

Councilman Jim McClain introduced the following Ordinance:

ORDINANCE NO. 07-004

AN ORDINANCE TO REPEAL AND REPLACE ORDINANCE NO. 88-230 ADOPTED FEBRUARY 2, 1989 AND ANY AMENDMENTS TO SAID ORDINANCE WITHIN THE CODE OF ORDINANCES FOR THE CITY OF ALABASTER; SECTION 5-1 LEASING OR RENTING TANGIBLE PERSONAL PROPERTY LICENSE TAX.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALABASTER, ALABAMA AS FOLLOWS:

ARTICLE I. LEASE OR RENTAL OF TANGIBLE PERSONAL PROPERTY

Section I. Definitions.

The following terms when used in this article shall have the respective meanings ascribed to them:

Business: All activities engaged in, or caused to be engaged in, by any person with the object of gain, profit, benefit or advantage, either direct or indirect, to such person.
Gross proceeds: The value proceeding or accruing from the leasing or rental of tangible personal property, without any deduction on account of the cost of the property so leased or rented, the cost of materials used, labor or service cost, interest paid or any other expenses whatsoever, and without any deductions on account of loss, and shall also include on the part of any person claiming exemption under Section III (4) an amount equal to the amount of rental paid on any tangible personal property acquired under such exemption and thereafter diverted to the use of such person.

Leasing or rental: A transaction whereunder the person who owns or controls the possession of, tangible personal property permits another person to have the possession or use thereof for a consideration and for the duration of a definite or indefinite period of time, without transfer of the title to such property. The detention by the user thereof of freight cars, oxygen and acetylene tanks, and similar property, in respect of which detention a demurrage or per diem charge is made against the user of such property, shall not be deemed to constitute a transaction whereunder property is leased or rented to another within the meaning of this article.

Tangible personal property: Personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other contracts, or securities.

Section. II. Levy of tax.

- A. In addition to all other licenses or taxes now imposed by law or ordinance, there is hereby levied and shall be collected as herein provided a privilege or license tax on each person engaging or continuing in the business of leasing or renting tangible personal property in the city at the rate of two (2%) per cent of the gross proceeds derived by the lessor from the lease or rental of tangible personal property.
- B. Provided that the privilege or license tax on each person engaging or continuing in the business of leasing or renting any automotive vehicle or truck trailer, semi trailer or house trailer in the city shall be at the rate of one-half (1/2%) of one per cent of the gross proceeds derived by the lessor from the lease or rental of such automotive vehicle or truck trailer, semi trailer or house trailer; provided further, that the tax levied.

Section III. Exemptions.

This article shall not apply to any leasing or rental, as lessor, by the state or any municipality or county in the state, or any public corporation organized under the laws of

the state, including without limiting the generality of the foregoing, any corporation organized under the provisions of the Code of Alabama 1975, section 11-54-80 et seq., as amended.

There are exempted from the computation of the amount of the tax levied, assessed or payable under this article the following:

- (1) The gross proceeds accruing from the leasing or rental of a film to a lessee who charges, or proposes to charge, admission for viewing the films;
- (2) The gross proceeds accruing from any charge in respect of the use of docks and docking facilities furnished for boats or other craft operated on waterways;
- (3) The gross proceeds accruing from any charge made by a landlord to a tenant in respect of the leasing or furnishing of tangible personal property to be used on the premises of real property leased by the same landlord to the same tenant for use as a residence or dwelling place, including mobile homes;
- (4) The gross proceeds accruing from the leasing or rental of tangible personal property to a lessee who acquires possession of the property for the purpose of leasing or renting to another the same property under a leasing or rental transaction subject to the provisions of this article;
- (5) The gross proceeds accruing from any charge made by a landlord to a tenant in respect of the leasing or furnishing of tangible personal property to be used on the premises of any room, lodging or accommodation leased or rented to transients in any hotel, motel, inn, tourist camp, tourist cabin or any other place in which rooms, lodgings or accommodations are regularly furnished to transients for a consideration;
- (6) The gross proceeds accruing from the leasing or rental of tangible personal property which the city is prohibited from taxing under the constitution or laws of the United States or under the constitution of the state;
- (7) The gross proceeds accruing from the leasing or rental of nuclear fuel assemblies together with the nuclear material contained therein and other nuclear material used or useful in the production of electricity and assemblies containing radiation sources together with the ionizing radiation sources contained therein or useful in medical treatment or scientific research;
- (8) A transaction whereunder the lessor leases a truck or tractor trailer or semi trailer, for operation over the public roads and highways, and such lessor furnishes a driver for each such vehicle; such transaction shall be deemed to constitute the rendition of service and not a "leasing or rental" within the meaning of this article;
- (9) The gross proceeds accruing from the leasing or rental of vehicles in interchange between regulated motor carriers on a per diem basis;
- (10) The gross proceeds accruing from the leasing or rental of all structures, devices, facilities and identifiable components of any thereof acquired primarily for the control, reduction or elimination of air or water pollution, and the gross proceeds accruing from the leasing or rental of all materials used or intended for use in structures built primarily for the control, reduction or elimination of air and water pollution;
- (11) The detention by the user thereof of freight cars, oxygen and acetylene tanks, and similar property, in respect of which detention a demurrage or per diem charge is made against the user of such property.

Section IV. Property rented in city for use outside city; property rented outside city for use in city; rental of certain vehicles.

- (a) When a lessor in the city, who is in the business of leasing and renting tangible personal property, leases tangible personal property to a lessee in another city, said property to be used in the other city (outside of this city), and the lessor's records in this city show that the property is so leased to be used in the other city, the receipts derived from the property so leased are not subject to the tax imposed in this article.
- (b) When the lessor is located outside of this city and rents tangible personal property to a lessee within this city, and the property so rented is being used in this city, the total gross receipts from the rental of said tangible personal property in this city will be subject to the tax.
- (c) Any person engaging in the business of renting any automotive vehicle, truck trailer, semi trailer or house trailer, within this city will be liable for the tax on the gross proceeds derived therefrom, although the automotive vehicle, truck trailer, semi trailer or house trailer may be turned in to the lessor, its agents or assigns in another city. In any

case where an automotive vehicle, truck trailer, semi trailer or house trailer is leased in another city and turned in to the lessor or lessor's agent in this city, the rental receipts therefrom will not be subject to the tax imposed herein.

(d) In any case where a lessor leases or rents a truck, truck trailer or semi trailer to a motor carrier in this city, the total gross receipts from the rental of the truck, truck trailer or semi trailer are subject to the tax affixed herein, although the truck, truck trailer or semi trailer may occasionally travel outside of this city. In those cases where the lessor leases a truck, truck trailer or semi trailer to a motor carrier outside this city, the receipts there from will not be subject to the tax, although the truck, truck trailer or semi trailer may occasionally travel in this city.

Section V. Monthly report and payment.

(a) The tax levied under the provisions of this article, except as otherwise provided shall be due and payable in monthly installments on or before the (20th) twentieth day of the month next succeeding the month in which the privilege license tax accrues. On or before the (20th) twentieth day of each month, every person on whom the amounts levied by this article are imposed shall render to the city, on a form prescribed by the city, a true and correct statement showing the gross proceeds of such person's business, for the next preceding month the amount of gross proceeds which are not subject to the privilege license tax or are not to be used as a measurement of the amounts due by such person, and the nature thereof, together with such other information as the city may require; and at the time of making such monthly report such person shall compute the privilege license taxes due and shall pay to the city the amounts shown to be due.

(b) If any person subject to this article should fail to pay the license tax imposed herein, or should fail to render any report required hereby or should willfully make a false statement of fact in the statement or return required hereunder, such person shall be guilty of a misdemeanor and upon conviction shall be punished as provided in Chapter 22.

Section VI. Recordkeeping.

It shall be the duty of every person engaging or continuing in any business for which a privilege tax is imposed by this article to keep and preserve suitable records of the gross proceeds of any such business and such other books or accounts as may be necessary to determine the amount of tax for which such person is liable, under the provisions of this article. It shall be [the] duty of every person to keep and preserve for a period of five (5) years all invoices of gross proceeds, proceeding or accruing from the leasing or rental herein taxed; and all such books, invoices and other records shall be open for examination at any time by the city or its agent. Any person leasing, who in addition leases for re-leasing, shall keep books so as to show separately the gross proceeds of leasing for re-leasing.

Section VII. Records, etc., to be open for inspection.

(a) The books, records and accounts mentioned in the next preceding Section VII shall at all times be open to examination by the city license inspector or any person designated to act for the city. Upon demand by the city license inspector or authorized deputy, auditor or representative, it shall be the duty of any person subject to this license tax to submit to the city license inspector or authorized deputy, auditor or representative for inspection and examination, during reasonable business hours, in the city thereof, all books of account. Each occurrence of a failure to keep records, or allow examination thereof, shall constitute a separate offense.

(b) Any person who shall fail to keep such records or who shall refuse to permit such examination thereof or who violates any other provisions hereof shall be guilty of a misdemeanor and upon conviction shall be punished as provided in Chapter 22.

Section VIII. Cash leases and rentals.

Any person taxable under this article, making cash and credit leases or rentals, may if such person desires, report such cash leases or rentals only, and shall thereafter include in each monthly report all credit collections made during the month preceding and shall pay the privilege license tax due thereon at the time of filing such report.

Section IX. Penalty for late payment.

Any person who fails to pay the price levied herein within the time required in above section shall pay an additional amount equal to ten (10%) per cent of the amount due, as a penalty, such penalty to be assessed and collected as a part of the tax.

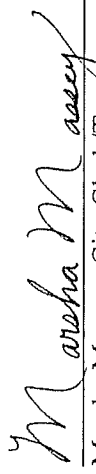
The provisions of this ordinance are severable. If any part hereof is declared invalid or unconstitutional by a court of competent jurisdiction, such declaration shall not affect the part which remains.

This ordinance shall become effective on October 1, 2007 and thereafter, unless further amended, and shall replace any conflicting provisions heretofore adopted and currently in effect, or otherwise.


ADOPTED AND APPROVED THIS 4 DAY OF SEPTEMBER 2007.

ATTEST:

CITY OF ALABASTER, ALABAMA



Marsha Massey, City Clerk/Treasurer

BY 

Rick Walters, Council President

APPROVED:



David Frings, Mayor