

## CHAPTER 113: OCCUPATION TAXES

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#### **GENERAL PROVISIONS**

##### **§ 113.01 PURPOSE; AMOUNTS.**

(A) For the purpose of raising revenue there is hereby levied an occupation tax upon the occupations and businesses carried on within the corporate limits of the city as specified in this section. Every person, firm, association, partnership or corporation carrying on the occupation or business shall pay to the City Clerk the sum specified as a tax upon the respective occupation or business. All money so

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collected shall be paid over by the Clerk to the General Fund of the city. The money shall be and remain under the control of the Mayor and the City Council for that use and purpose as other moneys belonging to the General Fund.

<i>Business</i>	<i>Tax</i>
<b>A</b>	
Accessories, sellers of, at retail or wholesale, from truck, automobile or other vehicle, per year	\$15
Auctioneers selling or offering for sale new goods, wares and merchandise, belonging to them or in their possession within sale rings, buildings or auction stores, within the corporate limits of this municipality per day; this tax shall not apply to auctioneers engaged exclusively in selling at auction of livestock, farm implements or household goods and effects of any resident family	\$25
<b>B</b>	
Bankrupt stock removed to this municipality and sold as such or any merchandise removed to this municipality from some other place and sold or offered for sale in this municipality under advertisement or announcement that the same is to be sold within a limited period of time or at reduced prices, and not as the regularly conducted permanent business in this municipality is carried on, per day	\$25
Billboard advertising and bill posting, thrust upon attention of public view from billboards located upon private property or elsewhere within the corporate limits of this municipality, by persons, firms, associations, partnerships or corporations for pay or hire, per board, per year	\$10
Billiard or pool hall or both for the first table, per year	\$25
For each additional table, per year	\$5
Bowling alley, for the first alley, per year	\$15
For each additional alley, per year	\$5
Bread, pastry or bakery products, sellers of, at retail, from truck, automobile or other vehicle, per year	\$50
Bread, pastry or bakery products, sellers of, at wholesale, from truck, automobile or other vehicle, per year	\$15
<b>C</b>	
Cable TV companies: gross revenues due and payable on March 1 of each year for the previous calendar year	5% of the annual gross revenues
Circus, concessions, carnival companies (the exact tax to be fixed in each instance by the Mayor and the City Council), per day	Not to exceed \$75
<b>D</b>	
Dairy products, beverages and any other food products, not otherwise specifically enumerated in this section, sellers of, at wholesale from truck, wagon, automobile or other vehicle, per year	\$15

## Occupation Taxes

<i>Business</i>	<i>Tax</i>
Dairy products, beverages and any other food products not otherwise specifically enumerated in this section, sellers of, at retail from truck, wagon, automobile or other vehicle, per year	\$50
Dry cleaners and laundries, their agents, solicitors or servants, whether the business or service is carried on by soliciting orders and taking garments, clothing or fabrics to be washed, cleaned or renovated within or without the corporate limits, or delivering or collecting the same, per year	\$25
<b>E</b>	
Express companies, on intrastate business to and from the municipality, per year	\$5
<b>F</b>	
Fireworks, sale of; local non-profit organization and retail vendors	\$100
Fish, meat and meat products, sellers of, at retail from cars or motor trucks, per car or truck, per day	\$3
<b>G</b>	
Gas, propane, skelgas and acetylene gas, dealers in, selling at wholesale or retail from storage tank, truck or tank wagon, except those having a regularly established principal place of business within the corporate limits of the municipality, per year	\$15
<b>H</b>	
Hawkers and peddlers, selling, taking orders for, delivering or collecting for any other commodity, not specifically enumerated in this section, at retail, on foot or from truck, wagon, automobile or vehicle, per day	\$3
<b>M</b>	
Magazine and newspaper salesmen, per day per each salesman	\$3
<b>N</b>	
Natural gas companies: gross revenues derived by the grantee from sales of natural gas delivered within the city limits	4% of annual gross revenues
<b>P</b>	
Palm readers and fortune tellers, per day	\$25
Petroleum products dealers in, selling or retail or wholesale from storage tank, truck or tank wagon, except those having a regularly established principal place of business within the corporate limits of the municipality, per year	\$25
Photographers and other agents, solicitors or servants other than those having a regularly established principal place of business within the corporate limits of the municipality, per year	\$25

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<i>Business</i>	<i>Tax</i>
<b>R</b>	
Retail liquor licensees, per year	
Class A	\$25
Class B	\$25
Class C	\$250
Class D	\$75
Class D1	\$150
Class H	\$60
Class I	\$200
Class J	\$75
Class K	\$125
Class L	\$250
Class W	\$250
Class X	\$500
Class Y	\$250
Roofers, repairing, recovering or weather proofing roofs, their agents or servants soliciting or taking orders for the same per year	\$25
<b>S</b>	
Sale of alcoholic beverages Alcoholic beverages as authorized by Neb. RS § 53-132(4), the occupation taxes for liquor license holders of the city will be an amount equal to the amount of the license fees established by the Nebraska Liquor Control Commission; for new licenses that are applied for and received on dates other than the renewal dates, the fees will be prorated on a quarterly basis as outlined by the Nebraska Liquor Control Commission	
Shuffle board operators for the first board, per year	\$25
Each additional board, per year	\$5
Skating rinks on portable platforms, per year	\$25

<i>Business</i>	<i>Tax</i>
T	
Telephone companies	
Gross revenues derived from mobile telecommunications services which shall mean a wireless communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes both one-way and two-way wireless communications services; a mobile service which provides regularly interacting group of base, mobile, portable and associated control and relay stations, whether on an individual, cooperative or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and any personal communications service	4% of annual gross revenues
Gross revenues derived from the providing of land-based to land-based interstate and intrastate calling services to and from and within the corporate limits of the city	4% of annual gross revenues
Trucks, truck lines and motor transportation companies, transporting freight for hire from any place within the municipality to other points or places within the state and from outside of the municipality and within the state to and within the corporate limits of the municipality, on each truck line or transportation company, per year	\$10

(B) It is hereby declared that the provisions of this section shall not extend to, nor affect individuals selling livestock, meat, meat products, milk, butter, eggs, vegetables, fruit, hay or grain raised or produced by the vendors or their employees.

(C) All scientific and literary lecturers and entertainment shall be exempt from the taxation as well as concerts and other entertainments given exclusively by the citizens of this municipality. (1999 Code, § 10-401) (Ord. 01-560, passed 2-6-2001; Ord. 02-609, passed 12-4-2002; Ord. 10-719, passed 12-7-2010)

**Statutory reference:**

*Authority, see Neb. RS 17-525*

**§ 113.02 INTERSTATE OR GOVERNMENT BUSINESS.**

The occupation tax provided for by this chapter is not levied upon any business or occupation which is interstate or which is done or conducted by any department of the government of the United States, the state or the city, or the officers of the government subdivisions, as such in the course of its or their official duties, or by any county or political subdivision of this state or its officers as such. (1999 Code, § 10-402)

**§ 113.03 PAYMENTS; REQUIREMENTS; NO REFUNDS.**

(A) On all occupations and businesses on which the occupation tax is levied at a yearly rate, the year for the tax shall be deemed to begin with May 1 of each year and shall end on the last day of April following; and the tax for that year shall be due and payable in advance on the first day of each and every

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year and thereafter shall be delinquent. On all occupations or businesses on which the tax is levied at a quarterly or daily rate, the tax shall be due and payable in advance before the business commences for the number of quarters or days, as the case may be, for which the occupation or business is to be carried on within the taxing year.

(B) It is hereby made the duty of each and every person, firm, association, partnership or corporation to pay the tax levied against him, her, them or it at the time the same becomes due.

(C) The occupation tax shall be paid in cash to the City Clerk or other person designated by the Mayor and the City Council who, upon the payment thereof by any person, persons, firm, partnership, association or corporation, shall issue a receipt therefor to the person, persons, partnership, firm, association or corporation paying the same, properly dated and specifying on behalf of whom and for what the tax is paid. The Clerk shall keep a proper account and record of the tax. The Clerk's receipt shall be the warrant and proper authority of any person to carry on and conduct the business specified in the receipt for which the tax has been paid, except that the receipt shall not be assignable.

(D) Every occupation tax levied at a daily or yearly rate or other rate must be paid in one payment in advance before the business is commenced, whether the license is issued at the beginning of the day, year or other term or any time thereafter. No license shall be issued for any certain time less than the day, year or other term or any time thereafter.

(E) No person paying an occupation tax shall be entitled to a refund of any part of the tax so paid.  
(1999 Code, § 10-403)

**§ 113.04 DUTY OF POLICE.**

It is hereby made the duty of the Chief of Police and all police officers and marshals of the municipality to promptly report all persons liable for payment of occupation tax to the City Clerk, and to assist the Clerk in the collection of the tax.  
(1999 Code, § 10-404)

***ENHANCED EMPLOYMENT ACT AREA; GENERAL RETAIL BUSINESS TAX*****§ 113.15 FINDINGS AND DETERMINATIONS.**

(A) Pursuant to Neb. RS Chapter 18, art. 21, as amended, the Community Development Agency of the city (the "CDA") has prepared and adopted the Redevelopment Plan for Friend Enhanced Employment Area Project which, in part, provides for the rehabilitation of the enhanced employment area by undertaking demolition, improvement and installation of infrastructure and other redevelopment activities (the "Redevelopment Project") in the redevelopment project area described in Exhibit A (attached to Ordinance 15-742 and incorporated herein by reference) and designates the area shown in

Exhibit A (attached to Ordinance 15-742) as an enhanced employment area as defined in Neb. RS 18-2103(22).

(B) Pursuant to Neb. RS 18-2142.02, the city is authorized to agree to and to levy and collect a general business occupation tax upon the businesses and users of space within the Enhanced Employment Act Area for the purpose of paying all or any part of the costs and expenses of the Enhanced Employment Act Project within the Enhanced Employment Act Area.

(C) It is necessary, desirable, advisable and in the best interests of the city that a general business occupation tax be imposed within the Enhanced Employment Act Area as provided by the Act for the purpose set forth in division (B) of this section.  
(Ord. 15-742, passed 7-7-2015)

**§ 113.16 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**GENERAL RETAIL BUSINESS.** Any business engaged in by any person or caused to be engaged in by such person in which products or services are sold, leased or rented for any purposes other than for resale, sublease or sub-rent in connection with convenience and/or visitor services, including without limitation; box store, convenience store, quick stop or truck stop with gas and food; hotel, motel, inn, bed and breakfast facilities offering rooms on a daily or weekly basis; camp grounds; fast food, with pay and food pickup at the counter, with walk up or drive up window and chain restaurants; fireworks stands; second-hand stores and car washes, except that general retail business shall not mean any transaction which is subject to tax under Neb. RS 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602 or 77-4008 or which is exempt from tax under Neb. RS 77-2704.24. The City Council has the final authority to determine whether a business qualifies as a general retail business.

**PERSON.** Any natural person, individual, partnership, association, organization or corporation of any kind or character engaging in the business of operating a general retail business.

**TAXPAYER.** Any person engaged in the business of operating a general retail business as defined in this subchapter who is required to pay the tax imposed.  
(Ord. 15-742, passed 7-7-2015)

**§ 113.17 AGREEMENT TO IMPOSE TAX.**

The city hereby agrees to impose an occupation tax upon every person operating a general retail business within the Enhanced Employment Act Area, and the Mayor and City Clerk are hereby authorized and directed to execute such documents and take such actions as are necessary to carry out this subchapter.  
(Ord. 15-742, passed 7-7-2015)

**§ 113.18 TAX IMPOSED; COLLECTION OF TAX.**

(A) On or after August 1, 2015, and in each calendar month thereafter, there is hereby imposed a retail business occupational tax upon each and every person operating a general retail business within the Enhanced Employment Act Area for any period of time during a calendar month. The amount of such tax shall be 1% of all general retail business transactions which the state is authorized to impose a tax as allowed by the Nebraska Local Option Revenue Act for each calendar month derived from the general retail business subject to this tax. Such tax shall be imposed on transactions which the state is authorized to impose a tax as allowed by the Nebraska Local Option Revenue Act resulting from the sales of products or services within the limits of the Enhanced Employment Act Area which are subject to the sales and use tax imposed by the state, except that no occupation tax shall be imposed on any transaction which is subject to tax under Neb. RS 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602 or 77-4008 or which is exempt from tax under Neb. RS 77-2704.24.

(B) The person engaged in operating a general retail business may itemize the tax levied on a bill, receipt, or other invoice to the purchaser, but each person engaged in such business shall remain liable for the tax imposed by this subchapter.

(Ord. 15-742, passed 7-7-2015)

**§ 113.19 BUSINESS CLASSIFICATIONS.**

Pursuant to Neb. RS 18-2142.02, the city hereby makes the following classifications of businesses, users of space or kinds of transactions for purposes of imposing the occupation tax:

(A) General retail business: means any activity engaged in by any person or caused to be engaged in by such person in which products or services are sold, leased or rented for any purpose other than for resale, sublease or sub-rent, except that general retail business shall not mean any transaction which is subject to tax under Neb. RS 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602 or 77-4008, as amended, or which is exempt from tax under Neb. RS 77-2704.24, as amended.

(B) Non-occupation tax retail: means users of space or kinds of transactions where an occupations tax cannot be imposed pursuant to Neb. RS 18-2142.02, which includes, but is not limited to manufacturers or wholesalers of alcoholic liquor; producers, suppliers, distributors, wholesalers or importers of motor fuel and/or gasoline; stamping agents engaged in distributing or selling cigarettes at wholesale; the first owner of tobacco products in the state; and the gross receipts from the sale, lease, or rental of and the storage use, or other consumption of food or food ingredients except for prepared food and food sold through vending machines.

(C) Other: businesses that are not either general retail or non-occupation tax retail.

(Ord. 15-742, passed 7-7-2015)

**§ 113.20 RETURN.**

Each and every person engaged in the operation of a general retail business within the Enhanced Employment Act Area for the calendar month beginning August 1, 2015, and for each and every month thereafter, shall prepare and file, on or before the 25th day of the following month thereafter on a form prescribed and furnished by the City Clerk, a return for such month, and at the same time pay to the city the tax imposed in this subchapter. The return shall be verified and sworn to by the officer in charge of the business. The return shall be considered filed on time if mailed in an envelope properly addressed to the City Clerk, postage prepaid and postmarked before midnight of the 25th day of the appropriate month.

(Ord. 15-742, passed 7-7-2015)

**§ 113.21 TAX CUMULATIVE.**

(A) The levy of the tax under this subchapter is in addition to all other fees, taxes, excises and licenses levied and imposed under any contract or any other ordinances of the city, in addition to any fee, tax, excise or license imposed by the state.

(B) Payment of the tax imposed by this subchapter shall not relieve the person paying the same from payment of any other tax now or hereafter imposed by contract or ordinance or by this subchapter, including those imposed for any business or occupation he or she may carry on, unless so provided therein. The occupational tax imposed by this subchapter shall be cumulative except where otherwise specifically provided.

(Ord. 15-742, passed 7-7-2015)

**§ 113.22 USE OF REVENUE.**

The 1% occupation tax imposed by this subchapter, less any administrative expenses, shall be used to fund any expenditures that the city is lawfully authorized to make in connection with the Enhanced Employment Act Project as permitted by the Act.

(Ord. 15-742, passed 7-7-2015)

**§ 113.23 FAILURE TO FILE RETURN; DELINQUENCY; ASSESSMENT BY CITY CLERK.**

(A) If any person neglects or refuses to file a return or make payment of the taxes as required by this subchapter, the City Clerk shall make an estimate, based upon such information as may be reasonably available, of the amount of taxes due for the period or periods for which the taxpayer is delinquent, and upon the basis of such estimated amount, compute and assess in addition thereto a penalty equal to 10% thereof, together with interest on such delinquent taxes, at the rate of 1%, per month, or fraction thereof from the date when due. Any such interest due may be compounded quarterly.

(B) The City Clerk shall give the delinquent taxpayer written notice of such estimated taxes, penalty, and interest, which notice must be served personally or by certified mail.

(C) Such estimate shall thereupon become an assessment and such assessment shall be final and due and payable from the taxpayer to the City Clerk ten days from the date of service of the notice or the date of mailing by certified mail; however, within such ten-day period, the delinquent taxpayer may petition the City Clerk for a revision or modification of such assessment and shall, within such ten-day period, furnish the City Clerk the facts and correct figures showing the correct amounts of such taxes.

(D) Such petition shall be in writing, and the facts and figures submitted shall be submitted in writing and shall be given under oath of the taxpayer.

(E) The City Clerk may then modify such assessment in accordance with the facts which he or she deems correct. Such adjusted assessment shall be made in writing, and notice thereof shall be mailed to the taxpayer within ten days; and all such decisions shall become final upon the expiration of 30 days from the date of service, unless proceedings are commenced within that time for appeal in the District Court.

(Ord. 15-742, passed 7-7-2015)

#### § 113.24 ADMINISTRATION; MISCELLANEOUS PROVISION.

(A) The administration of the provisions of this subchapter are hereby vested in the City Clerk, or his or her designee, who shall prescribe forms in conformity with this subchapter for the making of returns, for the ascertainment, assessment and collection of the tax imposed hereunder, and for the proper administration and enforcement hereof.

(B) All notices required to be given to the taxpayer under the provisions of this subchapter shall be in writing. Notices shall be mailed by registered or certified mail, postage prepaid, return receipt requested, to the taxpayer at his or her last known address.

(C) It shall be the duty of every taxpayer to keep and preserve suitable records and other books or accounts as may be necessary to determine the amount of tax for which he or she is liable hereunder.

(1) Records of the transactions which the state is authorized to impose a tax allowed by the Nebraska Local Option Revenue Act by which this tax is measured shall be kept separate and apart from the records of other sales or receipts in order to facilitate the examination of books and records as necessary for the collection of this tax.

(2) It shall be the duty of every taxpayer to keep and preserve for a period of four years all such books, invoices and other records, which shall be open for examination at any time by the City Clerk or his or her duly designated persons. If such person keeps or maintains his books, invoices, accounts or other records, or any thereof, outside of the state, upon demand of the City Clerk he or she shall make the same available at a suitable place within the city, to be designated by the City Clerk, for examination, inspection and audit by the City Clerk or his or her duly authorized persons. The taxpayer

shall reimburse the city for the reasonable costs of examination, inspection and audit if the City Clerk determines that the taxpayer paid ninety percent or less of the tax owing for the period of the examination.

(3) The City Clerk, in his or her discretion, may make, permit or cause to be made the examination, inspection or audit of books, invoices, accounts or other records so kept or maintained by such person outside of the state at the place where same are kept or maintained or at any place outside the state where the same may be made available, provided such person shall have entered into a binding agreement with the city to reimburse it for all costs and expenses incurred by it in order to have such examination, inspection or audit made in such place.

(D) For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any person, the City Clerk or his or her duly authorized persons, may conduct investigations concerning any matters covered by this subchapter; and may examine any relevant books, papers, records or memoranda of any such person.

(Ord. 15-742, passed 7-7-2015)

#### **§ 113.25 RECOVER OF UNPAID TAX BY ACTION AT LAW.**

(A) The City Clerk may also treat any such taxes, penalties or interest due and unpaid as a debt due the city.

(B) In case of failure to pay the taxes, or any portion thereof, or any penalty or interest thereon when due, the city may recover at law the amount of such taxes, penalties and interest in any court of Saline County or of the county wherein the taxpayer resides or has its principal place of business having jurisdiction of the amounts sought to be collected.

(C) The return of the taxpayer or the assessment made by the City Clerk, as herein provided, shall be prima facie proof of the amount due.

(D) The City Attorney may commence an action for the recovery of taxes due under this subchapter and this remedy shall be in addition to all other existing remedies, or remedies provided in this subchapter.

(Ord. 15-742, passed 7-7-2015)

#### **§ 113.26 SUSPENSION OR REVOCATION OF LICENSES FOR FAILURE TO PAY TAX; HEARING.**

If the Mayor or the Mayor's designee, after holding a hearing, shall find that any person has willfully evaded payment or collection and remittance of the tax imposed by this subchapter, such official may suspend or revoke any city license, permit or other approval held by such tax evader. Such person shall have an opportunity to be heard at such hearing to be held not less than seven days after notice is given of the time and place of the hearing to be held, addressed to the last known place of business of

such person. Pending the notice, hearing and finding, any licensee, permit or other approval issued by the city to the person may be temporarily suspended. No suspension or revocation hereunder shall release or discharge the person from civil liability for the payment or collection and remittance of the tax, nor from prosecution for such offense.

(Ord. 15-742, passed 7-7-2015)

#### § 113.27 SUNSET PROVISION.

The occupation tax imposed by this subchapter shall terminate and collection of the tax shall cease upon the payment in full of all indebtedness issued by the redevelopment authority of the city pursuant to the provisions of Neb. RS 18-2124, for which such occupation tax receipts have been pledged.

(Ord. 15-742, passed 7-7-2015)

#### § 113.99 PENALTY.

(A) Any person, or any person's agent or servant, who violates any of the provisions of §§ 113.01 through 113.04, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500. A new violation shall be deemed to have been committed every 24 hours of failure to comply with the provisions of this chapter.

(B) (1) Whenever a nuisance exists as defined in §§ 113.01 through 113.04, the municipality may proceed by a suit in equity to enjoin, abate and remove the same in the manner provided by law.

(2) Whenever, in any action, it is established that a nuisance exists, the Court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (1999 Code, § 10-501) (Ord. 00-20, passed 6-6-2000)