

CHAPTER 711
Exhibition Center Parking Tax

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CROSS REFERENCES

Parking generally - see TRAF. Ch. 351

Admissions Tax - see BUS. REG. Ch. 707

Exhibition license - see BUS. REG. Ch. 718

Off-street parking and loading - see P. & Z. Ch. 1125

Department of Taxation - see TAX. Ch. 1729

711.01 DEFINITIONS.

As used in this chapter:

- (a) "City" means the City of Brook Park.

- (b) "Director" means the Director of Taxation or his or her authorized representative.

- (c) "Exhibition center" means a place where conventions, auto shows, manufacturing shows, recreational shows, flower shows, home and garden shows, home improvement shows or any other types of shows are conducted, including seminars.

- (d) "Month" means a calendar month.

- (e) "Motor vehicle" means any motor vehicle as defined in Ohio R.C. 4501.01(B).

- (f) "Operator" means an exhibition center operating a parking facility or receiving consideration for the housing, parking or storing of motor vehicles at a parking facility (including an exhibition center operating a parking facility under a management agreement or a lease, sub-lease or concession agreement).

- (g) "Tax" means the eight percent tax assessed on any amounts covered by this chapter.

- (h) "Transaction" means the act of housing, parking or storing a motor vehicle in or on a parking facility for a charge, fee or other consideration, for a specific event.

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711.02 IMPOSITION OF TAX; COLLECTION BY OPERATOR; PAYMENT;
ANNUAL RECONCILIATION; LIABILITY.

- (a) There is hereby levied and imposed upon every exhibition center in the City that charges a parking fee an eight percent tax. Such tax should be in the amount of eight percent of the charge, fee or other consideration for any transaction.
- (b) The tax herein imposed is in addition to any other taxes imposed by law on or relating to transactions or the income or gross receipts therefrom.
- (c) An operator shall be required to collect the tax at the time the charge, fee or other consideration for a transaction is collected and to pay it over to the Director, as provided in subsections (e) and (f) hereof.
- (d) The tax shall not apply to a parking facility with respect to which the United States government or a division or department thereof is an operator.
- (e) Except as otherwise provided herein, the operator shall remit the tax to the Director on a monthly basis, by the twentieth day of the month following the month in which the tax has been or should have been collected. A remittance return shall accompany each monthly payment. The format of such remittance return shall be prescribed by the Director and such return shall include:
- (1) The gross receipts that were collected from transactions during the calendar month;
 - (2) The total number of vehicles parked during the month;
 - (3) The amount of taxes dues; and
 - (4) Such other pertinent information as the Director deems necessary.
- The remittance returns shall be filed and signed by the operator under penalty as provided by this section.
- (f) An annual reconciliation is required of each operator and shall be due on or before January 31 of each year beginning in 1999. Any operator who fails to file an annual reconciliation shall be subject to all penalties set forth in Section 711.03. Said reconciliation shall be evidenced on a form or forms furnished by or obtainable upon request from the Director of Taxation.
- (g) An operator shall be personally liable to the extent of the tax, interest and penalty, and jointly and severally liable for the payment to the Director of the taxes, interest and penalty required to be collected, whether or not such taxes have in fact been collected.

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711.03 TAX NOT PAID; INTEREST; LATE FILING FEE; ABATEMENT.

- (a) Any tax not paid when due shall bear interest at the rate of two percent per month, or fraction thereof, until paid.
- (b) In addition to any interest charges, an operator who fails to make timely payment of taxes shall be subject to a late payment penalty, unless a late filing penalty is due as provided in subsection (c) hereof, equal to ten percent of the taxes not paid timely.

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- (c) In addition to any interest charges, an operator who fails to file a remittance return when due shall be subject to a late filing penalty fee equal to ten percent of the taxes reported, or that should have been reported, on the return that is not filed timely.
- (d) Any payment or return shall be considered paid or filed, respectively, on the date such payment or return is physically received by the Director.
- (e) All payments received shall first be applied to any penalty due, the interest due and finally the taxes due for the period for which payment is made.
- (f) The Director may abate all or any portion of the penalty imposed for late payment or late filing if the Director determines that such failure was due to reasonable cause and not willful neglect.

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711.04 RECORDKEEPING; BURDEN OF PROOF.

- (a) Every operator shall keep, separately, with respect to each parking facility operated by such operator, accurate and complete books and records of all shows and events. These records shall include a daily report showing, for each event:
 - (1) The number of cars housed, parked or stored on an hourly, daily, weekly or monthly basis in or on a parking facility for each event;
 - (2) The gross receipts from all transactions for each event; and
 - (3) The taxes due the City on all transactions.
- (b) All books, records and daily reports shall be retained by each operator for a period to be prescribed by the Director in rules and regulations.
- (c) Each operator shall afford the Director and his or her designated agents access to all such records and evidence at all reasonable times and shall provide verification or authentication of the same, as the Director may require. The Director and his or her agents are hereby authorized to examine the books, papers and records of any operator or suspected operator in order to verify the accuracy of any return made, or, if no return has been made, to determine the taxes due. Every operator is hereby required and directed to provide to the Director and his or her designated agents the means, facilities and opportunity to conduct any examinations or investigations as are hereby authorized.

(Ord. 8511-1998. Passed 12-15-98.)

711.05 AUTHORITY OF DIRECTOR OF TAXATION.

The Director of Taxation shall have the power to adopt rules and regulations not inconsistent with the terms of this chapter for carrying out and enforcing the payment, collection and remittance of the tax herein levied, copies of which rules and regulations shall be made available in the office of the Tax Director. Failure to comply with any such rules and regulations shall be deemed a violation of this chapter.

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711.06 CREDIT OR REFUND; CLAIM PROCEDURES.

(a) Whenever it appears that an amount of tax, interest or penalty has been paid to the Department of Taxation in error, whether such amount has been paid through a mistake of fact or an error of law, other than an error resulting from the tax, any of its provisions or its application being declared invalid or unconstitutional, not later than three years from the date upon which such payment was made, the person paying such tax (hereinafter referred to as the "claimant") may file a claim for credit or refund with the Department of Taxation on forms provided by the Director of Taxation for that purpose. No credit or refund shall be allowed for any amount paid by any claimant unless such claimant bore the burden of such amount and did not shift the burden to another person.

(b) Any credit or refund that is allowed under this section shall be without interest.

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711.07 SALE OR TRANSFER OF BUSINESS; NOTIFICATION PROCEDURES.

An operator who sells or transfers his or her business of operating one or more parking facilities in the City or a major part of the assets of such business, other than a sale of assets, including inventory, in the ordinary and usual course of such business, must file a notice of such intended sale or transfer with the Department of Taxation at least forty-five days prior to the date of such sale or transfer, setting forth the name of the seller or transferor, the name of the purchaser or transferee, a description of the property or business sold, the amount of the purchase or transfer price and such other information as the Director may reasonably request. Within thirty days after such sale or transfer, such seller shall file any remittance returns and pay any taxes due and not paid up to the date of the sale or transfer. At least forty-five days before the closing of the sale or transfer referred to above, the purchaser or transferee shall also file a notice of intended purchase or acquisition with the Department of Taxation, setting forth the same information as required in the seller's or transferor's notice and further requesting that the Department of Taxation perform an audit of the seller's or transferor's books and records or do whatever is necessary to determine the amount of taxes due up to the date of the sale or transfer.

The purchaser's or transferee's notice may be made in conjunction with the seller's or transferor's notice. If the purchaser or transferee fails to file the notice as required herein, the purchaser or transferee shall be personally liable to the Department of Taxation for the amount of taxes, interest and penalty owed by the seller or transferor to the

Department of Taxation up to the amount or fair market value of the consideration paid by the purchaser or transferee.

Upon the filing of a notice, the Department of Taxation shall notify both the seller (or transferor) and the purchaser (or transferee) of the amount to be withheld from the purchase or transfer price to cover all taxes, interest and penalties due under this chapter and unpaid up to the date of closing of the sale or transfer. The purchaser or transferee shall withhold this amount from the purchase or transfer price or, if payment of money or property is not involved, shall withhold the performance that constitutes consideration for the sale or transfer until the seller or transferor produces a receipt from the Department of Taxation showing that such taxes, interest and penalty have been paid or a certificate from the Department of

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Taxation showing that no taxes are due. The purchaser or transferee is relieved from any duty to withhold from the purchase or transfer price and shall have no liability for taxes, interest or penalty due hereunder from the seller or transferor if the Department of Taxation fails to notify the purchaser or transferee of such amount claimed due at least five days before the date of such sale or transfer. If the purchaser or transferee is notified by the Department of Taxation of the amount to be withheld from the purchase or transfer price and does withhold such amount, the purchaser's or transferee's liability for any taxes, interest or penalty hereunder shall be limited to the amount to be withheld as set forth in the notification from the Department of Taxation. If the purchaser or transferee fails to withhold from the purchase or transfer price the amount requested by the Department of Taxation, then the purchaser or transferee shall be liable for any taxes, interest or penalty due in excess of any amount withheld, but not exceeding the amount or fair market value of the consideration paid upon such transfer.

The purchaser or transferee shall pay over to the Department of Taxation any amount withheld hereunder upon notification of the refusal of the seller or transferor to pay any taxes, interest or penalty due hereunder and upon notification of the Department of Taxation's claim against the purchaser or transferee. Nothing in this section shall be construed to relieve the seller or transferor of his or her liability for taxes, interest and penalty, except that any payments received from the purchaser or transferee as provided herein shall reduce such liability payable to the Department of Taxation.

(Ord. 8511-1998. Passed 12-15-98.)

711.08 CERTIFICATE OF REGISTRATION.

(a) Any person conducting or operating any place for entrance to an exhibition center for which a parking charge is made shall, on a form prescribed by the Director of Taxation, make application to and procure from the Director a certificate of registration, which certificate shall continue valid until December 31 of the year in which the same is issued. Such certificate, without additional charge, shall be posted in a conspicuous place in each parking lot where parking fees are collected.

(b) Whenever any person fails to pay any tax as herein provided with respect to any parking facility, the Director may revoke the certificate granted pursuant to this section, applicable to such parking facility, upon seven days notice to the registree.

(Ord. 8511-1998. Passed 12-15-98.)

711.09 APPEALS.

Appeals from any ruling of the Director of Taxation under this chapter shall be made to the Board of Review pursuant to the provisions and procedures set forth in Section 1725.02 of these Codified Ordinances.

(Ord. 8511-1998. Passed 12-15-98.)

711.99 PENALTY.

Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the first degree, punishable under Chapter 501 of these Codified Ordinances.

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