

10/22/00

126-O-00

AN ORDINANCE

**RIGHTS AND RESPONSIBILITIES RELATED TO
LOCALLY IMPOSED AND ADMINISTERED TAXES OF
OF THE CITY OF EVANSTON, ILLINOIS**

WHEREAS, the State of Illinois pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et.seq.*, has determined it reasonable and necessary to create the Local Government Taxpayers' Bill of Rights Act; and

WHEREAS, the Local Government Taxpayers' Bill of Rights Act requires that a municipality adopt tax processes and procedures to provide all necessary due process rights to a taxpayer in the collection and enforcement of local tax laws; and

WHEREAS, the City of Evanston, Illinois has determined it reasonable and necessary to establish certain procedures in regard to locally imposed and administered taxes,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON IN THE EXERCISE OF ITS HOME RULE POWERS as follows:

SECTION ONE: Title. This ordinance shall be known as, and may be cited as, the "Locally Imposed and Administered Tax Rights and Responsibility Ordinance."

SECTION TWO: Scope. The provisions of this ordinance shall apply to the City procedures in connection with all of the City locally imposed and administered taxes.

SECTION THREE: Definitions. Certain words or terms herein shall have the meaning ascribed to them as follows:

"Act" means the "Local Government Taxpayers' Bill of Rights Act."

"Corporate Authorities" means the City's Mayor and City Council.

"Locally imposed and administered tax" or "tax" means each tax imposed by the City that is collected or administered by the City not an agency or department of the State. It does not include any taxes imposed upon real property under the Property Tax Code or fees collected by the City other than infrastructure maintenance fees.

"**Local tax administrator,**" the City's Finance Director, is charged with the administration and collection of the locally imposed and administered taxes, including staff, employees or agents to the extent they are authorized by the local tax administrator to act in the local tax administrator's stead. The local tax administrator shall have the authority to implement the terms of this ordinance to give full effect to this ordinance. The exercise of such authority by the local tax administrator shall not be inconsistent with this ordinance and the Act.

"**City**" means the City of Evanston, Illinois.

"**Notice**" means each audit notice, collection notice or other similar notice or communication in connection with each of the City's locally imposed and administered taxes.

"**Tax Ordinance**" means each ordinance adopted by the City that imposes any locally imposed and administered tax.

"**Taxpayer**" means any person required to pay any locally imposed and administered tax and generally includes the person upon whom the legal incidence of such tax is placed and with respect to consumer taxes includes the business or entity required to collect and pay the locally imposed and administered tax to the City.

SECTION FOUR: Notices. Unless otherwise provided, whenever notice is required to be given, the notice is to be in writing mailed (not less than 14 days) prior to the day fixed for any applicable hearing, audit or other scheduled act of the local tax administrator. The notice shall be sent by the local tax administrator as follows:

- (1) First class or express mail, or overnight mail, addressed to the persons concerned at the persons' last known address, or
- (2) Personal service or delivery.

SECTION FIVE: Late payment. Any notice, payment, remittance or other filing required to be made to the City pursuant to any tax ordinance shall be considered late unless it is (a) physically received by the City on or before the due date, or (b) received in an envelope or other container displaying a valid, readable U.S. Postmark dated on or before the due date, properly addressed to the City, with adequate postage prepaid.

SECTION SIX: Payment. Any payment or remittance received for a tax period shall be applied in the following order: (1) first to the tax due for the applicable period; (2) second to the interest due for the applicable period; and (3) third to the penalty for the applicable period.

SECTION SEVEN: Certain Credits and Refunds.

(a) The City shall not refund or credit any taxes voluntarily paid without written protest at the time of payment in the event that a locally imposed and administered tax is declared invalidly

enacted or unconstitutional by a court of competent jurisdiction. However, a taxpayer shall not be deemed to have paid the tax voluntarily if the taxpayer lacked knowledge of the facts upon which to protest the taxes at the time of payment or if the taxpayer paid the taxes under duress.

(b) The statute of limitations on a claim for credit or refund shall be four (4) or less years after the end of the calendar year in which payment in error was made. The City shall not grant a credit or refund of locally imposed and administered taxes, interest, or penalties to a person who has not paid the amounts directly to the City.

(c) The procedure for claiming a credit or refund of locally imposed and administered taxes, interest or penalties paid in error shall be as follows:

(A) The taxpayer shall submit to the local tax administrator in writing a claim for credit or refund together with a statement specifying:

- (i) the name of the locally imposed and administered tax subject to the claim;
- (ii) the tax period for the locally imposed and administered tax subject to the claim;
- (iii) the date of the tax payment subject to the claim and the cancelled check or receipt for the payment;
- (iv) the taxpayer's recalculation, accompanied by an amended or revised tax return, in connection with the claim; and

(v) a request for either a refund or a credit in connection with the claim to be applied to the amount of tax, interest and penalties overpaid, and, as applicable, related interest on the amount overpaid; provided, however, that there shall be no refund and only a credit given in the event the taxpayer owes any monies to the City.

(B) Within ten (10) days of the receipt by the local tax administrator of any claim for a refund or credit, the local tax administrator shall either:

- (i) grant the claim; or
- (ii) deny the claim, in whole or in part, together with a statement as to the reason for the denial or the partial grant and denial.

(C) In the event the local tax administrator grants, in whole or in part, a claim for refund or credit, the amount of the grant for refund or credit shall bear interest at the rate of 5% per annum, based on a year of 365 days and the number of days elapsed, from the date of the overpayment to the date of mailing of a refund check or the grant of a credit.

SECTION EIGHT: Audit Procedure. Any request for proposed audit pursuant to any local administered tax shall comply with the notice requirements of this ordinance.

(a) Each notice of audit shall contain the following information:

- (i) the tax;
- (ii) the time period of the audit; and

(iii) a brief description of the books and records to be made available for the auditor.

(b) Any audit shall be conducted during normal business hours and if the date and time selected by the local tax administrator is not agreeable to the taxpayer, another date and time may be requested by the taxpayer within thirty (30) days after the originally designated audit and during normal business hours.

(c) The taxpayer may request an extension of time to have an audit conducted. The audit shall be conducted not less than seven (7) days nor more than thirty (30) days from the date the notice is given, unless the taxpayer and the local tax administrator agreed to some other convenient time. In the event taxpayer is unable to comply with the audit on the date in question, the taxpayer may request another date within the thirty (30) days approved in writing, that is convenient to the taxpayer and the local tax administrator.

(d) Every taxpayer shall keep accurate books and records of the taxpayer's business or activities, including original source documents and books of entry denoting the transactions which had given rise or may have given rise to any tax liability, exemption or deduction. All books shall be kept in the English language and shall be subject to and available for inspection by the City.

(e) It is the duty and responsibility of every taxpayer to make available its books and records for inspection by the City. If the taxpayer or tax collector fails to provide the documents necessary for audit within the time provided, the local tax administrator may issue a tax determination and assessment based on the tax administrator's determination of the best estimate of the taxpayer's tax liability.

(f) If an audit determines there has been an overpayment of a locally imposed and administered tax as a result of the audit, written notice of the amount of overpayment shall be given to the taxpayer within thirty (30) days of the City's determination of the amount of overpayment.

(g) In the event a tax payment was submitted to the incorrect local governmental entity, the local tax administrator shall notify the local governmental entity imposing such tax.

SECTION NINE: Appeal.

(a) The local tax administrator shall send written notice to a taxpayer upon the local tax administrator's issuance of a protestable notice of tax due, a bill, a claim denial, or a notice of claim reduction regarding any tax. The notice shall include the following information:

- (i) the reason for the assessment;
- (ii) the amount of the tax liability proposed;
- (iii) the procedure for appealing the assessment; and
- (iv) the obligations of the City during the audit, appeal, refund and collection process.

(b) A taxpayer who receives written notice from the local tax administrator of a determination of tax due or assessment may file with the local tax administrator a written protest and petition for hearing, setting forth the basis of the taxpayer's request for a hearing. The written protest and petition for hearing must be filed with the local tax administrator within forty-five (45) days of receipt of the written notice of the tax determination and assessment.

(c) If a timely written notice and petition for hearing is filed, the local tax administrator shall fix the time and place for hearing and shall give written notice to the taxpayer. The hearing shall be scheduled for a date within fourteen (14) days of receipt of the written protest and petition for hearing, unless the taxpayer requests a later date convenient to all parties.

(d) If a written protest and petition for hearing is not filed within the forty-five (45) day period, the tax determination, audit or assessment shall become a final bill due and owing without further notice.

(e) Upon the showing of reasonable cause by the taxpayer and the full payment of the contested tax liability along with interest accrued as of the due date of the tax, the local tax administrator may reopen or extend the time for filing a written protest and petition for hearing. In no event shall the time for filing a written protest and petition for hearing be reopened or extended for more than ninety (90) days after the expiration of the forty-five day period.

SECTION TEN: Hearing.

(a) Whenever a taxpayer or a tax collector has filed a timely written protest and petition for hearing under section nine, above, the local tax administrator shall conduct a hearing regarding any appeal.

(b) No continuances shall be granted except in cases where a continuance is absolutely necessary to protect the rights of the taxpayer. Lack of preparation shall not be grounds for a continuance. Any continuance granted shall not exceed fourteen (14) days.

(c) At the hearing the local tax administrator shall preside and shall hear testimony and accept any evidence relevant to the tax determination, audit or assessment. The strict rules of evidence applicable to judicial proceedings shall not apply.

(d) At the conclusion of the hearing, the local tax administrator shall make a written determination on the basis of the evidence presented at the hearing. The taxpayer or tax collector

shall be provided with a copy of the written decision.

SECTION ELEVEN: Interest and Penalties. In the event a determination has been made that a tax is due and owing, through audit, assessment or other bill sent, the tax must be paid within the time frame otherwise indicated.

(a) **Interest.** The City hereby provides for the amount of interest to be assessed on a late payment, underpayment, or nonpayment of the tax, to be 5% per annum, based on a year of 365 days and the number of days elapsed.

(b) **Late Filing and Payment Penalties.** If a tax return is not filed within the time and manner provided by the controlling tax ordinance, a late filing penalty, of five percent (5%) the amount of tax required to be shown as due on a return shall be imposed; and a late payment penalty of five percent (5%) of the tax due shall be imposed. If no return is filed within the time or manner provided by the controlling tax ordinance and prior to the City issuing a notice of tax delinquency or notice of tax liability, then a failure to file penalty shall be assessed equal to twenty-five percent (25%) of the total tax due for the applicable reporting period for which the return was required to be filed. A late filing or payment penalty shall not apply if a failure to file penalty is imposed by the controlling ordinance.

SECTION TWELVE: Abatement. The local tax administrator shall have the authority to waive or abate any late filing penalty, late payment penalty or failure to file penalty if the local tax administrator shall determine reasonable cause exists for delay or failure to make a filing.

SECTION THIRTEEN: Installment Contracts. The City may enter into an installment contract with the taxpayer for the payment of taxes under the controlling tax ordinance. The local tax administrator may not cancel any installment contract so entered unless the taxpayer fails to pay any amount due and owing. Upon written notice by the local tax administrator that the payment is thirty (30) days delinquent, the taxpayer shall have fourteen (14) days to cure any delinquency. If the taxpayer fails to cure the delinquency within the fourteen (14) day period or fails to demonstrate good faith in restructuring the installment contract with the local administrator, the installment contract shall be canceled without further notice to the taxpayer.

SECTION FOURTEEN: Statute of Limitations. The City, through the local tax administrator, shall review all tax returns in a prompt and timely manner and inform taxpayers of any amounts due and owing. The taxpayer shall have forty-five (45) days after receiving notice of the reviewed tax returns to make any request for refund or provide any tax still due and owing.

(a) No determination of tax due and owing may be issued more than 4 years maximum after the end of the calendar year for which the return for the applicable period was filed or for the calendar year in which the return for the applicable period was due, whichever occurs later.

(b) If any tax return is not filed or if during any 4-year period for which a notice of tax determination or assessment may be issued by the City, the tax paid was less than 75% of the tax due, the statute of limitations shall be six (6) years maximum after the end of the calendar year in which return for the applicable period was due or end of the calendar year in which the return for

the applicable period was filed.

(c) No statute of limitations shall not apply if a fraudulent tax return was filed by the taxpayer.

SECTION FIFTEEN: Voluntary Disclosure. For any locally imposed and administered tax for which a taxpayer has not received a written notice of an audit, investigation, or assessment from the local tax administrator, a taxpayer is entitled to file an application with the local tax administrator for a voluntary disclosure of the tax due. A taxpayer filing a voluntary disclosure application must agree to pay the amount of tax due, along with interest of one percent (1%) per month, for all periods prior to the filing of the application but not more than four (4) years before the date of filing the application. A taxpayer filing a valid voluntary disclosure application may not be liable for any additional tax, interest, or penalty for any period before the date the application was filed. However, if the taxpayer incorrectly determined and underpaid the amount of tax due, the taxpayer is liable for the underpaid tax along with applicable interest on the underpaid tax, unless the underpayment was the result of fraud on the part of the taxpayer, in which case the application shall be deemed invalid and void. The payment of tax and interest must be made by no later than ninety (90) days after the filing of the voluntary disclosure application or the date agreed to by the local tax administrator. However, any additional amounts owed as a result of an underpayment of tax and interest previously paid under this Section must be paid within ninety (90) days after a final determination and the exhaustion of all appeals of the additional amount owed or the date agreed to by the local tax administrator, whichever is longer.

SECTION SIXTEEN: Publication of Tax Ordinances. Any locally administered tax ordinance shall be published via normal or standard publishing requirements. The posting of a tax ordinance on the Internet shall satisfy the publication requirements. Copies of all tax ordinances shall be made available to the public upon request at the City Clerk's office.

SECTION SEVENTEEN: The local tax administrator shall establish an internal review procedure regarding any liens filed against any taxpayers for unpaid taxes. Upon a determination by the local tax administrator that the lien is valid, the lien shall remain in full force and effect. If the lien is determined to be improper, the local tax administrator shall:

- (i) timely remove the lien at the City's expense;
- (ii) correct the taxpayer's credit record; and
- (iii) correct any public disclosure of the improperly imposed lien.

SECTION EIGHTEEN: Application: This ordinance shall be liberally construed and administered to supplement all of the City's tax ordinances. To the extent that any tax ordinance is in conflict with or inconsistent with this ordinance, this ordinance shall be controlling.

SECTION NINETEEN: Severability. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining

provisions of this ordinance.

SECTION TWENTY: Conflict. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION TWENTY-ONE: Effective Date. This ordinance shall be in full force and effect, after passage, approval and publication as required by law.

Introduced: November 27, 2000

Adopted: December 18, 2000

Approved: December 21, 2000

Lorraine A. Morton
Mayor

ATTEST:

Mary J. Morris
City Clerk

Ellen Lynn
Asst. Corporation Counsel