

ORDINANCE NO. 3325

AN ORDINANCE AMENDING CHAPTER 18, TAXATION AND FINANCE, ARTICLE II, SALES TAX, DIVISION 1, TWO AND ONE-HALF PERCENT, AND DIVISION 2, ONE-HALF PERCENT, **AND ALL PREVIOUS AMENDMENTS THERETO**, ALL EXISTING ORDINANCES OF THE CITY OF BARTLESVILLE INCLUSIVE OF THOSE NUMBERED 1818, 1944, 2194, 2354, 2579, 2613, 2716, 2722, 2784, 2876, 2991, 3001, 3023, 3097 & 3149 WHICH ALL REQUIRE THE PAYMENTS OF SALES TAXES, HEREBY ADDING PENALTIES FOR FAILURE TO OBTAIN A TAX PERMIT FROM THE OKLAHOMA TAX COMMISSION, FAILURE TO COLLECT TAX, FAILURE TO REPORT TAX COLLECTIONS, FAILURE TO REMIT PAYMENT OF TAXES COLLECTED, FAILURE TO MEET VENDOR'S REQUIREMENTS AS CONTAINED HEREIN, AND HEREBY ADDING PROVISIONS FOR THE ENFORCEMENT BY THE CITY OF BARTLESVILLE OF VENDOR'S TAX PAYMENTS TO THE STATE OF OKLAHOMA TAX COMMISSION FOR THE BENEFIT OF THE CITY OF BARTLESVILLE, AND PROVIDING EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BARTLESVILLE, OKLAHOMA:

*State law references: Sales tax, 68 O.S. § 1350 et seq.

SECTION 1: That the following Sections of Chapter 18, Taxation and Finance, Article II, Sales Tax, Division 1, Two and One-Half Percent, be amended or added to read as follows:

Section 18-27. Collection Required; Vendor's Duty to Collect and Remit Tax.

(a) The tax levied under this division shall be paid by the consumer or user to the vendor, and it shall be the duty of each and every vendor in this city to collect from the consumer or user the full amount of the tax levied by this chapter, or an amount equal as nearly as possible or practicable to the average equivalent thereof. **Every person required to collect any tax imposed by this chapter, and in the case of a corporation, each principal officer thereof, shall be personally liable for such tax.**

(b) Vendors shall add the tax imposed under this division, or the average equivalent thereof, to the sales price or charge, and when added such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to vendor until paid, and shall be recoverable at law in the same manner as other debts.

(c) A vendor, as defined in this division who willfully or intentionally fails, neglects or refuses to collect the full amount of the tax levied in this division, or willfully or intentionally fails, neglects or refuses to comply with the provisions or remits or rebates to a consumer or user, either directly or indirectly and by whatsoever means, all or any part of the tax levied in this division, or makes in any form of advertising, verbally or otherwise, any statement which infers that he is absorbing the tax, or paying the tax for the consumer or user by an adjustment of prices or at a price including the tax, or in any manner whatsoever, shall be deemed guilty of an

offense, and upon conviction thereof shall be fined an amount not to exceed the maximum allowed by law.

(d) Any sum or sums collected or required to be collected in accordance with the provisions of this title shall be deemed to be held in trust for the city of Bartlesville, Oklahoma. Any person, firm, corporation, joint venture, or association that willfully or intentionally fails, neglects or refuses to remit the tax, after the tax levied by this ordinance was collected, shall be deemed guilty of an offense, and upon conviction thereof shall be fined an amount not to exceed the maximum allowed by law.

(e) It shall be unlawful for any of the following vendors to engage in or transact a business of reselling tangible property or services within the City of Bartlesville, Oklahoma, unless a written sales tax permit has been issued to him. This subsection shall apply to:

1 Any vendor who is regularly and continuously engaged in a business at an established place of business and makes sales subject to the Oklahoma sales tax code;

2. Any vendor who is engaged in a business in the City of Bartlesville, Oklahoma and makes sales incidental to such business which are subject to the Oklahoma sales tax code;

3. Any vendor who is a transient person, firm or corporation and makes seasonal sales, or in any manner becomes subject to the Oklahoma sales tax code; and

4. Any vendor, either within or without this state, who make sales subject to the Oklahoma sales tax code, through peddlers, solicitors or other salespersons who do not have established places of business in the City of Bartlesville.

Any person who engages in a business subject to the provisions of this section without a sales tax permit or permits issued by the State of Oklahoma, or after a permit has been suspended, shall be guilty of an offense and, upon conviction thereof, shall be fined an amount not to exceed the maximum allowed by law.

Section 18-31. Delinquency Interest and Penalties.

The Oklahoma State law, Title 68 O.S. Section 217, is adopted and made a part of this chapter. The interest and penalties at the rates and in the amounts as therein specified are levied and shall be applicable in cases of delinquency in reporting and paying the tax levied by this division. The failure or refusal of any taxpayer to make and transmit the reports and remittances of tax in the time and manner required by this division shall cause such tax to be delinquent.

(a) Any vendor reported to be delinquent by the Oklahoma Tax Commission shall be deemed delinquent by the City of Bartlesville and shall be subject to enforcement of payments as prescribed by the State of Oklahoma.

(b) Any vendor deemed to be delinquent in tax payments shall be subject to a collection fee assessed by the enforcing agency as prescribed by the State of Oklahoma.

(c) Any collection fee or fees assessed against a vendor shall be in addition to the delinquent taxes paid, as prescribed by the State of Oklahoma.

(d) Any subsequent delinquency requiring collection action shall be subject to an assessment fee, as prescribed by the State of Oklahoma.

(e) The City of Bartlesville may enforce the payments of any taxes reported by the Oklahoma Tax Commission to be more than sixty (60) days delinquent.

(f) The City Clerk or his designee shall charge a fee to a delinquent vendor for the enforcement of delinquent taxes payments when such enforcement is conducted by City of Bartlesville officials or by a licensed collection agency contracted by the City of Bartlesville.

(g) Any vendor reported to be delinquent in the payment of sales taxes for a period of sixty (60) days shall be given notice of delinquency by the City of Bartlesville and shall be notified of delinquency again if payments have not been reported within thirty (30) days of first notice.

(h) The City of Bartlesville Business License held by any vendor who refuses to pay delinquent tax payments to the tax collector, the Oklahoma Tax Commission, for the benefit of the City of Bartlesville, shall be immediately revoked and remains revoked only to be reissued as follows:

- (1) The vendor's place of business shall be posted as closed by the City Clerk or his designee and the posting shall contain the cause or reason of closing.
- (2) The business license of that vendor shall remain revoked until notice from the Oklahoma Tax Commission is given to the City of Bartlesville that the delinquent taxes have been paid.
- (3) Any fines, court cost, or collection fees assessed against the business shall be paid before the revoked business license can be reinstated.
- (4) Any business closed for violations of this section or violations of any section of the City of Bartlesville Sales Tax Ordinances shall not be reestablished under any other name at any other location within the City of Bartlesville if the vendor or persons in ownership of the vendor's business remain in the ownership of the business unless and until all delinquent tax payments for the revoked business and the associated fines and fees have been paid in full to the State of Oklahoma and to the City of Bartlesville as required by State law or City ordinance.

Sec. 18-29. Amendments.

The City Council is hereby authorized by ordinances to make such administrative and technical changes or additions in the method and manner of administration and enforcement of this division as may be necessary or proper for efficiency and fairness, except that the rate of tax contained within existing sales tax Ordinances shall not be changed without approval of the qualified electors of the city as provided by law.

Section 18-35. Violation and Fraudulent Returns

In addition to civil penalties provided in this division, it is unlawful for any person, or any officer, employee or agent of any of same, subject to the provisions of this division to fail to collect the tax or fail to file a report or return of same as provided by law, or fail to pay the taxes so collected, or to make any false or fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this division. The willful failure or refusal of any taxpayer to make reports or remittances herein required, or the making of any false or fraudulent report for the purpose of avoiding or escaping payments of any tax or portion thereof rightfully due under this chapter, shall be guilty of an offense and, upon conviction thereof, shall be subject to a fine in an amount not to exceed the maximum allowed by law.

Sec. 18-36. Provisions Severable.

The provisions hereof are hereby declared to be severable, and if any section, paragraph, sentence or clause of this division is, for any reason, held to be invalid or inoperative by any court of competent jurisdiction such decision shall not affect any other section, paragraph, sentence or clause hereof.

Sec. 18-37. Presentation, or Posting of Sales Tax Permit.

The following provisions shall apply to any vendor required by the State of Oklahoma to obtain a sales tax permit:

- (a) If the vendor maintains a location open to the public for the sale of items or services which are subject to sales tax, the vendor shall post the permit or a legible copy of a valid permit on the premises within plain sight of the public.

- (b) If sales are transacted from a mobile location, including but not limited to a vehicle, a trailer, a tent, or other place from which the vendor conducts business, the vendor shall post the sales permit, or a legible copy of a valid permit upon such mobile location within plain sight of the public.
- (c) For all other sales transacted within the City of Bartlesville, Oklahoma, a legible copy of a valid sales tax permit issued to the vendor shall be furnished each employee or contractor entitled to present invoices or collect monies from customers, to be presented upon request as part of the invoicing or collection process.
- (d) A valid copy of a vendors State of Oklahoma sales tax permit is to be presented upon request to City of Bartlesville officials at the time of vendor's application for a City of Bartlesville business license, if that business is required by the state of Oklahoma to have such permit.
- (e) A valid copy of a vendors State of Oklahoma sales tax permit is to be presented upon request to City of Bartlesville officials at the vendor's place of business, if that business is required by the State of Oklahoma to have such permit.

Any person who violates any of the provisions of this section shall be deemed guilty of an offense and, upon conviction thereof, and shall be fined an amount not to exceed the maximum allowed by law.

Sec. 18-38. Audits of Sales Records and of Sales Tax Payments.

Any vendor subject to violations hereof shall be subject to the following audits as allowed by State law:

- (a) Each sales transaction of the vendor shall be recorded and available for audit and shall contain the stated amount of the tax collected on each sales record, as prescribed by the State of Oklahoma.
- (b) The City Clerk or his designee or the clerk's appointed auditor may make request of records of sales transactions of the business conducted at the location of any business in the act of doing business while required tax payments are delinquent.
- (c) Upon the request of City's auditors, vendors shall produce records of each sales transaction made during the audit period.
- (d) Upon the request of City's auditors, vendors shall produce records of each sales tax payment paid to the Oklahoma Tax Commission.
- (e) City auditors will make available to the Oklahoma Tax Commission auditors all information found during the conducting of an audit of a delinquent vendor.
- (f) City auditors may be accompanied by the Oklahoma Tax Commission auditors at times of business investigations and delinquent vendor audits.
- (g) City auditors shall assist in the investigating of a delinquent vendor and may provide information leading to the Oklahoma Tax Commission's arrest and conviction of a State of Oklahoma tax code violator.

SECTION 2. That the following Sections of Article II, Sales Tax, Division 2, And One-Half Percent, be amended or added to read as follows:

Section 18-41.11. Collection Required; Vendor's Duty to Collect and Remit Tax.

- (a) The tax levied under this division shall be paid by the consumer or user to the vendor, and it shall be the duty of each and every vendor in this city to collect from the consumer or user the full amount of the tax levied by this chapter, or an amount equal as nearly as possible or practicable to the average equivalent thereof. **Every person required to collect**

any tax imposed by this chapter, and in the case of a corporation, each principal officer thereof, shall be personally liable for such tax.

- (b) Vendors shall add the tax imposed under this division, or the average equivalent thereof, to the sales price or charge, and when added such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to vendor until paid, and shall be recoverable at law in the same manner as other debts.
- (c) A vendor, as defined in this division who willfully or intentionally fails, neglects or refuses to collect the full amount of the tax levied in this division, or willfully or intentionally fails, neglects or refuses to comply with the provisions or remits or rebates to a consumer or user, either directly or indirectly and by whatsoever means, all or any part of the tax levied in this division, or makes in any form of advertising, verbally or otherwise, any statement which infers that he is absorbing the tax, or paying the tax for the consumer or user by an adjustment of prices or at a price including the tax, or in any manner whatsoever, shall be deemed guilty of an offense, and upon conviction thereof shall be fined an amount not to exceed the maximum allowed by law.
- (d) Any sum or sums collected or required to be collected in accordance with the provisions of this title shall be deemed to be held in trust for the city of Bartlesville, Oklahoma. Any person, firm, corporation, joint venture, or association that willfully or intentionally fails, neglects or refuses to remit the tax, after the tax levied by this ordinance was collected, shall be deemed guilty of an offense, and upon conviction thereof shall be fined an amount not to exceed the maximum allowed by law.
- (e) It shall be unlawful for any of the following vendors to engage in or transact a business of reselling tangible property or services within the City of Bartlesville, Oklahoma, unless a written sales tax permit has been issued to him. This subsection shall apply to:
 - (1) Any vendor who is regularly and continuously engaged in a business at an established place of business and makes sales subject to the Oklahoma sales tax code;
 - (2) Any vendor who is engaged in a business in the City of Bartlesville, Oklahoma and makes sales incidental to such business which are subject to the Oklahoma sales tax code;
 - (3) Any vendor who is a transient person, firm or corporation and makes seasonal sales, or in any manner becomes subject to the Oklahoma sales tax code; and
 - (4) Any vendor, either within or without this state, who make sales subject to the Oklahoma sales tax code, through peddlers, solicitors or other salespersons who do not have established places of business in the City of Bartlesville.

Any person who engages in a business subject to the provisions of this section without a permit or permits, or after a permit has been suspended, shall be guilty of an offense and, upon conviction thereof, shall be fined an amount not to exceed the maximum allowed by law.

Section 18-41.15. Delinquency Interest and Penalties.

The Oklahoma State law, Title 68 O.S. Section 217, is adopted and made a part of this chapter. The interest and penalties at the rates and in the amounts as therein specified are levied and shall be applicable in cases of delinquency in reporting and paying the tax levied by this division. The failure or refusal of any taxpayer to make and transmit the reports and remittances of tax in the time and manner required by this division shall cause such tax to be delinquent.

- (a) Any vendor reported to be delinquent by the Oklahoma Tax Commission shall be deemed delinquent by the City of Bartlesville and shall be subject to enforcement of payments as prescribed by the State of Oklahoma.

- (b) Any vendor deemed to be delinquent in tax payments shall be subject to a collection fee assessed by the enforcing agency as prescribed by the State of Oklahoma.
- (c) Any collection fee or fees assessed against a vendor shall be in addition to the delinquent taxes paid, as prescribed by the State of Oklahoma.
- (d) Any subsequent delinquency requiring collection action shall be subject to an assessment fee, as prescribed by the State of Oklahoma.
- (e) The City of Bartlesville may enforce the payments of any taxes reported by the Oklahoma Tax Commission to be more than sixty (60) days delinquent.
- (f) The City Clerk or his designee shall charge a fee to a delinquent vendor for the enforcement of delinquent taxes payments when such enforcement is conducted by City of Bartlesville officials or by a licensed collection agency contracted by the City of Bartlesville.
- (g) Any vendor reported to be delinquent in the payment of sales taxes for a period of sixty (60) days shall be given notice of delinquency by the City of Bartlesville and shall be notified of delinquency again if payments have not been reported within thirty (30) days of first notice.
- (h) The City of Bartlesville Business License held by any vendor who refuses to pay delinquent tax payments to the tax collector, the Oklahoma Tax Commission, for the benefit of the City of Bartlesville, shall be immediately revoked and remains revoked only to be reissued as follows:
 - (1) The vendor's place of business shall be posted as closed by the City Clerk or his designee and the posting shall contain the cause or reason of closing.
 - (2) The business license of that vendor shall remain revoked until notice from the Oklahoma Tax Commission is given to the City of Bartlesville that the delinquent taxes have been paid.
 - (3) Any fines, court cost, or collection fees assessed against the business shall be paid before the revoked business license can be reinstated.
 - (4) Any business closed for violations of this section or violations of any section of the City of Bartlesville Sales Tax Ordinances shall not be reestablished under any other name at any other location within the City of Bartlesville if the vendor or persons in ownership of the vendor's business remain in the ownership of the business unless and until all delinquent tax payments for the revoked business and the associated fines and fees have been paid in full to the State of Oklahoma and to the City of Bartlesville as required by State law or City ordinance.

Section 18-41.18. Violation and Fraudulent Returns

In addition to civil penalties provided in this division, it is unlawful for any person, or any officer, employee or agent of any of same, subject to the provisions of this division to fail to collect the tax or fail to file a report or return of same as provided by law, or fail to pay the taxes so collected, or to make any false or fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this division. The willful failure or refusal of any taxpayer to make reports or remittances herein required, or the making of any false or fraudulent report for the purpose of avoiding or escaping payments of any tax or portion thereof rightfully due under this chapter, shall be guilty of an offense and, upon conviction thereof, shall be subject to a fine in an amount not to exceed the maximum allowed by law.

Sec. 18-41.21. Amendments.

The City Council is hereby authorized by ordinances to make such administrative and technical changes or additions in the method and manner of administration and enforcement as may be

necessary or proper for efficiency and fairness, except that the rate of tax contained within existing sales tax Ordinances shall not be changed without approval of the qualified electors of the city as provided by law.

Sec. 18-41.23 Presentation, or Posting of Sales Tax Permit.

The following provisions shall apply to any vendor required by the State of Oklahoma to obtain a sales tax permit:

- (a) If the vendor maintains a location open to the public for the sale of items or services subject to sales tax, the vendor shall post the permit or a legible copy of a valid permit on the premises within plain sight of the public on the premises.
- (b) If sales are transacted from a mobile location, including but not limited to a vehicle, a trailer, a tent, or other place from which the vendor conducts business, the vendor shall post the sales permit, or a legible copy of a valid permit upon such mobile location within plain sight of the public.
- (c) For all other sales transacted within the City of Bartlesville, Oklahoma, a legible copy of a valid sales tax permit issued to the vendor shall be furnished each employee or contractor entitled to present invoices or collect monies from customers, to be presented upon request as part of the invoicing or collection process.
- (d) A valid copy of a vendors State of Oklahoma sales tax permit is to be presented upon request to City of Bartlesville officials at the time of vendor's application for a City of Bartlesville business license, if that business is required by the state of Oklahoma to have such permit.
- (e) A valid copy of a vendors State of Oklahoma sales tax permit is to be presented upon request to City of Bartlesville officials at the vendor's place of business, if that business is required by the State of Oklahoma to have such permit.

Any person who violates any of the provisions of this section shall be deemed guilty of an offense and, upon conviction thereof, and shall be fined an amount not to exceed the maximum allowed by law.

Sec. 18-41.24. Audits of Sales Records and of Sales Tax Payments.

Any vendor subject to violations hereof shall be subject to the following audits as allowed by State law:

- (a) Each sales transaction of the vendor shall be recorded and available for audit and shall contain the stated amount of the tax collected on each sales record, as prescribed by the State of Oklahoma.
- (b) The City Clerk or his designee or the clerk's appointed auditor may make request of records of sales transactions of the business conducted at the location of any business in the act of doing business while required tax payments are delinquent.
- (c) Upon the request of City's auditors, vendors shall produce records of each sales transaction made during the audit period.
- (d) Upon the request of City's auditors, vendors shall produce records of each sales tax payment paid to the Oklahoma Tax Commission.
- (e) City auditors will make available to the Oklahoma Tax Commission auditors all information found during the conducting of an audit of a delinquent vendor.
- (f) City auditors may be accompanied by the Oklahoma Tax Commission auditors at times of business investigations and delinquent vendor audits.

(g) City auditors shall assist in the investigating of a delinquent vendor and may provide information leading to the Oklahoma Tax Commission's arrest and conviction of a State of Oklahoma tax code violator.

SECTION 3: Emergency. It being immediately necessary for the preservation of the peace, health and safety of the City of Bartlesville and the inhabitants thereof, including the necessity of acquiring the sales taxes collected by vendors but not yet remitted to the tax collector, the provisions of this ordinance shall be put into force and effect immediately, an emergency is hereby declared to exist, by reason whereof this Ordinance shall take effect and be in full force from and after its passage, as provided by law.

PASSED AND APPROVED this 3rd day of May, 2010.

CITY OF BARTLESVILLE, OKLAHOMA



Ron Nikkel, Mayor

ATTEST: (Seal)


Mike Bailey, City Clerk

VOTE:

MR. MCGREW
DR. TULLOS
MR. GORMAN
VICE MAYOR HOLCOMB
MAYOR NIKKEL

<input checked="" type="radio"/> aye	no
<input checked="" type="radio"/> aye	no
<input checked="" type="radio"/> aye	no
<input checked="" type="radio"/> aye	no
<input checked="" type="radio"/> aye	no

APPROVED AS TO FORM AND LEGALITY


Jerry Maddux, City Attorney