

Staff Summary Report



Council Meeting Date: 06/15/06

Agenda Item Number: _____

SUBJECT: This is the second public hearing to amend Chapter 16 of the Tempe City Code relating to License, Privilege and Excise Taxes by amending Section 16-445; amending Regulations 16-300.1 and 16-445.1; and establishing an effective date.

DOCUMENT NAME: 20060615cacc01 TCC CH 16 – LICENSES, TAXATION & MISC BUS REGS, ETC. (0503-16) Ordinance No. 2006.44

SUPPORTING DOCS: No

COMMENTS: This ordinance change will eliminate the current exemption for one residential rental unit and make all residential rental units subject to the City's 1.8% Transaction Privilege (Sales) Tax.

PREPARED BY: Dean Doubrava, Tax and License Administrator (350-8510)

REVIEWED BY: Phil Falcosky, Tax Audit Supervisor (350-8685)

LEGAL REVIEW BY: George Romero, Assistant City Attorney (350-8611)

FISCAL NOTE: Estimated revenue is between \$200,000 and \$300,000 per year.

RECOMMENDATION: Staff recommends adoption of Ordinance No. 2006.44

ADDITIONAL INFO: In June 2005, the City Council approved the creation of an Ad Hoc Rental Housing Task Force to review current practices and develop tools to combat the negative effects of rentals on single-family neighborhoods. Members of the task force included Mayor Hugh Hallman, Vice Mayor Mark Mitchell, Councilmember Ben Arredondo and 15 community members. After five productive meetings, nine recommendations were forwarded to the full City Council and were approved in concept at the March 23 Issue Review Session. The recommendations included changing city tax code to tax all rentals, instead of the previous policy to exempt one residential rental unit from taxation.

ORDINANCE NO. 2006.44

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 16 OF THE TEMPE CITY CODE, RELATING TO LICENSE, PRIVILEGE AND EXCISE TAXES BY AMENDING SECTION 16-445; AMENDING REGULATIONS 16-300.1 AND 16-445.1 OF THE TAX CODE; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Section 16-445 of the Tax Code of the City of Tempe is hereby amended to read as follows:

Sec. 16-445. Rental, leasing, and licensing for use of real property.

(a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, or renting real property located within the City for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the City for a consideration, including any improvements, rights, or interest in such property; provided further that:

- (1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.
- (2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.
- (3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 16-470.

(b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.

(c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.

(d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.

(e) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(f) **(RESERVED)** ~~A person who has less than two (2) apartments, houses, trailer spaces, or other lodging spaces rented, leased or licensed or available for rent, lease, or license within the State and no units of commercial property for rent, lease, or license within the State, is not deemed to be in the rental business, and is therefore exempt from the tax imposed by this Section on such income. However, a person who has one (1) or more units of commercial property is subject to the tax imposed by this Section on rental, lease and license income from all such lodging spaces and commercial units of real estate even though the person may have fewer than two (2) lodging spaces.~~

(g) Reserved.

(h) Reserved.

(i) Reserved.

(j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 16-444 of this code.

(k) Reserved.

(l) Reserved.

(m) Reserved.

(n) Notwithstanding the provisions of Section 16-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.

(o) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this Section.

Section 2. That Regulation 16-300.1 of the Tax Code of the City of Tempe is hereby amended to read as follows:

Reg. 16-300.1. Who must apply for a license.

- (a) For the purposes of determining whether a license is required under Section 16-300, a person shall be deemed to be "*engaged in or continuing in business*" within the City, if he meets any of the following conditions:
 - (1) He is engaged in any activity subject to the City's Privilege Taxes as principal or broker.
 - (2) He has or maintains within the City directly, or if a corporation by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this City under the authority of such person or if a corporation its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily or whether such person or subsidiary is authorized or licensed to do business in this State or this City.
 - (3) He is soliciting sales, orders, contracts, leases, and other similar forms of business relationships, within the City from customers, consumers, or users located within the City, by means of salesmen, solicitors, agents, representatives, brokers, and other similar agents or by means of catalogs or other advertising, whether such orders are received or accepted within or without this City.
 - (4) He is regularly engaged in any activity subject to the City's Use Tax; provided, however, that individuals are not normally required to obtain a license because they acquire items outside the City for their own or their family's personal use and enjoyment.
 - (5) (Reserved)
- (b) **(RESERVED)** ~~For the purposes of obtaining a Privilege License, a person who has less than two (2) apartments, houses, trailer spaces, or other lodging spaces available for rent, lease, or license within the State is not considered to be regularly engaged in business and need not obtain a Privilege License; provided, however, if that person is also receiving income from the activity of renting, leasing, or licensing one (1) or more commercial properties or units within a commercial property, he is considered to be regularly engaged in business and must obtain licenses for all his rental, lease, or license property.~~

Section 3. That Regulation 16-445.1 of the Tax Code of the City of Tempe is hereby amended to read as follows:

Reg. 16-445.1. (RESERVED) ~~When the rental, leasing, and licensing of real property is exempt as "casual".~~

~~The person who has less than two (2) apartments, houses, trailer spaces, or other lodging spaces rented, leased or licensed, or available for rent, lease, or license within the State and no units of commercial property for rent, lease, or license within the State is deemed not to be in the business of renting, leasing, or licensing real property, and is therefore exempt from the tax imposed by Section 16 445 on such income. However, a person who has one (1) or more units of any other real property is deemed to be in the business of renting, leasing, or licensing real property, and subject to the tax imposed by Section 16 445 on rental, lease, and license income from all such lodging spaces and commercial units of real estate even though said person may have fewer than two (2) lodging spaces within the State.~~

Section 4. The provisions of this Ordinance are effective October 1, 2006.

Section 5. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the tax code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2006.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney