-04 Treatment of Tax by Dealer.**

- (a) The Tax shall be collected by the Dealer from Occupants.
- (b) Dealers, as far as practicable, shall add the exact amount of the Tax to the Sales Price for a Hotel room, motel room, or overnight camping facility and, when added, the Tax shall constitute a part of the Sales Price and shall be a debt from the Occupant to the Dealer, until paid, and shall be recoverable at law in the same manner as other debts.
- (c) Where the Tax collected for any period is in excess of the tax rate provided by this division, the total Tax collected must be paid to the Collector, less the compensation to be allowed the Dealer as hereafter set forth.
- (d) Any Dealer who fails, neglects or refuses to collect the Tax, either by himself or through his employees or representatives, in addition to being liable for the Tax, shall be fined not more than one hundred dollars (\$100.00) or imprisoned for not more than three (3) months, or both.
- (e) No Dealer shall advertise or hold out to the public, either directly or indirectly, that he will relieve an Occupant from payment of all or any part of the Tax. Any Dealer violates this provision shall be fined not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250.00) or imprisoned for not more than three (3) months, or both. For a second or subsequent offense, the penalty shall double.
- (f) The Dealer is required to state and collect the Tax separately from the Sales Price.
- (g) If an Occupant fails to pay, and a Dealer fails to collect, the Tax, in addition to all other rights, obligations and remedies provided herein, the Tax shall be payable by the Occupant directly to the Collector, and it shall be the duty of the Occupant to file a return with the

Collector and to pay the Collector the Tax due within fifteen (15) days after occupancy.

- (h) The use of tokens is forbidden. The Collector, by regulation, may prescribe the method to be used by the Dealer in collecting Tax and the schedule of the amount of Tax to be collected from Occupants. The amount of Tax collected by the Dealer and paid by the Occupant shall comply with schedules prescribed by the Collector.
- (i) To aid in the administration, collection and enforcement of the Tax, on or before April 1, 1996, or on opening for business in the case of Dealers commencing business after that date, every Dealer shall file with the Collector a certificate of registration in a form prescribed by him. The Collector, within five (5) days after registration, without charge to the Dealer, shall issue a certificate of authority empowering the Dealer to collect Tax from Occupants and duplicates thereof for any additional places of business. Each certificate or duplicate shall state the place of business to which it is applicable. Certificates of authority shall be nonassignable and nontransferable and shall be surrendered to the Collector immediately on the Dealer's ceasing to do business at the place named therein. Any dealer already registered with the Collector prior to January 1, 1996, need not obtain a replacement certificate.
- (j) Any Dealer who neglects, fails or refuses to collect Tax, either directly or through his employees or representatives, shall be liable for and pay the Tax himself.
- (k) The money collected by the Dealer for payment of the Tax shall be and remain the property of the Bureau and shall be deemed to be held in trust for the Bureau.

**Sec. 1-05 Exemption and exclusions.**

The Tax imposed by Section 1.02.1 shall not apply to the following:

- (a) Hospitals, convalescent or nursing homes or sanitariums or any hotel-like facility operated by or in conjunction with a hospital or

medical facility providing rooms exclusively for patients and their families; and

- (b) Hotel rooms rented to the same Occupant for a period of thirty (30) or more days or Hotel rooms rented on an annual contract basis for consecutive or non-consecutive days.

During any month, the Tax imposed by Section 1-02.2 shall not apply to the occupancy of twenty-five (25) percent of the Complimentary Rooms for a Hotel that is owned, owned in part, or operated, directly or indirectly, or any combination thereof, by a company which has, or which owns or owns in part, directly or indirectly, a company which has a license to conduct gambling activities on a river boat pursuant to Chapter 4 of Title 27 of La. R.S. 27:41 et seq. or its successor provision.

**Sec. 1-06 Returns and payment of Tax including interest, penalties and attorney fees.**

- (a) The Tax shall be due and payable by all Dealers monthly on the first day of the month.
- (b) For the purpose of ascertaining the amount of Tax payable, it shall be the duty of all Dealers, on or before the twentieth day of the month following the month in which this Tax becomes effective, to transmit to the Collector upon forms prescribed, prepared and furnished by the Collector, returns showing the Sales Price derived from all taxable transactions during the preceding calendar month or during part of the preceding calendar month, running from the effective date of this division to the end of the month. Thereafter, Dealers shall prepare, and transmit to the Collector, returns on or before the twentieth day of each month for the preceding calendar month. The returns shall show such additional information as the Collector may require to enable him to correctly compute and collect the Tax owed. The returns shall be signed by the Dealer filing the return, and his signature thereon shall constitute a warranty on the part of the Dealer that he had read and examined the return and that, to the best of his knowledge and belief, the return is true, correct and complete. Every

Dealer, at the time of making a return, shall compute and remit to the Collector the Tax due for the preceding calendar month.

- (c) (1) At the time of transmitting the return to the Collector, the Dealer shall remit the Tax due to the Collector. Failure to do so shall cause the Tax to become delinquent.
  - (2) Any Dealer who fails to pay Tax on or before the day on which the Tax is required to be paid, in addition to the Tax due, shall pay interest on the Tax due at the rate specified hereafter for each month or fraction thereof that the Tax remains unpaid, to be calculated from the date the Tax was due to the date of actual payment.
  - (3) In addition, a Dealer shall pay any special penalty or penalties provided by this division.
- (d) For the purpose of compensating the Dealer for accounting for and remitting the Tax, each Dealer shall be allowed one (1) percent of the Tax due and accounted for and remitted to the Collector, provided the Tax was not delinquent at the time of payment. The compensation shall be in the form of a deduction from the Tax due and shall be shown on the report submitted by the Dealer with payment of the Tax.
- (e) For the purposes of collecting and remitting Tax, a Dealer is hereby declared to be an agent of the Bureau.
- (f) The Collector, for good cause, may extend, for a period not to exceed thirty (30) days, the time for making any returns required under the provisions of this division.
- (g) (1) The Collector or his authorized representative is hereby authorized to enter into an agreement with a Dealer to allow for quarterly reporting and remitting of Tax if the Tax due is one hundred dollars (\$100.00) or less per month.
  - (2) The Collector may agree with a Dealer to allow for the collection of Tax from his independent agents, the Tax to be remitted to the Collector.

- (3) The Collector may agree with a Dealer to accept his tax returns and remittances on an irregular basis, when past returns and knowledge of common business practice indicate to the Collector that the Dealer's only tax liability is based on infrequent transactions.
- (h) If Tax due from a Dealer is not paid on or before the twentieth day of the month next following the month for which the Tax is due, in addition to the Tax due, the Dealer shall be liable for, and shall pay, interest on the Tax due but not paid at a rate of one and one-quarter (1 and 1/4) percent per month or fractional part thereof. The Dealer also shall be liable for, and shall pay, a penalty equal to five (5) percent per month, or fractional part thereof, of the Tax due (not to exceed twenty-five (25) percent in the aggregate) if the Tax due is not paid on or before the twentieth day of the month next following the month for which Tax is due. Both interest and penalty shall be computed from the first day of the month next following the month for which Tax is due. In the event of suit, a Dealer is charged for the Bureau's attorney's fees at the rate of ten (10) percent of the aggregate of the Tax, interest and penalty due. All interest and penalties due for subsequent months will be assessed and due as of the first day of each succeeding month. The Bureau is authorized to employ private counsel to assist in the collection of any Tax, penalties or interest due under this division or to represent it in any proceeding under this division.
- (i) If a Dealer fails to make any return required by this division or makes an incorrect return and if the circumstances indicate willful negligence or intentional disregard of rules and regulations, but no intent to defraud, there shall be imposed, in addition to any other penalties provided herein, a penalty of five (5) percent of the Tax or deficiency found to be due or ten dollars (\$10.00), whichever is greater. This penalty shall be an obligation to be collected and accounted for in the same manner as if it were a part of the Tax due and can be enforced either in a separate action or in the same action for the collection of the Tax.

- (j) If a Dealer pays Tax by means of a bank check and if the check is returned unpaid by the bank on which it is drawn because of insufficient funds in the bank account on which the check was drawn, there shall be imposed, in addition to any other penalties provided by this division or by law, a penalty to compensate the Collector for the costs of handling the check in an amount equal to one (1) percent of the amount of the check or twenty dollars (\$20.00), whichever is greater.
- (k) For any one (1) of the following violations, in addition to being liable for the other penalties provided herein, the party named shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one hundred dollars (\$100.00) or imprisonment in jail for not more than (60) days, or both, in the discretion of the court:
- (1) Any Person who is obligated to report and pay Tax and who fails, neglects and refuses to file a return thereof with the Collector and pay the Tax due within the time stated herein;
  - (2) Any Dealer who fails, neglects or refuses to collect Tax as provided in Section 1-04 (a) through (j) whether by himself or through his employees or representatives;
  - (3) Any Dealer who violates the provisions of Section 1-04 (e) of this division with respect to advertising;
  - (4) Any Dealer who violates the provisions of Section 1-07 (d) and (e) of this division;
  - (5) Any dealer who fails to permit the Collector to inspect records as provided in Section 1-07 (b) of this division;
  - (6) Any Dealer who violates the provisions of Section 1-04 (i) of this division;
  - (7) Any Dealer who violates the provisions of Section 1-07 (a) of this division;

- (8) Any Dealer who fails or refuses to furnish any return required herein or who fails or refuses to furnish a supplemental return or other data required by the Collector;
- (9) Any dealer required to make, render, sign or verify any return as provided in subsections (a) through (d) hereinabove who makes a false or fraudulent return with intent to evade Tax;
- (10) The president, executive officers, managers and directors of any corporation who violates the provisions of Section 1-07 (1) and (m) of this division; provided that the fine and imprisonment shall not prevent other action against the corporation provided in this division - For the recovery of Tax, interest and penalties due.
- (l) (1) Any Person who willfully fails to file any tax return, report or statement required to be filed under the provisions of this division or who willfully files or causes to be filed any false or fraudulent tax return, report or statement, or who willfully aids or abets another in the filing of a false or fraudulent tax return, report or statement relating to any Tax or penalty or interest, or any portion thereof, due pursuant to the provisions of this division, shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both.
- (2) Any Person who is required to collect, account for or pay over any Tax, penalty or interest due and who willfully fails to collect or truthfully account for or pay over that Tax, penalty or interest to the Collector as required under this division, in addition to other penalties provided by law, shall be fined not more than ten thousand dollars (\$10,000.00) or imprisoned, with or without hard labor, for not more than five (5) years or both.
- (m) All penalties and interest imposed by this division shall be payable to and recoverable by the Bureau in the same manner as if they were part of the Tax. If the failure to pay any Tax when due is explained to the satisfaction of the Collector, he may remit or waive payment of the whole or any part of any penalty and may remit and waive payment of

any interest charged which is in excess of the rate of two (2) percent per month.

All Tax, interest and penalties imposed under this division shall be paid to the Bureau or its agent(s) in the form of remittance required by the Collector.

**Sec. 1-07      Records and inspection thereof.**

- (a) (1) It shall be the duty of every Dealer to keep and preserve suitable records of transactions taxable under this division and such other books of account as may be necessary to determine the Tax due hereunder and such other information as may be required by the Collector. Each Dealer shall secure, maintain and keep, until the Tax to which they relate has prescribed, a complete record of taxable transaction by the Dealer together with invoices and other pertinent records and papers as may be required by the Collector for the reasonable administration of this division.  
  
(2) Any Dealer subject to the provisions of this section who violates the provisions of this section shall be fined not more than five hundred dollars (**\$500.00**) or imprisoned for not more than sixty (60) days, or both, for any offense.
- (b) For the purpose of administering this division, the Collector, whenever he deems it expedient, may make or cause to be made by an employee or other representative engaged in the administration of this division an examination or investigation of the place of business, if any, and the books, records, papers, vouchers, accounts and documents of any Dealer. It shall be the duty of every Dealer and every director, official, agent or employee of every Dealer to exhibit to the Collector or his employee or representative all of the books, records, papers,, vouchers, accounts and documents of the Dealer and to facilitate any examination or investigation as far as it may be in his or their power so to do.
- (c) The Collector shall keep a record of all of his official acts and shall preserve copies of all rules, decisions and orders made by him or by any employee or representative in charge of the collection of Tax.

Copies of rules, decisions or orders and of any paper or papers filed in any office maintained by the Collector in the administration of this division may be authenticated under the Collector's official signature and, when so authenticated, shall be evidence in all courts of the state of the same weight and force as the original thereof. For authenticating a copy, the Collector shall be paid a fee of one dollar (\$1.00) which shall be paid to the Bureau.

- (d) (1) The records and files of the Collector respecting the administration of this division shall be considered confidential and privileged, and neither the Collector nor any employee engaged in the administration of this division or charged with the custody of records or files relating thereto shall divulge or disclose any information obtained from any records or files or from any examination or inspection of the premises or the books, records or other documents of any Dealer. Neither the Collector nor any employee or representative engaged in administration of this division or charged with the custody of any such records or files shall be required to produce any of them for the inspection of any Person or for use in any action or proceedings except (a) in an action or proceedings under the provisions of this division and (b) when the records or files or the facts shown thereby are directly involved in such an action or proceedings.
  
- (2) Nothing contained in this division shall be construed to prevent:
  - a. The delivery to a Dealer or his duly authorized representatives of a copy of any return, report or other paper filed by him pursuant to the provisions of this division;
  - b. The publication of statistics so classified as to prevent the identification of any return or report and the items thereof;
  - c. The inspection by the Collector or other legal representative of the Bureau of the returns, reports or files relating to the claim of any Dealer who shall have brought an action to review or set aside any Tax or against whom an action or proceedings has been instituted in accordance with the provisions hereof;
  - d. The examination of the records and files by the Collector or by his duly authorized representatives; or

- e. The furnishing, in the discretion of the Collector, of any information disclosed by the records or files to any official Person or body of any other political subdivision or state or of the United States who shall be concerned with the administration of any similar tax by that political subdivision or state or the United States.

**Sec. 1-08 Remedies for collection.**

- (a) (1) If any Dealer fails to make a report and pay the Tax required by this division or if any Dealer make a grossly incorrect report or a report that is false or fraudulent, it shall be the duty of the Collector to make an estimate for the taxable period of the taxable transactions of the Dealer and assess and collect the Tax and interest and penalty, if any have accrued, on the basis of the assessment. The assessment shall be considered prima facie correct, and the Dealer shall have the burden to show that the assessment is incorrect.
- (2) If an estimate and assessment requires an examination of books, records or documents or an audit thereof, the Collector shall add to the assessment the cost of the examination together with any penalties accruing thereon. Those costs and penalties when collected shall be placed to the account of the Bureau in the same manner as is Tax.
- (3) If any Person or Dealer fails to make a return or report as required by this division, the Collector, within three (3) years after the last day on which the omitted report could have been filed without penalty, may make an estimate of the amount of Tax for which that Person or dealer is liable from any information he is able to conveniently obtain and, according to that estimate, may assess Tax, fees, penalties and interest due the Bureau, give notice of the assessment to the Person or Dealer and may make demand upon that Person or Dealer for payment, otherwise the claim shall prescribe.
- (4) After a return or report is filed under the provisions of this division, the Collector make such further audit or investigation as he may deem necessary and if he determines that there is a deficiency with respect to the payment of Tax, he shall assess the additional Tax

and any penalties and interest due the Bureau from that Person or Dealer and make demand upon him for payment.

(b) (1) If the Collector finds that a Person or Dealer obligated to pay or remit Tax designs to depart quickly from Calcasieu Parish or to discontinue business or to do any other act tending to prejudice or render wholly or partly ineffectual any proceedings that might be instituted to collect the Tax due, whereby it shall have become important that proceedings be instituted without delay, the Collector immediately may make a determination from any available information or by estimate or otherwise of the amount of Tax, penalty and interest the taxpayer is liable to pay under this division. After making that determination, the Collector immediately shall assess that amount and, by a writing to be retained as part of his official records, indicate the assessment has been made and, without any notice, proceed to distraint as is hereinafter provided any property belonging to the taxpayer. This assessment may be made whenever Tax becomes due under the provisions of this division, regardless of whether it is then payable or not.

(2) As soon as feasible after an assessment, and not later than (2) two calendar days thereafter, the Collector shall send by registered or certified mail a notice to the taxpayer against whom the assessment lies at the address given in the last report filed by the taxpayer or, if no report has been filed, to any address as may be obtainable. The notice shall inform the taxpayer of the assessment, its basis and jeopardous nature; make demand for immediate payment thereof; and give notice that any property distrained or to be distrained will be subject to sale as herein provided to satisfy the assessment.

(3) The taxpayer against whom the assessment lies can stay distraint of his property or sale of his property already distrained, as the case may be, only by the immediate payment of the assessment or by posting with the Collector a surety bond for the amount of the assessment or such lower amount acceptable to the Collector, with such sureties as the Collector deem appropriate. The taxpayer shall have sixty (60) calendar days from the date of payment or the date of posting bond to appeal to the courts as provided herein for a

redetermination of the assessment. During this period, the Collector shall hold any payment made in an escrow account. If the taxpayer does not appeal, the Collector immediately shall credit the payment to tax collections or proceed to collect the amount of the assessment from sureties, if any were given. In the event of an appeal, the payment or demand for payment from sureties shall be held in abeyance pending the redetermination or affirmation of the assessment by the court that reviews the matter. Final payment or collection from sureties will be for the amount of the affirmed or redetermined assessment.

All Tax, penalties and interest assessed pursuant to the provisions of this section shall be paid within thirty (30) days after notice and demand shall have been mailed to the taxpayer by the Collector. If Tax, penalties and interest so assessed shall not be paid within thirty (30) days, there shall be added to the amount assessed, in addition to interest as provided above and any other penalties provided by this division, a sum equivalent to five (5) percent of the Tax.

- (c) The liability of any Person or Dealer arising from Tax, interest or penalty imposed by this division, from the time they are due, shall be a personal debt of that Person or Dealer to the Bureau recoverable by the Bureau in any court of competent jurisdiction in an action at law. Those debts, whether sued upon or not, shall be a lien on all the property of the delinquent Person or Dealer, except as against an innocent purchaser for value without notice in the actual course of business, and shall have preference in any distribution of the assets of the Person or Dealer whether in bankruptcy, insolvency or otherwise. The proceeds of any judgment or order obtained hereunder shall be paid to the Bureau.
- (d) (1) If any Dealer liable for Tax, interest or penalty imposed under this Division shall sell his business or shall quit the business, he shall make a final return and payment within fifteen (15) days after the date of selling or quitting business. His successor, successors or assigns, if any, shall withhold a sufficient amount of the purchase money to cover the amount of Taxes, interest and penalties due and unpaid until such time as the former owner shall produce a receipt from the Collector showing payment in full or a certificate stating that no Tax,

interest or penalties are due. If the purchaser of a business fails to withhold purchase money as provided, he shall be personally liable for the payment of the Tax, interest and penalties owed by the former owner.

- (2) In the case of a Dealer who quits a business and who subsequently opens another similar business under the same ownership, whether that ownership is individual, partnership, corporation or other, that Dealer shall be liable for any Tax, interest or penalty owed by the original business.
- (e) If Dealer is delinquent in the payment of Tax, the Collector may give notice of the amount of the delinquency by registered mail to all Persons having in their possession or under their control any credits or other personal property belonging to the Dealer or owing any debts to the Dealer at the time of receipt by them of the notice, and thereafter any Person so notified shall neither transfer or make any other disposition of any credits, personal property or debts until the Collector shall have consented to a transfer or disposition or until thirty (30) days after receipt of notice. All Persons so notified, within five (5) days after receipt of notice, must advise the Collector of any and all credits, personal property or debts in their possession, under their control or owing by them, as the case may be.
- (f) (1) If a Dealer required to make and file a return under any of the provisions of this division fails to render the return within the time required or renders a return which is false or fraudulent (in that it contains statements which differ from the true Sale Price or other transactions taxable under this division or otherwise fails to comply with the provisions of this division for the taxable period for which the return is made), the Collector shall give the Dealer fifteen (15) days written notice, which notice shall require the Dealer to appear before the Collector or his employee or representative with such books, records and papers as the Collector or his employee or representatives may require relating to the business of the Dealer for the taxable period; and the Collector may require the Dealer or his employees or representatives to give testimony or to answer interrogatories, under oath administered by the Collector or his

assistants, respecting the transactions subject to the Tax or the failure to made a report thereof as provided in this division.

(2) If any Dealer fails to make a return or refuses to permit an examination of his books, records or papers or to appear and answer questions within the scope of an investigation relating to the transaction subject to Tax, the Collector may apply to any court of competent jurisdiction for an order requiring the Dealer to make such return or requiring the Dealer or his employees or representatives to appear and answer questions and/or permit an examination, and the court or any judge thereof thereupon shall issue, upon such reasonable notice as shall be prescribed therein, an order to be served upon the Dealer or his representatives or employees directing him or them to so appear and testify and to produce such books, records and papers as may be required. Any Person or any member of any firm, co-partnership, joint venture, association or corporation or any representative or employee thereof who fails to comply with any order shall be guilty of contempt and shall be punished as provided by law in cases of contempt.

(g) In addition any other procedure provided in this division or elsewhere in the laws of this parish and state and for the purpose of facilitating and expediting the determination and trial of all claims for taxes, penalties, interest, attorney fees or other costs and charges arising under this division,, there is hereby provided a summary proceeding, by or on behalf of the Collector, for Tax and for penalties, interest, attorney fees, costs of other charges due thereon, by preference in all courts as follows:

(1) All proceedings, whether original or by intervention or otherwise, brought by or on behalf of the Bureau or by or on behalf of the Collector for the determination or collection of any Tax, interest, penalty, attorney fees, costs of other charge claimed to be due under any provision of this division shall be summary and shall be tried or heard by preference in all courts, original or appellate, whether in or out of term time, and either in open court or chambers, at such time as may be fixed by the court which shall be not less than

two (2) nor more than ten (10) days after notice to the defendant or opposing party.

(2) All defenses, whether by exception or to the merits, made or intended to be made to any claim must be presented at one time and filed in the court of original jurisdiction prior to the time fixed for the hearing, and no court shall consider any defense unless so presented and filed. This provision shall be construed to deny to any court the right to extend the time for pleading defenses, and no continuances shall be granted by any court to any defendant except for the legal grounds set forth in Article 1602 of the Louisiana Code of Civil Procedure.

(3) All matters involving any claim shall be decided within forty-eight (48) hours after submission, whether in term time or in vacation and whether in the court of first instance or in an appellate court, and all judgments sustaining any claim shall be rendered and signed the same day and shall become final and executory on the fifth calendar date after rendition. No new trial, rehearing or devolutive appeal shall be allowed. Suspensive appeals may be granted but must be perfected within five (5) calendar days from the rendition of the judgment by giving of bond, with good and solvent security, in a sum double that of the total amount of the judgment including costs. Appeals, whether to a court of appeals or to the Supreme Court, shall be made returnable in not more than fifteen (15) calendar days from the rendition of the judgment.

(4) If the pleading filed on behalf of the Bureau or on behalf of the Collector is accompanied by an affidavit of the Collector or of the attorney filing the pleading stating that the facts as alleged are true to the best of the affiant's knowledge or belief, all of the facts alleged in the pleading shall be accepted as prima facie true and as constituting a prima facie case, and the burden of proof to establish anything to the contrary shall rest wholly on the defendant or opposing party.

(5) The appropriate municipal police department and/or the Sheriff of Calcasieu Parish shall enforce all injunctions prohibiting the further pursuit of business when a valid injunction and judgment has

been obtained from a court of competent jurisdiction involving delinquent Tax under the provisions of this division until such time as the delinquent Tax, interest, penalties and costs have been paid by the Dealer.

- (h) Failure to pay any Tax when due, without demand or putting in default, shall cause the Tax, interest, penalties and costs to become immediately delinquent, and the Collector hereby is vested with authority, on motion in a court of competent jurisdiction, to take a rule to show cause in not less than two (2) or more than ten (10) days, exclusive of holidays, after the service thereof, which may be tried out of term and in chambers and which always shall be tried by preference, why a Dealer should not be ordered to cease from further pursuit of business as a dealer, and, if the rule is made absolute, the order thereon rendered shall be considered a judgment in favor of the Bureau prohibiting the Dealer from the further pursuit of business until such time as he has paid delinquent Tax, interest, penalties and costs. Every violation of the injunction shall be considered as a contempt of court and punished according to law.
  
- (i) (1) The Collector may require a bond or other security for the payment of Tax, fees, interest, or penalties where any of the following conditions apply:
  - a. The taxpayer is three (3) months or more delinquent in reporting or remitting Tax, penalties or interest; or
  - b. A new owner has purchased a business, which, at the time of the sale, is delinquent in reporting or remitting Tax, penalties or interest.
  
- (2) The requirement of a security tax deposit shall be satisfied by payment in the form of cash, certified check, cashier check or money order.
  
- (3) The security tax deposit shall be an estimate of three (3) months Tax, penalty and interest. The estimate shall be based on the average of the past twelve (12) months remittances of Tax, penalty and interest or knowledge of finances of related businesses or other

relevant information. Additional three-month deposits, up to a maximum of twelve (12) months, for accounts that have been delinquent at least three (3) months each year for the previous three (3) years, may be required.

(4) All delinquent tax accounts shall be reviewed periodically and tax deposits shall be applied to delinquent tax accounts. Taxpayers shall be notified when tax deposits are so applied and shall then be required to provide additional security tax deposits to replace the amount applied to the delinquent tax account.

(5) The Collector shall retain these security tax deposits until such time as the delinquent taxpayer has remained current in reporting and remitting taxes for a period of twelve (12) consecutive months or until such time as the business has ceased its operation in the taxing jurisdiction.

(j) (1) If any Dealer against whom Tax has been assessed shall refuse or neglect to pay the Tax within the time prescribed in this division, it shall be lawful for the Collector to enforce collection of that Tax together with interest and penalty and any other additional amounts added by law by distraint and sale of any property or rights to property belonging to the delinquent Dealer.

(2) Whenever the Collector or his authorized representative shall distraint any property of a taxpayer or Dealer, he shall cause to be made a list of the property or effects distrained, a copy of which signed by the Collector or his authorized representative shall be sent by registered mail to the taxpayer or Dealer at his last know address or business address or served on him in person. This list shall be accompanied with a notice of the sum demanded and a notice of the time and place where the property will be sold in a sale is necessary. Thereafter, the Collector or his authorized representative shall cause a notice to be published in the Bureau's official journal specifying the property distrained and the time and place of sale. The sale shall be held not less than fifteen (15) calendar days from the date of the notice mailed or served on the taxpayer or Dealer or the date of publication in the official journal, whichever is later. The Collector

or his authorized representative may postpone the sale from time to time if it deems advisable but not for a period to exceed thirty (30) calendar days. If the sale is continued it shall be re-advertised.

(3) Any Person in possession of property or rights to property subject to distraint upon which a levy has been made, upon demand by the Collector or his authorized representative, shall surrender the property or rights to the Collector or his authorized representative unless such property or right, at the time of demand, is subject to an attachment or execution under any judicial process. Any Person failing or refusing to surrender any property or rights shall be liable to the Collector acting for the Bureau in a sum equal to the value of the property or rights not so surrendered but not exceeding the amount of the Tax, penalties, interest, costs and other charges due.

(4) The Collector or his authorized representative shall sell at public auction for cash to the highest bidder so much of the property distrained by him as may be sufficient to satisfy the Tax, penalties, interest, cost and other charges due. The Collector shall give the purchaser a certificate of sale which will be prima facie evidence of the right regularity of his proceedings in making the sale and which will transfer to the purchaser all rights, title and interest of the Dealer or taxpayer in the property sold.

(5) Out of the proceeds of the sale, the Collector first shall pay all costs of the sale and the apply so much of the balance of the proceeds as may be necessary to pay the assessment. Any remaining balance shall be paid to the Dealer or taxpayer.

(k) The Collector may enter into a formal installment payment agreement with a Dealer or taxpayer for the collection of past due tax, penalty and interest when, in his opinion, it is in the best interest of the Bureau to do so.

(1) No corporation organized under the laws of the State of Louisiana shall be dissolved or effect a merger, reorganization or consolidation under any law of the State of Louisiana by the action of the stockholders or by the decree of any court until all Tax, fees,

penalties, interest and other charges imposed on the corporation in accordance with provisions of this division have been paid in full. No foreign corporation which has obtained authority from this state to transact business in the State of Louisiana may surrender its authority and withdraw from the State of Louisiana until all Tax, fees, penalties, interest and other changes imposed upon the corporation in accordance with the provisions of this division has been paid in full.

- (m) (1) Notwithstanding any other provision of law to the contrary, if any corporation fails to file returns or to remit Tax due, as an alternative means of enforcing collection, the Collector is authorized to hold the officers or directors who have direct control or supervision for the Tax due under this division or charged with the responsibility of filing returns for, and remitting, the Tax due and who willfully fail to remit or account for Tax collected, personally liable for the total amount of Tax collected and not accounted for or not remitted, together with any interest, penalties, cost and other charges accruing thereon. Collection of the total amount due may be made from any one or any combination of the officers or directors who willfully fail to remit or account for Tax collected by use of any of the methods authorized by this division.
  - (2) A corporation by resolution of the board of directors may designate an officer or director having direct control or supervision of Tax or charged with responsibility of filing returns and remitting Tax. That resolution shall be filed with the Louisiana Secretary of State.
- (n) (1) Tax levied under this division shall prescribe as of three (3) years from the thirty-first day of December of the year in which Tax becomes due.
  - (2) The prescriptive period running against Tax shall be interrupted by any of the following:
    - a. The action of the Collector in assessing taxes in the manner prescribed by law.

- b. Filing of a summary proceeding in court.
- c. Filing of any pleadings by the Bureau or by the taxpayer with any state or federal court.
- d. Filing of a false or fraudulent tax return.
- e. Failure to file a tax return with intent to defraud.

(3) The running of a prescriptive period also may be suspended by means of a written agreement between a taxpayer and the Bureau made prior to the lapse of the period.

**Sec. 1-09 Refunds and reimbursements.**

- (a) (1) If the Sales Price is refunded to an Occupant after Tax has been collected or charged, a Dealer shall be entitled to reimbursement of the amount of tax collected or charged, in the manner prescribed by the Collector, and, if the Tax has not been remitted by the Dealer to the Collector, the Dealer may deduct the tax in submitting his return. Upon receipt of a sworn statement by a Dealer as to the gross amount of refunds during the period covered by the sworn statement, which period shall not be longer than ninety (90) days, the Bureau, through the Collector, shall issue to the Dealer an official credit memorandum equal to the net amount remitted by the Dealer for the Tax collected. A memorandum shall be accepted by the Bureau at full face value from the Dealer to whom it is issued in the remittance for subsequent Tax accrued under the provisions of this division.
- (2) If any Dealer gives the Collector notice within the time provided in subparagraph (1) above, a Dealer, at any time within three (3) years from December thirty-first of the year in which the Tax becomes due or after one (1) year from the date the Tax is paid, whichever is later, may file with the Collector a claim under oath for refund, in such form as the Collector may prescribe, stating the grounds thereof. However, no claim for refund shall be required or permitted to be filed with respect to Tax paid after protest has been filed with the Collector as hereafter provided or after proceedings on appeal have been finally determined.

- (3) If, upon examination of a claim for refund, it is determined by the Collector that there has been an overpayment of Tax, the amount of overpayment shall be credited against any liability of the Dealer under this division, and if there is no liability, the Dealer shall be entitled to a refund of the Tax overpaid. If the Collector rejects the claim for refund in whole or in part, he shall make an order and serve notice upon the Dealer. A Dealer may appeal a rejection as provided in subparagraph (1) above hereof, provided the appeal is taken within thirty (30) days from the date of notice.
- (4) Where no question of fact or law is involved and it appears from the records of the Collector that any monies have been erroneously or illegally collected from a Dealer or has been paid by a Dealer under a mistake of fact or law, the Collector, at any time within three (3) years from December thirty-first of the year in which the Tax becomes due or after one (1) year from the date the Tax is paid, whichever is later, upon making a record in writing his reasons therefor, may certify that a Dealer is entitled to a refund, and thereupon the Collector shall authorize the payment thereof from any appropriation available for such purposes. No claim for refund shall be allowed after a lapse of three (3) years from December thirty-first of the year in which the Tax becomes due or after one (1) year from the date the Tax is paid, whichever is later. Interest shall be computed on the basis established pursuant to L.R.S. 33:2718.
- (5) When, to secure compliance with any of the provisions of this division, monies have been deposited with the Collector by any Dealer and have been paid over to the Bureau and the Collector is satisfied that the Dealer has fully complied with all applicable provisions, the Collector shall so certify and authorize repayment from any appropriations available for such purpose to the Dealer of the monies or such part thereof as the Collector shall certify has not been applied by him to the satisfaction of any indebtedness arising under this division. Claims for credits and/or refunds without the Bureau's approval shall be limited to four thousand dollars (\$4,000.00).

- (6) a. Whenever the unpaid balance of an account due to a Dealer has been found to be bad in accordance with Section 166 of the United States Internal Revenue code and has actually been charged off for federal income tax purposes, the Dealer shall be entitled to reimbursement of the amount of tax previously paid by the Dealer on these accounts.
- b. The prescription for such a refund or credit shall begin to run from the date of signature on the federal income tax return charging off the debt.
- c. Whenever the balance of an account that had been determined to be worthless and Tax refunded is recovered at a later date, for purposes of the Tax levied under this division, the payment shall be reported as a new taxable transaction in the month recovered.

**Sec. 1-10 Remedies of the Dealer.**

- (a) (1) A right of action is hereby created to provide a remedy at law for any Dealer aggrieved by the provisions of this division, and, if a Dealer resisting the payment of any amount found due or the enforcement of any provisions of any laws relating thereto, the Dealer shall pay the amount found due by the Collector and, at the time of payment, shall give the Collector notice of his intention to file suit for the recovery of the Tax paid; and, upon receipt of notice, the amount so paid shall be segregated and held by the Collector for a period of thirty (30) days; and, if suit be filed within that thirty (30) day period, the funds so segregated shall continue to be segregated pending the outcome of the suit. If the Dealer prevails, the Collector shall refund the amount to the claimant with interest at the rate prescribed by L.R.S. 33:2718 covering the period from the date the funds were received by the Collector to the date of refund.
- (2) This section shall afford a legal remedy and right of action in any city, state or federal court having jurisdiction over the parties and subject matter for a full and complete adjudication of any and all

questions arising in the enforcement of this division and as to the legality of any tax accrued or accruing under this division or the method of enforcement thereof. In such actions, service shall be upon the Chairman of the Board of the Bureau.

(3) This section shall be construed to provide a legal remedy in the city, state or federal courts if the Tax or the collection thereof is claimed to be an unlawful burden upon interstate commerce or is in violation of any act of Congress, the United States Constitution or the Constitution of the State of Louisiana or if jurisdiction is vested in any of the courts of the United States; provided that, upon request of the Dealer and upon proper showing by the Dealer that the principal of law involved in an additional assessment is already pending before the courts for judicial determination, the Dealer upon agreement to abide by the decisions of the counts, may pay the additional assessment under protest, but need not file an additional suit. In such cases, the Tax paid under protest shall be segregated and held by the Collector until the question of law involved has been determined by the courts and shall then be disposed of as therein provided.

- (b) If any Dealer is aggrieved by any finding or assessment of the Collector, within thirty (30) days of the receipt of notice of the assessment or finding, he may file a protest in writing signed by him or his duly authorized representative, which protest shall be under oath and shall set forth the reasons therefor, and he may request a hearing. Thereafter, if a hearing has been requested, the Collector shall grant a hearing to the Dealer and may make an order confirming, modifying or vacating any finding or assessment. The filing of a protest shall not abate any penalty for nonpayment, nor shall it stay the right of the Collector to collect Tax in any manner herein provided unless the Dealer furnishes security of a kind and in an amount satisfactory to the Collector. Appeals from the decision of the Collector shall be directed to any state, city or federal court of competent jurisdiction as provided or in this section.

**Sec. 1-11 Other Administrative Provisions.**

- (a) Any notice required to be given by the Collector pursuant to this division may be given by personal service on the Dealer for whom it is intended or by mail, addressed to the Dealer for whom it is intended at the address given in the Dealer's last report filed pursuant to the provisions of this Division or, if no report has been filed, to such address as may be obtainable. The mailing of a notice shall be presumptive evidence of its receipt by the Dealer to whom it is addressed.
- (b) Nothing in this division shall be construed as depriving the Dealer, in the review of Tax or in any proceedings to collect Tax, of any remedy afforded the Dealer by any other law or as depriving the Bureau enforcement of this division through any procedure or remedies expressly provided in this division or in any other law.
- (c) If any section, subsection, sentence, clause or phrase of this division is held invalid, that decision shall not affect the validity of the remaining portions of this division. The Bureau declares that it would have passed this division, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one (1) or more sections, subsections, sentence, clauses or phrases may be declared invalid.
- (d) The Tax is declared to be supplemental and in addition to all other taxes levied by and under or to be levied by and under the authority of the Bureau.
- (e) This division may be cited or otherwise referred to as the "Southwest Louisiana, Calcasieu Parish, Louisiana, Occupancy Tax Ordinance No. 1 of 1996".
- (f) (1) The Collector and his employees and representatives hereby are designated as the agents and representatives of the Bureau for purposes of administration, enforcement and collection of the Tax provided for herein. The Collector is authorized and empowered to adopt rules, regulations and procedures for implementation, administration, enforcement and collection of Tax, receive and

receipt for payment of Tax, make refunds, deposit moneys, conduct hearings and audits, make estimates of Tax due and assessments thereof, file suit to collect Tax, interest, penalties, fees, costs and other charges, issue notices, maintain records, purchase, prepare and distribute forms, supplies and paraphernalia for the collection of Tax, compromise and adjust claims and, in general, perform all other acts which the Bureau could do in administering, enforcing and collecting Tax.

(2) The Collector is duly authorized and empowered to carry into effect the provisions of this division to make and enforce such rules as he may deem necessary. Such regulations whereon promulgated shall have the full force and effect of law. Promulgation shall be accomplished by publication at least one (1) time in the Bureau's official journal.

- (g) The Collector, on behalf of the Bureau, may contract with and hire expert consultants in connection with tax audits conducted by the Collector. Any contracts of employment shall be subject to the Bureau's approval.
- (h) The Collector shall design, prepare, print and furnish to Dealers or make available to Dealers, all necessary forms for filing returns, and instructions to insure a full collection and an accounting for the Tax due from Dealers. The failure of any Dealer to secure forms promulgated by the Collector shall not relieve a Dealer from the payment of Tax at the time and manner herein provided. The cost of preparing and distributing the report forms and related material for the collection of Tax and of the inspection and enforcement duties required herein, shall be borne as provided in Section 1-06.

#### **Sec. 1-12 Disposition of tax proceeds and revenues.**

- (a) All Tax, revenues, funds, assessments, monies, penalties, fees or other income which may be collected or come into the possession of the Collector as agent of the Bureau, under any provision or provisions of this division shall be promptly deposited by the Collector for the account of the Bureau with the regularly designated

fiscal agent or agents of the Bureau, provided however, any amount which is paid under protest and is subject to litigation may be transferred to a separate account established by the Collector pending final determination of the protest or litigation.

- (b) Out of the funds on deposit, the Collector first shall pay all reasonable and necessary costs and expenses of collecting the Tax and administering the provisions of this division as well as the various administrative procedures established herein. These costs and expenses shall be reported to the Bureau monthly by the Collector.

**Sec. 1-13      Miscellaneous.**

- (a) Any provision of this division to the contrary notwithstanding, the Bureau may contract with anyone for the performance of any or all of the duties of the Collector provided for herein.
- (b) This division shall be published within twenty (20) days after its adoption in the official journal, or as soon as possible thereafter, but shall be in full force and effect effective January 1, 1996, as it affects the Bureau's public health, welfare and safety.
- (c) A certified copy of this division shall be recorded as soon as possible with the Clerk of Court of Calcasieu Parish.

**DIVISION 2 - ADMINISTRATION**

**Sec. 2-01      Official Journal.**

The official Journal of the Southwest Louisiana Convention & Visitor's Bureau shall be the Lake Charles American Press.

**SECRETARY'S CERTIFICATE**

I hereby certify that I am the duly authorized and acting Secretary of the Southwest Louisiana Convention and Visitors Bureau, that the foregoing Ordinance was duly adopted at a meeting of the Board of Directors of the Southwest Louisiana Convention and Visitors Bureau called for, and held on, December 21, 1995, that the Ordinance is in full force and effect with an effective date of January 1, 1996.

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SECRETARY

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(DATE)

*Note: This Ordinance was updated to incorporate legislative changes through the 1998 session; 5-6-99.*