

ST. CLAIR COUNTY COMMISSION

RESOLUTION NO. 2007-36

PURSUANT TO THE PROVISIONS OF THE LAWS OF THE STATE OF ALABAMA WHICH AUTHORIZE THE ST. CLAIR COUNTY COMMISSION TO LEVY THE TAXES HEREINAFTER DEFINED, THIS RESOLUTION LEVIES A PRIVILEGE, LICENSE, SALES, USE OR EXCISE TAX AGAINST PERSONS, FIRMS OR CORPORATIONS STORING, USING OR OTHERWISE CONSUMING OR ENGAGED IN THE BUSINESS OF SELLING AT RETAIL TANGIBLE PERSONAL PROPERTY OR CONDUCTING PLACES OF AMUSEMENT IN ST. CLAIR COUNTY, ALABAMA, EXCLUDING THE CORPORATE LIMITS OF THE CITY OF PELL CITY, ALABAMA; PROVIDES FOR THE COLLECTION OF SAID TAXES; AND PROVIDES PENALTIES FOR THE VIOLATION OF THIS RESOLUTION

WHEREAS, on or about May 25, 2004, the St. Clair County Commission approved Resolution No. 2004-39, which intended to levy a privilege, license, sales use or excise tax against persons, firms or corporations storing, using or otherwise consuming or engaged in the business of selling at retail tangible personal property or conducting places of amusement in St. Clair county, Alabama, excluding the corporate limits of the City of Pell City, Alabama (said resolution repealing the Resolution previously adopted by the St. Clair County Commission which became effective on the first day of January, 1987); and

WHEREAS, Resolution No. 2004-39 included in its title language covering the levying of a use or excise tax, it failed to include language in its body regarding the levy of a use tax; and

WHEREAS, the St. Clair County Commission wishes to correct said oversight; and

WHEREAS, pursuant to a Resolution of the St. Clair County Commission, which became effective January 1, 1987, St. Clair County, Alabama, currently imposes a one-cent sales tax on sales in St. Clair County, but outside the corporate limits of the City of Pell City, Alabama; and

WHEREAS, the net proceeds from the said tax, less the cost of collection thereof, have heretofore been used exclusively for public school purposes for all schools under the jurisdiction of the St. Clair County Board of Education; and

WHEREAS, since the original levy of said tax the City of Leeds Board of Education has been created; and

WHEREAS, the newly created City of Leeds Board of Education now educates some of the children who reside in the corporate limits of the City of Leeds, Alabama, and St. Clair County, who were formerly educated by schools under the jurisdiction of the St. Clair County Board of Education; and

WHEREAS, the City of Leeds Board of Education has requested that the St. Clair County

Commission allow it to share in the proceeds of the said tax based upon the ratio of the number of the children attending its schools who reside in St. Clair County as compared to the number of children who attend schools under the jurisdiction of the St. Clair County Board of Education plus the number of children who reside in St. Clair County and attend schools under the jurisdiction of the City of Leeds Board of Education; and

WHEREAS, the St. Clair County Commission has determined that it is fair and equitable to share the said tax revenue among all children that the tax was originally levied to benefit; and

WHEREAS, the St. Clair County Commission is of the opinion that the original tax levy, which became effective on the first day of January, 1987, is due to be repealed and replaced by the tax levied herein.

NOW, THEREFORE, pursuant to the provisions of the Constitution of the State of Alabama, and the applicable general and local laws enacted pursuant thereto, BE IT ORDAINED OR RESOLVED by the County Commission of St. Clair County, Alabama, as follows:

**Section 1. Definitions and Use of Phrases.**

The following words and phrases and others evidently intended as the equivalent thereof, shall, in the absence of clear implication herein otherwise, be given the following respective interpretations herein:

*"Commission"* means the St. Clair County Commission, or other governing body of the County that may succeed to the functions of St. Clair County, Alabama.

*"County"* means St. Clair County in the State of Alabama.

*"Person"* whether singular or plural, shall mean those persons, partnerships, firms, corporations or any other entity engaged in any business that makes them subject to the provisions of this ordinance or resolution.

*"This ordinance or resolution"* means this ordinance or resolution.

*"State Department of Revenue"* shall mean the Department of Revenue of the State of Alabama.

*"Storage"* shall mean any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased at retail.

*"Use"* shall mean the exercise of any right or power over tangible personal property incident to the ownership of that property, or by any transaction where possession is given, except that it shall not include the sale of that property in the regular course of business.

"Use or Excise Tax Statutes" shall mean § 40-23-60, et. seq, Code of Alabama, 1975, as heretofore amended and supplemented, all other statutes of the State of Alabama directly relating to such tax (including without limiting the generality of the foregoing, all statutes exempting the gross proceeds of various sales from the measure of such tax as said other statutes now exist).

The definitions set forth in the State Sales Tax Statutes shall be effective as definitions of the words, terms and phrases used in this ordinance or resolution. All words, terms and phrases used herein, other than those herein above specifically defined, shall have the respective meanings ascribed to them in the State Sales Tax Statutes, and shall have the same scope and effect that the same words, terms and phrases have where used in the State Sales Tax Statutes.

**Section 2. Levy of Privilege or License Tax in the County.**

A. There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities and in the amounts to be determined by the application of rates against gross sales, or gross receipts, as the case may be, as follows:

(1) Upon every person, firm or corporation engaged or continuing within the County, excluding the corporate limits of the City of Pell City, Alabama, in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character (not including, however, bonds or other evidences of debt or stocks, nor materials and supplies sold to any person for use in fulfilling a contract for the painting, repair or reconditioning of vessels, barges, ships and other water craft of over fifty tons burden); an amount equal to one percent (1%) of the gross proceeds of sales of the business except where a different amount is expressly provided herein; provided, that any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax measured by the gross proceeds of retail sales of such business at the rates specified when his books are kept so as to show separately the gross proceeds of sales of each business, and when his books are not so kept, he shall pay as a retailer the tax measured by the gross sales of the business.

(2) Upon every person, firm or corporation engaged or continuing within the County, excluding the corporate limits of the City of Pell City, Alabama, in the business of conducting or operating places of amusement or entertainment, billiard and pool rooms, bowling alleys, amusement devices, musical devices, theaters, opera houses, moving picture shows, vaudeville, amusement parks, athletic contests, including wrestling matches, prize fights, boxing and wrestling exhibitions, football and baseball games (including athletic contests conducted by or under the auspices of any educational institution within this state, or any athletic association thereof, or other association, whether such institution or association be a denominational, or a state, county or municipal institution or association, a state, county school, or other institution, association or school), skating rinks, race tracks, golf courses, or any other place at which any exhibition, display, amusement or entertainment is offered to the public, or place or places where an admission fee is charged, including public bathing places, public dance halls of every kind and description within the county, an amount equal to one percent

(1%) of the gross receipts of any such business.

(3) Upon every person, firm or corporation engaged or continuing within the County, excluding the corporate limits of the City of Pell City, Alabama, in the business of selling at retail machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property, an amount equal to one-half of one percent ( $\frac{1}{2}$  of 1%) of the gross proceeds of the sale of such machines; provided, that the term "machines" as herein used, shall include machinery which is used for mining, quarrying, compounding, processing or manufacturing tangible personal property, and the parts of such machines, attachments, and replacements thereof which are made or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used.

(4) Upon every person, firm or corporation engaged or continuing, within the County excluding the corporate limits of the City of Pell City, Alabama, in the business of selling at retail any automotive vehicle, truck trailer and semi-trailer, an amount equal to one half of one percent ( $\frac{1}{2}$  of 1%) of the gross proceeds of the sale of said automotive vehicle, truck trailer or semi-trailer; provided, that when any used automotive vehicle, truck trailer or semi-trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be computed on the net difference, that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade; and provided further, that when a taxpayer subject to the tax provided for in this subsection (d) withdraws from his stock in trade any automotive vehicle or truck trailer or semi-trailer for use by such taxpayer or by an employee or agent of such taxpayer in the operation of such business, the tax of such taxpayer hereunder shall be measured with respect to the item so withdrawn by him by the sum of Two and 50/100 Dollars (\$2.50) for each year, or part thereof, during which such automotive vehicle, truck trailer or semi-trailer so withdrawn shall remain the property of such taxpayer. Each such year, or part thereof, shall begin with the day of the anniversary date, as the case may be, of such withdrawal and shall run for the twelve (12) succeeding months, or part thereof, during which such automotive vehicle, truck trailer or semi-trailer so withdrawn shall remain the property of such taxpayer.

(5) Upon every person, firm or corporation engaged or continuing within the County, excluding the corporate limits of the City of Pell City, Alabama, in the business of selling at retail any machine, machinery or equipment, either that which is self-propelled or otherwise propelled or drawn, and which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock, or poultry on farms and replacements thereof which are made or manufactured for use on or in the operation of such machine, machinery, or equipment, and which are necessary to and customarily used in the operation of such machine, machinery, or equipment, an amount equal to one-half of one percent ( $\frac{1}{2}$  of 1%) of the gross proceeds of the sale thereof; provided, however, the rate prescribed in this subsection (e) with respect to parts, attachments, and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting or agricultural commodities;

provided, that where any used machine, machinery or equipment, either that which is self-propelled or otherwise propelled or drawn, and which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock, and poultry on farms is taken in trade or in a series of trades as a credit or part payment on a sale of a new or used machine, machinery or equipment, the measure of the tax levied herein shall be the net difference, that is, the price of the new or used machine, machinery or equipment sold less the credit for the used machine, machinery or equipment taken in trade.

(6) Upon every person, firm or corporation engaged or continuing within the County, excluding the corporate limits of the City of Pell City, Alabama, in the business of selling through coin-operated dispensing machines, food and food products for human consumption, not including beverages other than coffee, milk, milk products and substitutes therefor, there is hereby levied a tax equal to one percent (1%) of the cost of such food, food products and beverages sold through such machines, which cost for the purpose of this subsection shall be the gross proceeds of sales of such business.

**B. Levy of Use or Excise Tax in the County.**

There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, an use or excise tax against the person on account of the business activities and in the amounts to be determined by the application of rates against gross sales or gross receipts, as the case may be, as follows:

(1) An use or excise tax is hereby imposed on the storage, use or other consumption in the County, excluding the corporate limits of the City of Pell City, Alabama, of tangible personal property (not including materials and supplies brought for use in fulfilling a contract for the painting, repairing or reconditioning of vessels, barges, ships and other watercraft of more than fifty (50) tons' burden) purchased at retail on or after the effective date of this resolution or ordinance for storage, use or other consumption in the county, except as provided in subsections (2), (3) and (4), at the rate of one per cent (1.0%) of the sales price of such property.

(2) An use or excise tax is hereby imposed on the storage, use or other consumption in the County, excluding the corporate limits of the City of Pell City, Alabama, of any machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property purchased at retail on or after the effective date of this resolution or ordinance at the rate of one-half of one percent ( $\frac{1}{2}$  of 1%) of the sale price of any such machine, within the County, excluding the corporate limits of the City of Pell City, Alabama; provided that the term "machine" as herein used shall include machinery which is used for mining, quarrying, compounding, processing or manufacturing tangible personal property, and the parts of such machines, attachments and replacements therefor, which are made or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and customarily so used.

(3) An use or excise tax is hereby imposed on the storage, use or other consumption

in the County, excluding the corporate limits of the City of Pell City, Alabama, of any automotive vehicle or truck trailer, semitrailer or house trailer purchased at retail on or after the effective date of this resolution or ordinance for storage, use or other consumption in the County, excluding the corporate limits of the City of Pell City, Alabama, at the rate of one-half of one percent ( $\frac{1}{2}$  of 1%) of the sales price of such automobile vehicle, truck trailer, semitrailer or house trailer within the corporate limits of said city. Where any used automotive vehicle, truck trailer, semi trailer or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference, that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade.

(4) An use or excise tax is hereby levied and imposed on the storage, use or other consumption in the county, excluding the corporate limits of the City of Pell City, Alabama, of any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry on farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment, which is purchased at retail after the effective date of this resolution or ordinance, for the storage, use or other consumption in the County, excluding the corporate limits of the City of Pell City, Alabama, at the rate of one-half of one percent ( $\frac{1}{2}$  of 1%) of the sales price of such property, regardless whether the retailer is or is not engaged in the business in this County, excluding the corporate limits of the City of Pell City, Alabama. Provided, however, the one-half of one percent ( $\frac{1}{2}$  of 1%) rate herein prescribed with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities. When any used machine, machinery or equipment which is used in planting, cultivating and harvesting farm products used in connection with the production of agricultural produce or products, livestock and poultry on farms, is taken in trade or in a series of trades as credit or part payment on a sale of a new or used machine, machinery or equipment, the tax levied herein shall be paid on the net difference, that is, the price of the new or used machine, machinery or equipment sold, less the credit for the used machine, machinery or equipment taken in trade.

**Section 3. Provisions of Certain Statutes Applicable to This Ordinance and Taxes Herein Levied.**

This ordinance or resolution and the taxes herein levied shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, rules, regulations, provisions, penalties, fines, punishments and deductions that are applicable to the taxes levied by the State Sales Tax Statutes, the State Department of Revenue, and § 40-23-60, et. seq. Code of Alabama (1975) except where inapplicable or where herein otherwise provided.

**Section 4. Collection and Payment of Taxes Herein Levied.**

The taxes levied under the provisions of this ordinance or resolution shall be due and payable in monthly installments on or before the twentieth (20<sup>th</sup>) day of the month next succeeding the month in which the tax accrues. On or before the twentieth (20<sup>th</sup>) day of each month, every person on whom the taxes levied by this ordinance or resolution are imposed shall render a true and correct statement showing (a) the gross sales, the gross proceeds of sales, or gross receipts of his business, as the case may be, for the next proceeding month; (b) the amount of gross proceeds or gross receipts which are not subject to the said taxes, or are not to be used as a measurement of the taxes due by such person, and the nature thereof, and (c) such other information as may be required as herein provided; and at the time of making said monthly report such person shall compute the amount of the taxes due and shall pay the amount of taxes shown to be due. The taxes herein levied shall be paid to and collected by the Commission, or its duly authorized and designated agent. The taxes herein levied shall be paid by each taxpayer to the said Commission, or its duly authorized and designated agent. If any person subject to this ordinance or resolution should wilfully make a false return or false statement of facts in any statement or report required hereunder, he shall be guilty of a misdemeanor and upon conviction shall be punished as provided in Section 8 hereof.

**Section 5. Adding Amount of Tax to Price.**

Any person on whom taxes are levied by this ordinance or resolution are imposed shall add the tax herein levied to the sales price of the goods sold or to the admission price to a place of amusement and shall collect the amount so added from the purchaser, or person paying the admission price. It shall be unlawful for any person on whom the tax is levied by this ordinance or resolution or imposed to fail or refuse to add the tax herein levied to the said price; and it shall likewise be unlawful to refund or offer to refund all or any part of the amount collected, or to absorb or advertise directly or indirectly the absorption or refund of the amount required to be added to the sales or admission price and collected from the purchaser, or person paying the admission price, or any portion of such amount. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Fifty and No/100 Dollars (\$50.00) nor more than Five Hundred and No/100 Dollars (\$500.00), or may be imprisoned in the county jail for not more than six (6) months, or by both such fine and imprisonment, and each act in violation of the provisions of this article shall constitute a separate offense. The foregoing provisions of this section shall in no way relieve any person from payment of the tax levied by this ordinance or resolution, nor shall the inability, impracticability, refusal or failure to add to the sales price and collect from the purchaser the amount provided herein relieve such person, firm, corporation, association or co-partnership from the tax levied by this ordinance or resolution. All taxes paid in pursuance of this ordinance or resolution shall conclusively be presumed to be a direct tax on the retail consumer, precollected for the purpose of convenience and facility only.

**Section 6. Reporting of Credit Sales.**

Any person taxable under this ordinance or resolution having cash and credit sales may, if he desires, report such cash sales only, and he shall thereafter include in each monthly report

all credit collections made during the month proceeding and shall pay the taxes due thereon at the time of filing such report.

**Section 7. Records.**

It shall be the duty of every person engaging or continuing in any business for which a use, excise or privilege tax is imposed by this ordinance or resolution to keep and preserve suitable records of the gross sales, gross proceeds of sales and gross receipts of sales of such business and such other books or accounts as may be necessary to determine the amount of tax for which he is liable under the provisions of this ordinance or resolution, and it shall be the duty of every person to keep and preserve for a period of three (3) years all invoices of goods, wares and merchandise purchased for resale or otherwise, and all such books, invoices and other records shall be open for examination at any time by the County or its agents. Any person selling both at wholesale and retail shall keep his books as to show separately the gross proceeds of wholesale sales and the gross proceeds of retail sales. The books, records and accounts provided for in this section shall at all times be open to examination by the Commission or its duly authorized and designated agent.

**Section 8. Penalties for Violation Hereof.**

A. Any person who shall fail to keep the records provided for in Section 7 hereof, or who shall refuse to permit such examination thereof, shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25.00 nor more than \$500.00 for each offense, and each month in which such failure, refusal or violation shall occur shall constitute a separate offense. Any person failing to render any report required by Section 4 of this ordinance or resolution shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25.00 nor more than \$500.00 and each failure shall constitute a separate offense.

B. Any person who fails to pay, within the time provided in Section 4 hereof, any tax levied by this ordinance or resolution for which he is liable shall be deemed to be doing business without a license and shall pay, in addition to the tax, a penalty of ten percent (10%) of the amount of tax due (but in no instance less than \$5.00), together with interest thereon at the rate of one-half of one percent ( $\frac{1}{2}$  of 1%) per month from the date on which the tax became due until it is paid, the penalty and interest to be assessed and collected as a part of the tax; provided, that the County may for good and sufficient reason shown to waive it or remit the said ten percent (10%) penalty or any portion thereof.

**Section 9. Discount for Prompt Payment.**

A discount equal to two percent (2%) of each month installment of the said taxes shall be allowed to each taxpayer on the filing of the monthly report with respect to such installment in the form and at the time herein provided, upon payment of the amount of such monthly installment (minus said discount) at or prior to the time when such installment is required herein to be paid. If the report is not filed and payment is not made within the time herein provided with respect to any monthly installment of the tax herein levied, the taxpayer shall not be entitled to the said discount with respect to that monthly installment but shall pay the full amount of the

tax then due, together with the applicable penalty and interest provided in Section 8 hereof.

**Section 10. Use of Proceeds.**

A. All proceeds from the tax hereby levied, less the cost of collection thereof, shall be used exclusively for public school purposes for all schools under the jurisdiction of the St. Clair County Board of Education and the City of Leeds Board of Education and shall be assessed, collected and distributed by the St. Clair County Commission or its designated agents as follows:

- (1) St. Clair County shall deduct and retain five percent (5%) of the proceeds from the tax hereby levied as costs for administration and collection.
- (2) The City of Leeds Board of Education shall receive a fractional share of the net proceeds of the tax levied herein, the numerator of such fraction being the number of children who reside in St. Clair County and who attend schools under the jurisdiction of the City of Leeds Board of Education, and the denominator of such fraction being the total number of children who attend schools under the jurisdiction of the St. Clair County Board of Education plus those children who reside in St. Clair County and who attend schools under the jurisdiction of the City of Leeds Board of Education.
- (3) The balance of the tax levied herein shall be paid to the St. Clair County Board of Education.

B. The determination of the total number of students attending schools under the jurisdiction of the St. Clair County Board of Education for use in the foregoing fraction shall be established in January of each year and shall be the number of pupils in average daily membership during the first forty scholastic days of the preceding school year as defined by Code of Alabama § 16-13-231 (1975). Such number shall be certified to the St. Clair County Commission by the St. Clair County Board of Education.

C. The determination of the total number of students who reside in St. Clair County and attend schools under the jurisdiction of the City of Leeds Board of Education for use in the foregoing fraction shall be established in January of each year and shall be the average daily attendance of such pupils during the first forty scholastic days of the preceding school year as certified to the St. Clair County Commission by the City of Leeds Board of Education.

**Section 11. Severability.**

Each and every provision of this ordinance or resolution is hereby declared to be an independent provision, and the holding of any provision hereof to be void or invalid shall not affect any other provision thereof, it being hereby declared that the other provisions of this ordinance or resolution would have been enacted regardless of any provision which might have been held invalid.

**Section 12. Exemptions.**

The only exemption permitted under this ordinance or resolution are one and the same as permitted or allowed by the State Department of Revenue of the State of Alabama for the same or similar taxes imposed by the State of Alabama except on sale of house trailers as approved by the County Commission on September 9, 1986.

**Section 13. Repeal of Former Tax.**

The Resolution previously adopted by the St. Clair County Commission, which became effective on the first day of January, 1987, is hereby repealed as of the effective date of this Resolution.

**Section 14. Effective Date.**

This ordinance or resolution shall become effective as of June 12, 2007.

**DONE and RESOLVED** this the 12<sup>th</sup> day of June, 2007.

ST. CLAIR COUNTY, ALABAMA

  
Stanley D. Batemon, Chairman

Attest:

  
Kim McPherson, Administrator