

# **PART 7 - FINANCE AND TAXATION**

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## **CHAPTER 1**

### **FINANCES GENERALLY**

#### **SECTION — DESCRIPTION**

- 7-101 Investments
  - 7-102 Depositories designated, deposit of funds
  - 7-103 Funds secured by unit collateral system
  - 7-104 Purchasing procedure
  - 7-105 When bidding not required
  - 7-106 Disposition of surplus, obsolete materials, bidding
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#### **SECTION 7-101. INVESTMENTS**

The Town Treasurer or any other person authorized to invest public monies shall invest the same in those investments authorized by the Town Board of Trustees or authorized by state law in a manner authorized by either or both such Board of Trustees and Statutes.

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#### **SECTION 7-102. DEPOSITORIES DESIGNATED, DEPOSIT OF FUNDS**

All banks and financial institutions as are designated by the Town Board of Trustees shall be designated as depositories for the funds of the town. The Town Treasurer shall deposit daily all public funds received by him in these banks. Funds may be transferred from one depository to another upon direction of the Treasurer.

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#### **SECTION 7-103. FUNDS SECURED BY UNIT COLLATERAL SYSTEM**

The deposits of the town shall be secured by the unit collateral system provided by state law. The provisions of the state law on the unit collateral system, Sections 516.1 through 516.10 of Title 62 of the Oklahoma Statutes, are hereby adopted insofar as they are applicable to the town.

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## **SECTION 7-104. PURCHASING PROCEDURE**

### **A. General Authority**

All purchases of supplies, materials, equipment, and contractual services for the City shall be made by the City Council or pursuant to authorizations granted by it. The City Council shall also approve all sales of surplus or obsolete supplies, materials, and equipment.

### **B. Duties of Purchasing Authority**

The City Council, through its designated purchasing authority, shall contract for and purchase all supplies, materials, and equipment for the offices, departments, and agencies of the City. The purchasing authority may transfer or sell surplus or obsolete supplies, materials, or equipment, subject to City Council approval.

### **C. Competitive Bidding Requirements**

Before entering into a contract, or making any purchase or sale involving more than Seven Thousand Five Hundred Dollars (\$7,500.00):

1. The contract or sale must be approved by the City Council.
2. Competitive bidding shall be required, unless otherwise exempted by this Chapter.
3. Written notice for sealed bids shall be issued by the purchasing authority.

### **D. Notice and Bid Procedures**

The required notice shall:

1. State the time and place for filing bids.
2. Contain an adequate description of items to be purchased or sold.
3. Specify the time and place bids will be opened.
4. State that all bids may be rejected.

All bids must be written, sealed, and filed with the City Clerk prior to opening. The City Council may reject all bids, re-advertise, or award to the lowest and best responsible bidder. Items may also be purchased through state central purchasing.

### **E. Sales of Surplus or Obsolete Property**

1. No sale may be made until the City Council declares the property surplus or obsolete.
2. The City Council shall advertise sales in a newspaper of general circulation or by other adequate means.
3. All bids shall be sealed and publicly opened at the designated time and place, except when the sale is by auction.
4. The City Council may reject bids or re-advertise. Sales shall be made to the highest responsible bidder, with ties decided by lot.

### **F. Contractual Services**

For the purposes of this section, “contractual services” shall mean services performed for the City by non-employees, which may include equipment use or furnishing of commodities. Such

services include, but are not limited to: travel, freight, postage, utilities, rents, printing, repairs, alterations, maintenance of buildings, equipment, streets, bridges, and other physical facilities.

### **G. Mayor's Purchasing Authority**

1. In emergencies, the Mayor may approve purchases not exceeding One Thousand Dollars (\$1,000.00) without prior approval.
2. The Mayor may approve routine purchases up to One Thousand Five Hundred Dollars (\$1,500.00).
3. Any purchase beyond these limits requires City Council approval.

### **H. Payment Procedure in Lieu of Purchase Orders**

At the direction of the City Mayor, a payment procedure may be used in place of purchase orders, whereby properly submitted and due claims and invoices are processed and paid as follows:

1. The Treasurer or designee shall accumulate all submitted claims/invoices.
2. Confirm funds are available.
3. Present claims/invoices to the Mayor for confirmation of validity.
4. Encumber designated funds.
5. Submit claims/invoices to the Mayor for approval.
6. Issue signed checks or other authorized payment.
7. Provide a list of claims/invoices paid to the City Council at the next meeting.

When implemented, this procedure shall also apply to public trusts where the City of Kiowa is the sole beneficiary.

*Amended April 28, 2022*

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## **SECTION 7-105. WHEN BIDDING NOT REQUIRED**

### **A. The following may be purchased without giving an opportunity for competitive bidding:**

1. Supplies, materials, equipment or contractual services where cost does not exceed Seven Thousand Five Hundred Dollars (\$7,500.00) in a single transaction;
2. Supplies, materials, equipment or contractual services which can be furnished only by a single dealer or a sole source vendor, or which have a uniform price wherever bought;
3. Supplies, materials, equipment or contractual services purchased from another unit of government at a price deemed below that obtainable from private dealers, including war surplus, or purchased at auction at a price deemed below that obtainable elsewhere;
4. Contractual services (gas, electricity, telephone service, and the like) purchased from a public utility at a price or rate determined by the State Corporation Commission or other government authority;

5. Supplies, materials, equipment or contractual services when purchased at a price not exceeding a price set therefor by the state purchasing agency or any other state agency authorized to regulate prices for things purchased by the state (whether such price is determined by a contract negotiated with a vendor or otherwise);
6. Contractual services of a professional nature, such as engineering, architectural, medical and legal services; or
7. When an emergency is declared to exist.

**B. Definition**

The term "contractual services," for the purpose of this chapter, means services performed for the town by persons not in the employment of the town, and may include the use of equipment or the furnishing of commodities in connection with such services under express or implied contract. Contractual services include travel; freight; express; parcel post; postage; telephone; telegraph; utilities; rents; repairs, alterations, and maintenance of buildings, equipment, streets, and bridges, and other physical facilities of the town; and other services performed for the town by persons not in the employment of the town.

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**SECTION 7-106. DISPOSITION OF SURPLUS, OBSOLETE MATERIALS, BIDDING**

**A.** No surplus or obsolete supplies, materials or equipment of a value of more than Seven Thousand Five Hundred Dollars (\$7,500.00) may be sold until the procedures outlined in this section have been followed.

**B. The town purchasing authority may sell the following without giving an opportunity for competitive bidding:**

1. Surplus or obsolete supplies, materials or equipment whose total value does not exceed Seven Thousand Five Hundred Dollars (\$7,500.00) in a single transaction; or
  2. Supplies, materials or equipment when sold at a price at least as great as that paid by the town for the same; or
  3. Where the Board of Trustees has authorized the sale of surplus property at public auction under such terms, conditions and notice as the Board of Trustees may prescribe or as the town purchasing authority deems appropriate.
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**CHAPTER 2**

**SALES TAX**

**SECTION — DESCRIPTION**

7-201 Citation of chapter

- 7-202 Definitions
  - 7-203 Classification of taxpayers
  - 7-204 Subsisting state permits
  - 7-205 Purpose of revenues; disposition of proceeds
  - 7-206 Tax rate; sales subject to tax
  - 7-207 Exemptions; sales subject to other tax
  - 7-208 Exemptions; governmental and nonprofit entities
  - 7-209 Exemptions; general
  - 7-210 Exemptions; agriculture
  - 7-211 Exemptions; manufacturers
  - 7-212 Exemptions; corporations and partnerships
  - 7-213 Tax due and payable
  - 7-214 Payment of tax; brackets
  - 7-215 Tax constitutes prior claim
  - 7-216 Vendor's duty to collect tax
  - 7-217 Returns and remittances; discounts
  - 7-218 Interest and penalties; delinquency; discount forfeiture
  - 7-219 Waiver of interest and penalties
  - 7-220 Erroneous payments; claim for refund
  - 7-221 Failure to file; fraudulent returns; penalties
  - 7-222 Tax records confidential
  - 7-223 Provisions cumulative
  - 7-224 Amendments to chapter
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## **SECTION 7-201. CITATION OF CHAPTER**

This chapter shall be known and may be cited as the Town of Kiowa Sales Tax Ordinance.

State Law Reference: State sales tax provisions, 68 O.S. Secs. 1350, et seq.; Town powers, procedures to levy, 68 O.S. Secs. 2701 et seq.

Editor's Note: Ord. No. 10-83 levied a third cent sales tax effective March 1, 1984.

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## **SECTION 7-202. DEFINITIONS**

A. The definitions of words, terms and phrases contained in the Oklahoma Sales Tax Code, 68 O.S. Section 1352, and Sections 596 and 793 of Title 37 of the Oklahoma Statutes, are hereby adopted by reference and made a part of this chapter.

B. The term "tax collector," as used herein, shall mean the department of the town or the official agency of the state duly designated according to law or contract authorized by law to administer the collection of the tax herein levied.

Editor's Note: Sections 596 and 793 of Title 37 define sales to include sales of ice or beverages for mixing with alcoholic beverages for consumption on premises.

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### **SECTION 7-203. CLASSIFICATION OF TAXPAYERS**

For the purpose of this chapter, the classification of taxpayers hereunder shall be as prescribed by state law for purposes of the Oklahoma Sales Tax Code.

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### **SECTION 7-204. SUBSISTING STATE PERMITS**

All valid and subsisting permits to do business issued by the Oklahoma Tax Commission pursuant to the Oklahoma Sales Tax Code are, for the purpose of this chapter, hereby ratified, confirmed and adopted in lieu of any requirement for an additional town permit for the same purpose.

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### **SECTION 7-205. PURPOSE OF REVENUES; DISPOSITION OF PROCEEDS**

It is hereby declared to be the purpose of the revenues generated by the sales taxes levied herein to provide revenues for the support of the functions of the municipal government of the town.

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### **SECTION 7-206. TAX RATE; SALES SUBJECT TO TAX**

There is hereby levied an excise tax of three percent (3%) upon the gross proceeds or gross receipts derived from all sales taxable under the Oklahoma Sales Tax Code including but not exclusive of the following:

1. Tangible personal property;
2. Natural or artificial gas, electricity, ice, steam, or any other utility or public service except water and those specifically exempt by this chapter;
3. Transportation for hire of persons by common carriers, including railroads, motor transportation companies, taxicab companies, and all other means of transportation for hire;
4. Service by telephone to subscribers or users, including transmission of messages, whether local or long distance. This shall include all services and rental charges having any connection with transmission of any message;
5. Printing or printed matter of all types, kinds, and characters and the service of printing or over-printing, including the copying of information or otherwise duplicating written or printed matter in any manner.

6. Service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house or tourist camps;
7. Service of furnishing storage or parking privileges by auto hotels and parking lots;
8. Selling, renting or otherwise furnishing computer hardware or software.
9. Food, confections and all drinks sold or dispensed by hotels, restaurants, or other dispensers, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere;
10. Advertising of all kinds, types and character, including any and all devices used for advertising purposes and the servicing of any advertising devices, except those specifically exempt by this chapter;
11. Dues or fees to clubs including free or complimentary dues or fees which shall have the value equivalent to the charge that would have otherwise been made, including any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business;
12. Sales of tickets, fees or other charges made for admission to or voluntary contributions made to places of amusement, sports entertainment, exhibition, display or other recreational events or activities, including free or complimentary admissions which shall have the value equivalent to the charge that would have otherwise been made;
13. Charges made for the privilege of entering or engaging in any kind of activity, when no admission is charged spectators, such as tennis, racket ball or hand ball courts;
14. Charges made for the privilege of using items for amusement, sports, entertainment or recreational activity such as trampolines or golf carts;
15. The rental of equipment for amusement, sports, entertainment or other recreational activities, such as bowling shoes, skates, golf carts, or other sports and athletic equipment;
16. The gross receipts from sales through any vending machine, without any deduction for rental to locate the vending machine on the premises of a person who is not the owner or any other deductions therefrom;
17. Gross receipts or gross proceeds from the rental or lease of tangible personal property, including rental or lease of personal property when the rental or lease agreement requires the vendor to launder, clean, repair or otherwise service the rented or leased property on a regular basis, without any deduction for the cost of the service rendered. Provided if the rental or lease charge is based on the retail value of the property at the time of making the rental or lease agreement and the expected life of the property, and the rental or lease charge is separately stated from the service cost in the statement, bill or invoice delivered to the consumer, the cost of services rendered shall be deducted from the gross receipts or gross proceeds;
18. Any licensing agreement, rental, lease or other device or instrument whereby rights to possess or exhibit motion pictures or filmed performances or rights to receive images, pictures or performances for telecast by any method are transferred. Provided, persons regularly engaged in the business of exhibiting motion pictures for which the sale of tickets or admissions is taxed under this chapter shall not be deemed to be consumers or users in respect to the licensing or exhibiting of copyrighted motion picture features, shorts, cartoons and scenes from copyrighted features and the sale or licensing of such films shall not be considered a sale within the purview of this chapter;

19. Flowers, plants, shrubs, trees and other floral items, whether or not same was produced by the vendor, sold by persons engaged in florist or nursery business in this state, including all orders taken by an Oklahoma business for delivery in another state. Provided, all orders taken outside this state for delivery within this state shall not be subject to the tax levied by this chapter;
  20. Tangible personal property sold to persons, peddlers, solicitors or other salesmen, for resale where there is likelihood that this state will lose tax revenue due to the difficulty of enforcing this chapter because of:
    - a. The operation of the business;
    - b. The nature of the business;
    - c. The turnover of independent contractors;
    - d. The lack of place of business in which to display a permit or keep records;
    - e. Lack of adequate records;
    - f. The persons are minors or transients;
    - g. The persons are engaged in service businesses; or
    - h. Any other reasonable reason;
  21. Any taxable services and tangible personal property including materials, supplies and equipment sold to contractors for the purpose of developing and improving real estate even though such real estate is intended for resale as real property are hereby declared to be sales to consumers or users and taxable; and
  22. Any taxable services and tangible personal property sold to persons who are primarily engaged in selling their services, such as repairmen, are hereby declared to be sales to consumers or users and taxable.
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## **SECTION 7-207. EXEMPTIONS; SALES SUBJECT TO OTHER TAX**

There is hereby specifically exempted from the tax levied by this chapter the gross receipts or gross proceeds exempted from the Oklahoma Sales Tax Code inclusive, but not exclusive of, and derived from the:

1. Sale of gasoline or motor fuel on which the motor fuel tax, gasoline excise tax or special fuels tax levied by state law has been paid;
2. Sale of motor vehicles or any optional equipment or accessories attached to motor vehicles on which the Oklahoma Motor Vehicle Excise Tax levied by state law has been paid;
3. Sale of crude petroleum or natural or casinghead gas and other products subject to gross production tax under state law. This exemption shall not apply when such products are sold to consumer or user for consumption or use, except when used for injection into the earth for the purpose of promoting or facilitating the production of oil or gas. This paragraph shall not operate to increase or repeal the gross production tax levied by the laws of this state; and
4. Sale of aircraft on which the tax levied pursuant to Sections 6001 through 6004 of Title 68 of the Oklahoma Statutes has been paid.

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## **SECTION 7-208. EXEMPTIONS; GOVERNMENTAL AND NONPROFIT ENTITIES**

There are hereby specifically exempted from the tax levied by this chapter:

1. Sale of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of the state; provided, all sales to contractors in connection with the performance of any contract with the United States Government, State of Oklahoma or any of its political subdivisions shall not be exempted from the tax levied by this chapter, except as hereinafter provided;
2. Sales of property to agents appointed or contracted with by agencies or instrumentalities of the United States Government if ownership and possession of such property transfers immediately to the United States Government;
3. Sales made directly by county, district or state fair authorities of this state, upon the premises of the fair authority, for the sole benefit of the fair authority;
4. Sale of food in cafeterias or lunch rooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils and are not operated primarily for the public or for profit;
5. Dues paid to fraternal, religious, civic, charitable or educational societies or organizations by regular members thereof, provided, such societies or organizations operate under what is commonly termed the lodge plan or system, and provided such societies or organizations do not operate for a profit which inures to the benefit of any individual member or members thereof to the exclusion of other members;
6. Sale of tangible personal property or services to or by churches, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business;
7. The amount of proceeds received from the sale of admission tickets which is separately stated on the ticket of admission for the repayment of money borrowed by any accredited state-supported college or university for the purpose of constructing or enlarging any facility to be used for the staging of an athletic event, a theatrical production, or any other form of entertainment, edification or cultural cultivation to which entry is gained with a paid admission ticket. Such facilities include, but are not limited to, athletic fields, athletic stadiums, field houses, amphitheaters and theaters. To be eligible for this sales tax exemption, the amount separately stated on the admission ticket shall be a surcharge which is imposed, collected and used for the sole purpose of servicing or aiding in the servicing of debt incurred by the college or university to effect the capital improvements hereinbefore described;
8. Sales of tangible personal property or services to the board of trustees organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A and the Campfire Girls shall be exempt from sales tax;
9. Sale of tangible personal property or services to any county, municipality, public school district, the institutions of the Oklahoma system of higher education and the Grand River Dam Authority, or to any person with whom any of the above named subdivisions or

agencies of this state has duly entered into a public contract pursuant to law, necessary for carrying out such public contract or to any subcontractor to such a public contract. Any person making purchases on behalf of such subdivision or agency of this state shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such subdivision or agency of this state and set out the name of such public subdivision or agency. Any person who wrongfully or erroneously certifies that purchases are for any of the above named subdivision or agencies of this state or who otherwise violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount equal to double the amount of the sales tax involved or incarcerated for not more than sixty (60) days or both;

10. Sales of tangible personal property or services to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, including materials, supplies, and equipment used in the construction and improvement of buildings and other structures owned by the institutions and operated for educational purposes. Any person, firm, agency or entity making purchases on behalf of any institution, agency or subdivision in this state, shall certify in writing, on the copy of the invoice of sales ticket the nature of the purchases, and violation of this act shall be a misdemeanor as set forth in Paragraph (9) of this section;
11. Tuition and educational fees paid to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of the Section 501(c)(3) of the Internal Revenue Code; and
12. Sales of tangible personal property made by public or private school for grade levels kindergarten through twelfth grade, a public school district, public school board, public school student group or organization or public school district personnel for purposes of raising funds for the benefit of such school, school district, school board, student group or organization. For purposes of this paragraph, "public or private school" shall mean any public or private institution of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs. Sale of tangible personal property in this paragraph shall not include sale of admission tickets or concessions at athletic events.

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## **SECTION 7-209 EXEMPTIONS; GENERAL**

There are hereby specifically exempted from the tax levied by this chapter:

- A. Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;

**B.** Transportation of persons where the fare of each person does not exceed One Dollar (\$1.00), or local transportation of persons within the corporate limits of a municipality except by taxicab;

**C.** Carrier sales of newspapers and periodicals made directly to consumers. Other sales of newspapers and periodicals where any individual transaction does not exceed Five Dollars (\$5.00). A carrier is a person who regularly delivers newspapers or periodicals to subscribers on an assigned route;

**D.** Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in this chapter. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salesmen who do not have an established place of business and a sales tax permit;

**E.** Sales of advertising space in newspapers and periodicals and billboard advertising service, and advertising through the electronic media, including radio, television and cable television;

**F.** Eggs, feed, supplies, machinery and equipment purchased by persons regularly engaged in the business of raising worms, fish, any insect or any other form of terrestrial or aquatic animal life and used for the purpose of raising same for marketing. This exemption shall only be granted and extended to the purchaser when the items are to be used and in fact are used in the raising of animal life as set out above. Each purchaser shall certify, in writing, on the invoice or sales ticket retained by the vendor that he is regularly engaged in the business of raising such animal life and that the items purchased will be used only in such business. The vendor shall certify to the Oklahoma Tax Commission that the price of the items has been reduced to grant the full benefit of the exemption. Violation hereof by the purchaser or vendor shall be a misdemeanor;

**G.** Sales of medicine or drugs prescribed for the treatment of human beings by a person licensed to prescribe the medicine or drugs. This exemption shall not apply to proprietary or patent medicines as defined by Section 353.1 of Title 59 of the Oklahoma Statutes;

**H.** Transfers of title or possession of empty, partially filled, or filled returnable oil drums to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty, partially filled, or filled returnable oil drums;

**I.** Sales of food or food products for home consumption which are purchased in whole or in part with coupons issued pursuant to the federal food stamp program as authorized by Sections 2011 through 2029 of Title 7 of the United States Code, as to that portion purchased with such coupons. The exemption provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the exemption as a condition for participation by the State of Oklahoma in the federal food stamp program; and

**J.** Nothing herein shall be construed as limiting or prohibiting the town from levying and collecting taxes on the sale of natural or artificial gas and electricity whether sold for residential or commercial purposes. Any sales tax levied by the town on natural or artificial gas and electricity shall be in effect regardless of ordinance or contractual provisions referring to previously imposed state sales tax on such items.

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## **SECTION 7-210 EXEMPTIONS; AGRICULTURE**

There are hereby specifically exempted from the tax levied by this chapter:

**A.** Sales of agricultural products produced in this state by the producer thereof directly to the consumer or user when such articles are sold at or from a farm and not from some other place of business, as follows:

- Farm, orchard or garden products;
- Dairy products sold by a dairyman or farmer who owns all the cows from which the dairy products offered for sale are produced;
- Livestock sold by the producer at a special livestock sale; and

The provisions of this paragraph shall not be construed as exempting sales by florists, nurserymen or chicken hatcheries, or sales of dairy products by any other business except as set out herein;

**B.** Livestock, including cattle, horses, mules, or other domestic or draft animals, sold by the producer by private treaty or at a special livestock sale;

**C.** Sale of baby chicks, turkey poults and starter pullets used in the commercial production of chickens, turkeys and eggs, provided that the purchaser certifies, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the pullets will be used primarily for egg production;

**D.** Sale of salt, grains, tankage, oyster shells, mineral supplements, limestone and other generally recognized animal feeds for the following purposes and subject to the following limitations:

- Feed which is fed to poultry and livestock, including breeding stock and wool-bearing stock, for the purpose of producing eggs, poultry, milk or meat for human consumption;
- Feed purchased in Oklahoma for the purpose of being fed to and which is fed by the purchaser to horses, mules or other domestic or draft animals used directly in the producing and marketing of agricultural products;
- Any stock tonics, water purifying products, stock sprays, disinfectants or other such agricultural supplies;
- Poultry shall not be construed to include any fowl other than domestic fowl kept and raised for the market or production of eggs;

- Livestock shall not be construed to include any pet animals such as dogs, cats, birds or such other fur-bearing animals; and
- This exemption shall only be granted and extended where the purchaser of feed that is to be used and in fact is used for a purpose that would bring about an exemption hereunder executes an invoice or sales ticket in duplicate on a form to be prescribed by the Tax Commission. The purchaser may demand and receive a copy of the invoice or sales ticket and the vendor shall retain a copy;

E. Sales of items to be and in fact used in the production of agricultural products. Sale of the following items shall be subject to the following limitations:

1. Sales of agricultural fertilizer to any person regularly engaged, for profit, in the business of farming or ranching. Each such purchaser shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor, that he is so engaged in farming or ranching and that the material purchased will be used only in such business;
2. Sales of agricultural fertilizer to any person engaged in the business of applying such materials on a contract or custom basis to land owned or leased and operated by persons regularly engaged, for profit, in the business of farming or ranching. Each such purchaser shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that he is engaged in the business of applying such materials to lands owned or leased and operated by persons regularly engaged, for profit, in the business of farming or ranching, and shall show in the certificate the name or names of such owner or lessee and operator, the location of the lands on which the materials are to be applied to each such land, and he shall further certify that his contract price has been reduced so as to give the farmer or rancher the full benefit of this exemption;
3. Sales of agricultural fertilizer, pharmaceuticals and biologicals to persons engaged in the business of applying such materials on a contract or custom basis shall not be considered to be sales to contractors under this chapter, and the sales shall not be considered to be taxable sales within the meaning of the Oklahoma Sales Tax Code. As used in this section, "agricultural fertilizer," "pharmaceuticals" and "biologicals" mean any substance sold and used for soil enrichment or soil corrective purposes or for promoting the growth and productivity of plants or animals;
4. Sales of agricultural seed or plants to any person regularly engaged, for profit, in the business of farming or ranching. This section shall not be construed as exempting from sales tax seed which is packaged and sold for use in noncommercial flower and vegetable gardens;
5. Sales of agricultural chemical pesticides to any person regularly engaged, for profit, in the business of farming or ranching. For the purposes of this act, agricultural chemical pesticides shall include any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insect, snail, slug, rodent, bird, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in living man, or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; and
6. This exemption shall only be granted and extended to the purchaser where the items are to be used and in fact are used in the production of agricultural products. Each purchaser

shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the material purchased will only be used in his farming occupation. The vendor shall certify to the Oklahoma Tax Commission that the contract price of the items has been reduced to grant the full benefit of the exemption. Violation hereof by the purchaser or vendor shall be a misdemeanor, and, upon violation and conviction for a second offense, the Oklahoma Tax Commission shall revoke the vendor's sales tax permit;

**F.** Sale of farm machinery, repair parts thereto or fuel, oil, lubricants and other substances used for operation and maintenance of the farm machinery to be used directly on a farm or ranch in the production, cultivation, planting, sowing, harvesting, processing, spraying, preservation or irrigation of any livestock, poultry, agricultural or dairy products produced from such lands. Each purchaser of farm machinery, repair parts thereto or fuel must certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor, that he is engaged in farming or ranching and that the farm machinery, repair parts thereto or fuel will be used only in farming or ranching. The exemption provided for herein shall not apply to motor vehicles. Each purchaser shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the material purchased will only be used in his farming occupation. The vendor shall certify to the Oklahoma Tax Commission that the price of the items has been reduced to grant the full benefit of the exemption. Violation hereof by the purchaser or vendor shall be a misdemeanor, and, upon violation and conviction for a second offense, the Oklahoma Tax Commission shall revoke the vendor's sales tax permit.

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## **SECTION 7-211 EXEMPTIONS; MANUFACTURERS**

There are hereby specifically exempted from the tax levied by this chapter:

**A.** Goods, wares, merchandise and property purchased for the purpose of being used or consumed in the process of manufacturing, compounding, processing, assembling or preparing for sale a finished article and such goods, wares, merchandise or property become integral parts of the manufactured, compounded, processed, assembled or prepared products or are consumed in the process of manufacturing, compounding, processing, assembling or preparing products for resale. The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

**B.** Ethyl alcohol when sold and used for the purpose of blending same with motor fuel on which motor fuel tax is levied by state law;

**C.** Sale of machinery and equipment purchased and used by persons establishing new manufacturing plants in Oklahoma, and machinery and equipment purchased and used by persons in the operation of manufacturing plants already established in Oklahoma. This exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property subject to taxation under this chapter. The

term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

**D.** Sales of containers when sold to a person regularly engaged in the business of reselling empty or filled containers or when purchased for the purpose of packaging raw products of farm, garden or orchard for resale to the consumer or processor. This exemption shall not apply to the sale of any containers used more than once and which are ordinarily known as returnable containers, except returnable soft drink bottles. Each and every transfer of title or possession of such returnable containers in this state to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty or filled containers shall be taxable under this code. And, this exemption shall not apply to the sale of labels or other materials delivered along with items sold but which are not necessary or absolutely essential to the sale of the sold merchandise;

**E.** Sale of tangible personal property manufactured in Oklahoma when sold by the manufacturer to a person who transports it to another state for immediate and exclusive use in some other state; or

**F.** Machinery, equipment, fuels and chemicals incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume or harmful properties of controlled industrial waste at treatment facilities specifically permitted pursuant to the Controlled Industrial Waste Disposal Act and operated at the place of waste generation, or facilities approved by the State Department of Health for the cleanup of a site of contamination. The term "controlled industrial waste" may include low-level radioactive waste for the purpose of this subsection.

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## **SECTION 7-212 EXEMPTIONS; CORPORATIONS AND PARTNERSHIPS**

There are hereby specifically exempted from the tax levied in this chapter:

**A.** The transfer of tangible personal property, as follows:

1. From one corporation to another corporation pursuant to a reorganization. As used in this subparagraph the term "reorganization" means a statutory merger or consolidation or the acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or a part of the voting stock of the acquiring corporation, or of its parent or subsidiary corporation;
2. In connection with the winding up, dissolution or liquidation of a corporation only when there is a distribution in kind to the shareholders of the property of such corporation;
3. To a corporation for the purpose of organization of such corporation where the former owners of the property transferred are immediately after the transfer in control of the corporation, and the stock or securities received by each is substantially in proportion to his interest in the property prior to the transfer;
4. To a partnership in the organization of such partnership if the former owners of the property transferred are immediately after the transfer, members of such partnership and

the interest in the partnership received by each is substantially in proportion to his interest in the property prior to the transfer; or

5. From a partnership to the members thereof when made in kind in the dissolution of such partnership; and

**B.** Sale of an interest in tangible personal property to a partner or other person who after such sale owns a joint interest in such tangible personal property where the state sales or use tax has previously been paid on such tangible personal property.

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## **SECTION 7-213 TAX DUE AND PAYABLE**

The tax levied under this chapter shall be due and payable at the time and in the manner and form prescribed for payment of the state sales tax under the sales tax law of the state.

## **SECTION 7-214 PAYMENT OF TAX; BRACKETS**

**A.** The tax herein levied shall be paid to the tax collector at the time and in the form and manner provided for payment of state sales tax under the sales tax law of the state.

**B.** The bracket system for the collection of the town sales tax by the tax collector shall be as the same is hereafter adopted by the agreement of the town and the tax collector, in the collection of both the town sales tax and the state sales tax.

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## **SECTION 7-215 TAX CONSTITUTES PRIOR CLAIM**

Taxes, penalty and interest due hereunder shall at all times constitute a prior, superior and paramount claim as against the claims of unsecured creditors and may be collected by suit as any other debt.

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## **SECTION 7-216 VENDOR'S DUTY TO COLLECT TAXES**

**A.** The tax levied hereunder shall be paid by the consumer or user to the vendor; and each and every vendor shall collect from the consumer or user the full amount of the tax levied, or an amount equal as nearly as possible or practicable to the average equivalent thereof.

**B.** Vendors shall add the tax imposed hereunder, 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 the vendor until paid, and shall be recoverable at law in the same manner as other debts.

C. No vendor shall willfully or intentionally fail, neglect or refuse to collect the full amount of the tax levied; or willfully or intentionally fail, neglect or refuse to comply with the provisions of this chapter; or remit or rebate to a consumer or user, either directly or indirectly, and by whatsoever means, all or any part of the tax herein levied; or make 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.

*State Law Reference: Vendor's duty to collect tax, 68 O.S. § 1310.*

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## **SECTION 7-217 RETURNS AND REMITTANCES; DISCOUNTS**

Returns and remittances of the tax herein levied and collected shall be made to the tax collector at the time and in the manner, form and amount as prescribed for returns and remittances required by the state sales tax code; and remittances of tax collected hereunder shall be subject to the same discount as may be allowed by the code for collection of state sales taxes.

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## **SECTION 7-218 INTEREST AND PENALTIES; DELINQUENCY; DISCOUNT FORFEITURE**

A. Section 217 of Title 68 of the Oklahoma Statutes is adopted and made a part of this chapter.

B. Interest and penalties at the rates and in amounts specified in the state statute cited in Subsection A herein are hereby levied and shall be applicable in cases of delinquency in reporting and paying the tax levied by this chapter.

C. 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 chapter shall cause such tax to be delinquent.

D. If such delinquency continues for a period of five (5) days, the taxpayer shall forfeit his claim to any discount allowed under this chapter.

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## **SECTION 7-219 WAIVER OF INTEREST AND PENALTIES**

A. The interest or penalty or any portion thereof accruing by reason of a taxpayer's failure to pay the town tax herein levied may be waived or remitted in the same manner as provided for the waiver or remittance as applied in administration of the state sales tax provided in Section 220 of Title 68 of the Oklahoma Statutes.

**B.** To accomplish the purposes of this section, the applicable provisions of Section 220 of Title 68 of the Oklahoma Statutes are adopted by reference and made a part of this chapter.

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### **SECTION 7-220 ERRONEOUS PAYMENTS; CLAIM FOR REFUND**

**A.** Refund of erroneous payment of the town sales tax herein levied may be made to any taxpayer making such erroneous payment in the same manner and procedure, and under the same limitations of time, as provided for administration of the state sales tax as set forth in Section 227 of Title 68 of the Oklahoma Statutes.

**B.** To accomplish the purposes of this section, the applicable provisions of Section 227 of Title 68 of the Oklahoma Statutes are adopted by reference and made a part of this chapter.

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### **SECTION 7-221 FAILURE TO FILE; FRAUDULENT RETURNS; PENALTIES**

**A.** No person shall:

1. Intentionally fail or refuse to make tax reports and remittances as required under this chapter; or
2. Intentionally make false and fraudulent tax reports for the purpose of avoiding or escaping payment of any tax or portion thereof due under this chapter.

**B.** Any person required to collect and remit sales tax pursuant to the state sales tax code or the town code, and engaging in any of the callings, trades, avocations, professions, businesses or occupations for which a license is required by the town, and applying for such license, must submit proof as a condition precedent to issuing such license of a valid sales tax permit number issued by the State of Oklahoma.

**C.** Any license issued by the town to any person engaging in any of the callings, trades, avocations, businesses, professions or occupations for which a license is required by the town code may be suspended or revoked for failure to maintain a lawful sales tax license or collect and remit sales tax if and as required by the state sales tax code or the town code.

**D.** In addition to all civil penalties provided by this chapter, any violation of this section shall subject the offending taxpayer to the penalty set forth in Section 1-108 of this code. Each day of such violation shall be considered a separate offense and charged separately.

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### **SECTION 7-222 TAX RECORDS CONFIDENTIAL**

The confidential and privileged nature of the records and files concerning the administration of the town sales tax is legislatively recognized and declared; and to protect the same the provisions of Section 205 of Title 68 of the Oklahoma Statutes of the state sales tax code, and all subsections thereof, are hereby adopted by reference and made fully effective and applicable to administration of the town sales tax as if here set forth in full.

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### **SECTION 7-223 PROVISIONS CUMULATIVE**

The provisions of this chapter shall be cumulative and in addition to any and all other taxing provisions of town ordinances.

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### **SECTION 7-224 AMENDMENTS TO CHAPTER**

The board of trustees, by ordinance duly enacted, is authorized to make such administrative and technical changes or additions in the method and manner of administration and enforcing this chapter as may be necessary or proper for efficiency and fairness, except that the rate of the tax herein provided shall not be changed without approval of the qualified electors of the town as provided by law.

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## **CHAPTER 3**

### **TELEPHONE EXCHANGE FEE**

#### **SECTION — DESCRIPTION**

- 7-301 Inspection fee and service charge
  - 7-302 Charge in lieu of other license tax
- 

### **SECTION 7-301 INSPECTION FEE AND SERVICE CHARGE**

**A.** There is hereby levied an annual inspection fee and service charge upon each and every person operating a telephone exchange in the town to compensate the town for the expenses incurred and services rendered incident to the exercise of its police power, supervision, police regulation and police control of the construction of lines and equipment of the telephone company in the town.

**B.** The amount of the inspection fee and service charge shall be an amount equal to two percent (2%) of the gross revenues for each current year for exchange telephone transmission service rendered wholly within the limits of the town.

**C.** The inspection fee and charge shall be due and payable to the town on or before the first day of May of each year and shall be paid into and appropriated and expended from the general revenue fund of the town. Payment shall be accompanied by a report showing the gross sales by service classification (residential, commercial, and industrial).

*State Law Reference: Town powers to levy tax on utilities, 68 O.S. § 2601 et seq.*

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## **SECTION 7-302 CHARGE IN LIEU OF OTHER LICENSE TAX**

During continued substantial compliance with the terms of this chapter by the owner of any telephone exchange, the charge levied by this chapter shall be and continue to be in lieu of all concessions, charges, excise, franchise, license, privilege, and permit fees or taxes or assessments except ad valorem taxes. This section is not intended to extinguish or abrogate any existing arrangement whereby the town is permitted to use the underground conduit, duct space or pole contracts of the company for the fire alarm and police call systems of the town, or either of them.

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# **CHAPTER 4**

## **UTILITY FEE**

### **SECTION DESCRIPTION**

- 7-401 Utility fee levied
  - 7-402 Fee to be in lieu of franchise
  - 7-403 Tax payable
  - 7-404 Tax constitutes lien
  - 7-405 Ouster for failure to pay
- 

### **SECTION 7-401 UTILITY FEE LEVIED**

There is hereby levied and assessed an annual tax of two percent (2%) upon the gross receipts from residential and commercial sales of electricity in the town, which tax shall be in lieu of any

other franchise, license, occupation or excise tax levied by the town, all as provided by Sections 2601 et seq. of Title 68 of the Oklahoma Statutes.

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### **SECTION 7-402 FEE TO BE IN LIEU OF FRANCHISE**

The tax levied under this chapter shall, when levied, apply to all persons, firms, associations or corporations engaged in the business of furnishing electricity within the corporate limits of the town, except it shall not apply to any person, firm, association or corporation operating under a valid franchise from the town.

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### **SECTION 7-403 TAX PAYABLE**

The tax levied under this chapter shall remain in effect until repealed and shall be payable annually. The tax shall be placed in the general revenue fund of the town. Amounts not paid when due shall bear interest at the rate of ten percent (10%) per annum until paid.

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### **SECTION 7-404 TAX CONSTITUTES LIEN**

The tax so imposed in this chapter shall constitute a first and prior lien on all the assets located within the town of any person, firm or corporation engaged in the business of selling electricity within the town limits of the town.

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### **SECTION 7-405 OUSTER FOR FAILURE TO PAY**

Any person, firm or corporation failing or refusing to pay such tax when levied shall be regarded as a trespasser and may be ousted from the town. In addition thereto, an action may be maintained against such person, firm or corporation for the amount of the tax, and all expenses of collecting same, including reasonable attorney's fees.

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## **CHAPTER 5**

### **USE TAX**

#### **SECTION DESCRIPTION**

7-501	Citation and codification
7-502	Definitions
7-503	Excise tax on storage, use or other consumption of tangible personal property levied
7-504	Purpose of revenues
7-505	Exemptions
7-506	Time when due, returns, payment
7-507	Tax constitutes debt
7-508	Collection of tax by retailer or vendor
7-509	Collection of tax by retailer or vendor not maintaining a place of business within state or both within and without state, permits
7-510	Revoking permits
7-511	Remunerative deductions allowed vendors or retailers of other states
7-512	Interest and penalties, delinquency
7-513	Waiver of interest and penalties
7-514	Erroneous payments, claim for refund
7-515	Fraudulent returns
7-516	Records confidential
7-517	Classification of taxpayers
7-518	Subsisting state permits
7-519	Provisions cumulative

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## **SECTION 7-501 CITATION AND CODIFICATION**

This chapter shall be known and may be cited as "Town of Kiowa Use Tax."

*Ed. Note: Ord. 3-91 levied a 3% use tax effective April 25, 1991.*

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## **SECTION 7-502 DEFINITIONS**

The definitions of words, terms and phrases contained in the Oklahoma Use Tax Code, Section 1401 of Title 68 of the Oklahoma Statutes, are hereby adopted by reference and made a part of this chapter. In addition thereto, the following words and terms shall be defined as follows:

- **"Tax collector"** means the department of the town government or the official agency of the state, duly designated according to law or contract authorized by law, to administer the collection of the tax herein levied; and
  - **"Transaction"** means sale.
- 

## **SECTION 7-503 EXCISE TAX ON STORAGE, USE OR OTHER CONSUMPTION OF TANGIBLE PERSONAL PROPERTY LEVIED**

There is hereby levied and there shall be paid by every person storing, using or otherwise consuming within the town tangible personal property purchased or brought into this town, an excise tax on the storage, use or other consuming within the town of such property at the rate of three percent (3%) of the purchase price of such property.

Such tax shall be paid by every person storing, using or otherwise consuming, within the town, tangible personal property purchased or brought into the town. The additional tax levied hereunder shall be paid at the time of importation or storage of the property within the town and shall be assessed to only property purchased outside Oklahoma; provided, that the tax levied herein shall not be levied against tangible personal property intended solely for use outside the town, but which is stored in the town pending shipment outside the town or which is temporarily retained in the town for the purpose of fabrication, repair, testing, alteration, maintenance or other service.

Any person liable for payment of the tax authorized herein may deduct from such tax any local or municipal sales tax previously paid on such goods or services; provided, that the amount deducted shall not exceed the amount that would have been due if the taxes imposed by the town had been levied on the sale of such goods or services.

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## **SECTION 7-504 PURPOSE OF REVENUES**

It is hereby declared to be the purpose of this chapter to provide revenues for the support of the functions of the municipal government of the town, and any and all revenues derived hereunder may be expended by the governing body of the town for any purpose for which funds may be lawfully expended as authorized.

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## **SECTION 7-505 EXEMPTIONS**

The provisions of this chapter shall not apply:

1. In respect to the use of an article of tangible personal property brought into the town by a nonresident individual visiting in this town for his or her personal use or enjoyment while within the town;
2. In respect to the use of tangible personal property purchased for resale before being used;
3. In respect to the use of any article of tangible personal property on which a tax, equal to or in excess of that levied by both the Oklahoma Use Tax Code and the Town of Kiowa Use Tax, has been paid by the person using such tangible personal property in the town, whether such tax was levied under the laws of Oklahoma or some other state or municipality of the United States. If any article of tangible personal property has already been subjected to a tax by Oklahoma or any other state or municipality in respect to its sale or use, in an amount less than the tax imposed by both the Oklahoma Use Tax Code and Town of Kiowa Use Tax, the provisions of this chapter shall also apply to it by a rate

measured by the difference only between the rate provided by both the Oklahoma Use Tax Code and the Town of Kiowa Use Tax, and the rate by which the previous tax upon the sale or use was computed. Provided, that no credit shall be given for taxes paid in another state or municipality, if that state or municipality does not grant like credit for taxes paid in Oklahoma and the town;

4. In respect to the use of machinery and equipment purchased and used by persons establishing new manufacturing or processing plants in the town, and machinery and equipment purchased and used by persons in the operation of manufacturing plants already established in the town. Provided, this exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property subject to taxation under the sales tax code of the town. The term "manufacturing plants" means those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;
5. In respect to the use of tangible personal property now specifically exempted from taxation under the sales tax code of the town;
6. In respect to the use of any article of tangible personal property brought into the town by an individual with intent to become a resident of this town where such personal property is for such individual's personal use or enjoyment;
7. In respect to the use of any article of tangible personal property used or to be used by commercial airlines or railroads; or
8. In respect to livestock purchased outside Oklahoma and brought into this town for feeding or breeding purposes, and which is later resold.

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## **SECTION 7-506 TIME WHEN DUE, RETURNS, PAYMENT**

The tax levied by this chapter is due and payable at the time and in the manner and form prescribed for payment of the State Use Tax under the Use Tax Code of the State of Oklahoma.

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## **SECTION 7-507 TAX CONSTITUTES DEBT**

Such taxes, penalty and interest due hereunder shall at all times constitute a prior, superior and paramount claim as against the claims of unsecured creditors, and may be collected by suit as any other debt.

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## **SECTION 7-508 COLLECTION OF TAX BY RETAILER OR VENDOR**

Every retailer or vendor maintaining places of business both within and without the state, and making sales of tangible personal property from a place of business outside this state for use in this town shall at the time of making such sales collect the use tax levied by this chapter from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the

Tax Commission, if the Tax Commission shall, by regulation, require such receipt. Each retailer or vendor shall list with the Tax Commission the name and address of all his agents operating in this town and location of any and all distribution or sales houses or offices or other places of business in the town.

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### **SECTION 7-509 COLLECTION OF TAX BY RETAILER OR VENDOR NOT MAINTAINING A PLACE OF BUSINESS WITHIN STATE OR BOTH WITHIN AND WITHOUT STATE, PERMITS**

The Tax Commission may, in its discretion, upon application, authorize the collection of the tax herein levied by any retailer or vendor not maintaining a place of business within this state but who makes sales of tangible personal property for use in this town and by the out-of-state place of business of any retailer or vendor maintaining places of business both within and without this state and making sales of tangible personal property from such out-of-state place of business for use in this town.

Such retailer or vendor may be issued, without charge, a permit to collect such taxes by the Tax Commission in such manner and subject to such regulations and agreements as it shall prescribe. When so authorized, it shall be the duty of such retailer or vendor to collect the tax upon all tangible personal property sold to his knowledge for use within this town. Such authority and permit may be canceled when at any time the Tax Commission considers that such tax can more effectively be collected from the person using such property in this town.

Provided, however, that in all instances where such sales are made or completed by delivery to the purchaser within this town by the retailer or vendor in such retailer's or vendor's vehicle, whether owned or leased (not by common carrier), such sales or transactions shall continue to be subject to applicable town sales tax at the point of delivery and the tax shall be collected and reported under taxpayer's sales tax permit number accordingly.

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### **SECTION 7-510 REVOKING PERMITS**

Whenever any retailer or vendor not maintaining a place of business in this state, or both within and without this state, and authorized to collect the tax herein levied, fails to comply with any of the provisions of this chapter or the Oklahoma Use Tax Code or any orders, rules or regulations of the Tax Commission, the Tax Commission may, upon notice and hearing as provided for in Section 1408 of Title 68 of the Oklahoma Statutes, by order revoke the use tax permit, if any, issued to such retailer or vendor.

If any such retailer or vendor is a corporation authorized to do business in this state, the Tax Commission may, after notice and hearing above provided, cancel the corporation's license to do business in this state and shall issue a new license only when such corporation has complied with

the obligations under this chapter, the Oklahoma Use Tax Code, or any orders, rules or regulations of the Tax Commission.

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### **SECTION 7-511 REMUNERATIVE DEDUCTIONS ALLOWED VENDORS OR RETAILERS OF OTHER STATES**

Returns and remittances of the tax herein levied and collected shall be made to the Tax Commission at the time and in the manner, form and amount as prescribed for returns and remittances required by the Oklahoma Use Tax Code; and remittances of tax collected hereunder shall be subject to the same discount as may be allowed by the code for the collection of state use taxes.

### **SECTION 7-512 INTEREST AND PENALTIES, DELINQUENCY**

Section 217 of Title 68 of the Oklahoma Statutes is hereby adopted and made a part of this chapter, and interest and penalties at the rates and in the amounts as herein specified are hereby levied and shall be applicable in cases of delinquency in reporting and paying the tax levied by this chapter. Provided, that the failure or refusal of any retailer or vendor to make and transmit the reports and remittances of tax in the time and manner required by this chapter shall cause such tax to be delinquent. In addition, if such delinquency continues for a period of five (5) days, the retailer or vendor shall forfeit his claim to any discount allowed under this chapter.

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### **SECTION 7-513 WAIVER OF INTEREST AND PENALTIES**

The interest or penalty or any portion thereof accruing by reason of a retailer's or vendor's failure to pay the town tax herein levied may be waived or remitted in the same manner as provided for the waiver or remittance as applied in administration of the State Use Tax provided in Section 227 of Title 68 of the Oklahoma Statutes, and to accomplish the purposes of this section the applicable provisions of Section 220 are hereby adopted by reference and made a part of this chapter.

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### **SECTION 7-514 ERRONEOUS PAYMENTS, CLAIM FOR REFUND**

Refund of erroneous payment of the town use tax herein levied may be made to any taxpayer making such erroneous payment in the same manner and procedure, and under the same limitations of time, as provided for administration of the State Use Tax as set forth in Section 227 of Title 68 of the Oklahoma Statutes, and to accomplish the purpose of this section, the applicable provisions of Section 227 are hereby adopted by reference and made a part of this chapter.

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## **SECTION 7-515 FRAUDULENT RETURNS**

In addition to all civil penalties provided by this chapter, the willful failure or refusal of any taxpayer to make reports and remittances herein required, or the making of any false and fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this chapter shall be an offense, and upon conviction thereof the offending taxpayer shall be punished as provided in Section 1-108 of this code. Each day of noncompliance with this chapter shall constitute a separate offense.

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## **SECTION 7-516 RECORDS CONFIDENTIAL**

The confidential and privileged nature of the records and files concerning the administration of the town use tax is legislatively recognized and declared, and to protect the same the provisions of Section 205 of Title 68 of the Oklahoma Statutes, of the State Use Tax Code, and each subsection thereof, is hereby adopted by reference and made fully effective and applicable to administration of the town use tax as is herein set forth in full.

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## **SECTION 7-517 CLASSIFICATION OF TAXPAYERS**

For the purpose of this chapter, the classification of taxpayers hereunder shall be as prescribed by state law for purposes of the Oklahoma Use Tax Code.

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## **SECTION 7-518 SUBSISTING STATE PERMITS**

All valid and subsisting permits to do business issued by the Tax Commission pursuant to the Oklahoma Use Tax Code are for the purpose of this chapter hereby ratified, confirmed and adopted in lieu of any requirement for an additional town permit for the same purpose.

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## **SECTION 7-519 PROVISIONS CUMULATIVE**

The provisions hereof shall be cumulative, and in addition to any and all other taxing provisions of the town ordinances.

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# CHAPTER 6

## HOTEL/MOTEL TAX

### SECTION DESCRIPTION

7-601	Citation and Codification
7-602	Effective Date
7-603	Definitions
7-604	Impositions of Tax; Exemptions
7-605	Records to be Kept
7-606	Returns
7-607	Payment of Tax
7-608	Assessment and Determination of Tax
7-609	Refunds
7-610	Notices
7-611	Remedies Exclusive
7-612	Proceedings to Recover Tax
7-613	General Powers of the Tax Collector
7-614	Administration of Oaths and Compelling Testimony
7-615	Discount; Delinquent Taxes
7-616	Interest and Penalties
7-617	Confidential Records
7-618	Amendments
7-619	Provisions Cumulative
7-620	Purpose of Revenues
7-621	Special Fund for Hotel/Motel Tax Deposits

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### SECTION 7-601 CITATION AND CODIFICATION

This Ordinance shall be known and cited as the City of Kiowa Hotel Tax Ordinance and shall be codified in the Ordinances of the City of Kiowa.

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### SECTION 7-602 EFFECTIVE DATE

This Ordinance shall become effective 1-1-2009, subject to approval of a majority of the registered voters of the City of Kiowa, Oklahoma, voting on the same in the manner prescribed by law.

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## **SECTION 7-603 DEFINITIONS**

Unless a different meaning clearly appears from the context, for the purposes of this chapter, the following words and phrases shall have the meanings given herein:

- A.** Person shall mean an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a Court or otherwise, or any combination of the above acting as a unit.
- B.** Operator shall mean any person operating a hotel in this City, included, but not limited to, the owner, proprietor, lessee, sublessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel.
- C.** Occupant shall mean a person who, for a consideration, uses, possesses or has the right to the use or possession of any room or rooms in a hotel under any lease, concession, permit, right of access, license to use, or other agreement, or otherwise.
- D.** Occupancy shall mean the use or possession or the right to use or possession of any room or rooms in a hotel.
- E.** Hotel shall mean any building or buildings, trailer or other facility in which three (3) or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures. The term shall include hotels, apartment hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, trailer houses, trailer motels, dormitory space where bed space is rented to individuals or groups, apartments not occupied by "permanent residents," as that term is hereinafter defined, and all other facilities where rooms or sleeping facilities or space are furnished for a consideration. As defined herein, "hotel" shall not include hospitals, sanitariums or nursing homes.
- F.** Room shall mean any room or rooms of any kind in any part or portion of a hotel which is available for, let for the use of, or possessed for the purpose of lodging or sleeping.
- G.** Rent shall mean the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupancy, without any deduction therefrom whatsoever.
- H.** Permanent Resident shall mean any occupant who has or shall have the right of occupancy of any room or rooms in the same hotel for at least thirty (30) consecutive days during the current calendar year or preceding year.
- I.** Return shall include any return filed or required to be filed as herein provided.
- J.** Tax Collector shall mean the City Treasurer or such other Department of City Government duly designated by the City Council, to administer the collection of the tax herein levied.

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## **SECTION 7-604 IMPOSITION OF TAX; EXEMPTIONS**

**A.** There is hereby levied an excise tax of five percent (5%) upon the gross proceeds or gross receipts derived from the rent from every occupancy of a room or rooms in a hotel in this City, except that the tax shall not be imposed where the rent is less than at the rate of Five Dollars (\$5.00) per day. This excise tax shall be in addition to any existing sales tax imposed by the City of Kiowa or the State of Oklahoma.

**B.** Operator shall mean any person operating a hotel in this City, included, but not limited to, the owner, proprietor, lessee, sublessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel.

**C.** No tax shall be imposed hereunder upon the United States insofar as it is immune from taxation, the State of Oklahoma, nor any municipality or other political subdivision of the State.

**D.** The tax to be collected shall be stated and charged separately from the rent and shall be shown separately on any record thereof at the time when occupancy is arranged or contracted and charged for, and upon every evidence of occupancy or any bill, statement or charge made for such occupancy issued or delivered by the operator. The tax shall be paid by the occupant to the operator as trustees for and on account of the City, and the operator shall be liable for the collection thereof and for the payment of the tax. The operator and any officer of any corporate operation shall be personally liable for the tax collected or required to be collected under this title, and the operator shall have the same right in respect to collecting the tax from the occupant or in respect to nonpayment of the tax by the occupant as if the tax were a part of the rent for the occupancy payable at the same time such tax shall become due and owing, including rights of eviction, dispossession, repossession, and enforcement of innkeeper's lien that he may have in the event of nonpayment of rent by the occupant; provided, however, that the City of Kiowa shall be joined as a party in action or proceeding brought by the operator to collect or enforce collection of the tax.

**E.** Such taxes, penalty and interest due hereunder at all times constitute a prior, superior and paramount claim as against claim of unsecured creditors and may be collected by suit as any other debt.

**F.** Where the occupant has failed to pay and the operator has failed to collect a tax as imposed by this Chapter, then, in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the City, and it shall be the duty of the occupant to file a return thereof with the Tax Collector and to pay the tax imposed thereon to the Tax Collector, within fifteen (15) days after such tax was due.

**G.** The Tax Collector may, whenever he deems it necessary for the proper enforcement of this Chapter, provide by regulation that the occupant shall file returns and pay directly to the Tax Collector the tax herein imposed at such times as returns are required to be filed and payment over made by the operator.

**H.** The tax imposed by this section shall be paid upon any occupancy on or after 1-1-09, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to 1-1-09. Where rent is paid, charged, billed or falls due on either weekly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period after 1-1-09, and such payment, bill, charge or rent due shall be apportioned on the basis of the ratio of the number of days falling within such portion to the total number of days covered thereby. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Tax Collector may, by regulation, provide for credit or refund of the amount of such tax upon application as provided herein.

**I.** For the purpose of the proper administration of this Chapter, and to prevent evasion of the tax hereby imposed, it shall be presumed that all rentals are subject to the tax until facts to the contrary are established; and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator or the occupant.

**J.** No operator shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this Chapter is not considered as an element in the rent charged to the occupant.

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## **SECTION 7-605 RECORDS TO BE KEPT**

Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon in such form as the Tax Collector may, by regulation, require. Such records shall be available for inspection and examination at any time upon demand by the Tax Collector or a duly authorized agent or employee of the City and shall be preserved for a period of three (3) years, except that the Tax Collector may consent to their destruction within that period or may require that they be kept longer.

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## **SECTION 7-606 RETURNS**

**A.** Every operator, on or before the fifteenth day of each month, shall file with the Tax Collector a return of occupancy and of rents and of the taxes payable thereon for the preceding calendar month. The date of filing shall be the date of delivery to the Tax Collector.

**B.** The Tax Collector may permit or require returns to be made by shorter or longer periods and upon such dates as he may specify. The form of return shall be prescribed by the Tax Collector and shall contain such information as he may deem necessary for the proper administration of this code. The Tax Collector may require amended returns to be filed within twenty (20) days after notice, containing the information specified in the notice.

C. If a return required by this Chapter is not filed or if a return when filed is incorrect or insufficient on its face, the Tax Collector shall take the necessary steps to enforce the filing of a return or an amended return.

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## **SECTION 7-607 PAYMENT OF TAX**

At the time of filing a return of occupancy and of rents, each operator shall pay to the City the taxes imposed upon the rents included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this Chapter.

All taxes for the period for which a return is required shall be due and payable on or before the date fixed for the filing of the return for such period, without regard to whether a return is filed or whether the return correctly filed shows the amount of rents and the taxes due.

If any operator has twice failed to pay taxes on or before the date fixed for payment of such taxes, or if any operator refuses to pay the taxes, or if the Tax Collector has reasonable grounds for belief that the operator is about to cease business or leave the State or remove or dissipate assets, or if, for any similar reason, he deems it necessary to protect revenues due hereunder, the Tax Collector may require an operator to file with the City either a performance and payment bond, or in lieu of this bond, an escrow account or an irrevocable letter of credit as detailed herein.

The performance bond, irrevocable letter of credit, or escrow account shall be provided as follows:

A. Performance and payment bond in a form acceptable to the City, naming the operator as obligee thereof, executed by a surety acceptable to the City and authorized to do business in the State of Oklahoma, in a sum equal to the City-wide average daily room rental rate, to be ascertained by the Tax Collector, times the number of rooms available for rent within the hotel multiplied by a factor of thirty (30), times five percent (5%); or

B. An irrevocable letter of credit in a form acceptable to the City, executed by the operator and a federally insured financial institution acceptable to the City, providing for a sum equal to the City-wide average daily room rental rate, to be ascertained by the Tax Collector, times the number of rooms available for rent within the hotel multiplied by a factor of thirty (30), times five percent (5%); or

C. An escrow account held by the City in a sum equal to the City-wide average daily room rental rate, to be ascertained by the Tax Collector, times the number of rooms available for rent within the hotel multiplied by a factor of thirty (30), times five percent (5%).

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## **SECTION 7-608 ASSESSMENT AND DETERMINATION OF TAX**

If a return required by this Chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be assessed by the Tax Collector from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, types of accommodations and services, number of employees, or other factors.

Written notice of such assessments shall be given to the person liable for the collection and payment of the tax. Such assessment shall finally and irrevocably fix and determine the tax, unless the person against whom it is assessed, within ninety (90) days after the giving of such assessment, shall apply in writing to the Council of the City of Kiowa for a hearing, or unless the Tax Collector, at his discretion, shall reassess the same.

After such hearing, the Council of the City of Kiowa shall give written notice of its determination to the person against whom the tax is assessed. If the taxes and interest due are not paid within ten (10) days of assessment or reassessment by the Tax Collector or determination by the Council, in addition to the taxes and interest, the operator shall pay a penalty equal to ten percent (10%) of the taxes due.

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## **SECTION 7-609 REFUNDS**

**A.** In the manner provided in this section, the Tax Collector shall refund or credit any tax erroneously, illegally or unconditionally collected if written application to the Tax Collector for such refund shall be made within two (2) years from the date of payment thereof. For like causes, and in the same period, a refund may be so made upon the initiative and the order of the Tax Collector. Whenever a refund is made, the reasons therefor shall be stated in writing.

Such application may be made by the person upon whom such tax was imposed and who has actually paid the tax. Such application may also be made by the person who has collected and paid such tax to the City, provided that the application is made within two (2) years of the payment by the occupant to the operator; but no refund of money shall be made to the operator until he shall first establish to the satisfaction of the Tax Collector, under such regulations as the Tax Collector may prescribe, that he has repaid to the occupant the amount for which the application for refund is made.

The Tax Collector, in lieu of any refund required to be made, may allow credit therefor on payments due from the applicant.

**B.** An application for a refund or credit made, as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of, and the Tax Collector may receive evidence with respect thereto. After making his determination, the Tax Collector shall give notice thereof to the applicant. Such determination shall be final unless the applicant, within ten (10) days after such notice of determination, shall apply in writing to the Council for a hearing. After such hearing, the Council shall give written notice of its determination to the applicant.

C. A person shall not be entitled to revision, refund or credit of a tax under this section if he has had a hearing or an opportunity for a hearing as provided in this Chapter and has failed to avail himself of the remedies therein provided.

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## **SECTION 7-610 NOTICES**

Notices provided for under this Chapter shall be deemed to have been given when such notices have been delivered personally to the operator or deposited in the United States mail to the last known address of the operator.

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## **SECTION 7-611 REMEDIES EXCLUSIVE**

The remedies provided by ordinance shall be exclusive remedies available to any person for the review of tax liability imposed by this ordinance.

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## **SECTION 7-612 PROCEEDINGS TO RECOVER TAX**

### **A. Civil Remedies**

1. Whenever any operator, occupant or other person shall fail to collect and/or pay over any tax, or to owe any tax, penalty or interest imposed by this Chapter as herein provided, the Tax Collector may file notice of liens on behalf of the City of Kiowa against the real estate upon which the hotel is located and/or against all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by the person owing the tax pursuant to 68 O.S. § 2701 and 68 O.S. § 2704.

The liens shall, upon proper filing, attach to the real estate and/or personal property then owned or thereafter acquired by the debtor whether such property is used by the debtor in the operation of business or is under the authority of an assignee, trustee, or receiver for the benefit of creditors, from the date such taxes are due and payable as allowed by 68 O.S. § 2704.

The Tax Collector shall notify the person owing the tax by personal service or by Certified Mail that the City of Kiowa will file such liens if any delinquent lodging taxes, interest and/or penalties are not paid within fifteen (15) days of receiving such notice.

The Tax Collector may also request the City Attorney to institute an action in personam and in rem to enforce payment and collect any delinquent lodging taxes, penalties and/or interest.

### **B. Criminal Penalties**

In addition to all civil penalties provided by this Chapter, the willful failure or refusal of any operator, occupant or other person to make reports and/or remittances as herein required or the

making of any false and fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this Chapter shall be an offense, and upon conviction thereof the offending operator, occupant or other person shall be punished by a fine of not more than the penalty set out in the Code of the City of Kiowa, excluding costs.

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### **SECTION 7-613 GENERAL POWERS OF THE TAX COLLECTOR**

In addition to all other powers granted to the Tax Collector, he is hereby authorized and empowered:

- A. To make, adopt and amend rules and regulations appropriate to the carrying out of the provisions of this Chapter for the purposes thereof;
  - B. To extend, for cause shown, the time for filing any return for a period not exceeding sixty (60) days; and for cause shown, to waive, remit or reduce penalties or interest;
  - C. To delegate his functions hereunder to a deputy or other employee or employees of the City;
  - D. To assess, reassess, determine, revise and readjust the taxes imposed by this Chapter; and
  - E. To prescribe methods for determining the taxable and non-taxable rents.
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### **SECTION 7-614 ADMINISTRATION OF OATHS AND COMPELLING TESTIMONY**

A. The Tax Collector, or employees or agents of the City duly designated and authorized by him, shall have the power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this Chapter. The Tax Collector shall have the power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of his duties hereunder and of the enforcement of this Chapter, and to examine them in relation thereto.

B. Any person who shall refuse to testify or to produce books or records, or who shall testify falsely in any material matter pending before the Tax Collector, shall be guilty of an offense punishable by a fine of not more than the penalty set out in the Code of the City of Kiowa, excluding costs.

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### **SECTION 7-615 DISCOUNT; DELINQUENT TAXES**

A. At the time of filing the returns required under this Chapter with the Tax Collector, the operator shall remit therewith to the Tax Collector, except as hereinafter provided, ninety-seven percent (97%) of the tax due under the provisions of this Chapter; provided that the tax is delivered to the Tax Collector before the 15th of the month for the preceding calendar month's

return, or if transmitted by mail, that the date of postmark by the U.S. Postal Service is before the 15th day of the month for the preceding month's return.

In the event that payment of any tax due is not made before the 15th of the month, the operator forfeits his claim to the three percent (3%) discount and must remit to the Tax Collector one hundred percent (100%) of the taxes due. If the filing of the return and remittance of the taxes due are received by the Tax Collector after the fifteenth day of the month, the taxes are then delinquent and the operator shall pay, in addition to one hundred percent (100%) of the taxes due, interest and penalties as prescribed in Subsection 16A of this Article.

**B.** The discount granted by this section shall remunerate the operator for keeping tax records, filing reports and remitting the tax when due as required by this Chapter.

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## **SECTION 7-616 INTEREST AND PENALTIES**

**A.** If an operator fails to file a return or remit the taxes due prior to the fifteenth day of the month, the operator shall pay, in addition to one hundred percent (100%) of the taxes due, the following interest and penalties:

1. One and one-half percent (1½%) interest per month on the total amount of taxes due from the fifteenth day of the month to the date of filing; and
2. A penalty of ten percent (10%) of the total amount of the taxes due.

**B.** In addition to the penalties provided herein, the following persons shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not more than the penalty set out in the Code of the City of Kiowa, excluding costs:

- Any operator or occupant who willfully fails to file a return as required by this Chapter, or who files or causes to be filed, or makes or causes to be made, or causes to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this Chapter which is willfully false;
- Any operator who willfully fails to file a bond required by this Chapter or who willfully fails to file a registration certificate and such data in connection therewith as the Tax Collector may require, by regulation or otherwise, or who fails to display or surrender the license as required by this Chapter, or who assigns or transfers such license;
- Any operator who willfully fails to charge separately from the rent the tax herein imposed, or who willfully fails to state such tax separately on any evidence of occupancy and on any bill, statement or receipt of rent issued or employed by the operator, or who willfully fails or refuses to collect tax from the occupant;
- Any operator who willfully refers or causes reference to be made to this tax in a form or manner other than that required by this Chapter; and
- Any operator who willfully fails to keep the records required by this Chapter.

C. The affidavit of the Tax Collector to the effect that a tax has not been paid, that a return, bond, or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this Chapter, shall be presumptive evidence thereof.

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## **SECTION 7-617 CONFIDENTIAL RECORDS**

The confidential and privileged nature of the records and files concerning the administration of this tax is legislatively recognized and declared, and to protect the same, the provisions of 68 O.S. § 205, and each subsection thereof, are hereby adopted by reference and made fully effective and applicable to administration of this tax as if they were herein set forth in full.

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## **SECTION 7-618 AMENDMENTS**

The people of the City of Kiowa, Oklahoma, shall by their approval of this Chapter at the election herein provided, authorize the Council of the City of Kiowa, Oklahoma, by ordinance duly enacted, to make such changes or additions in the method and manner of administration and enforcing this Chapter as may be necessary or proper for efficiency and fairness, except that the rate of the tax herein provided shall not be changed without approval of the qualified electors of the City of Kiowa as herein provided.

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## **SECTION 7-619 PROVISIONS CUMULATIVE**

The provisions hereof shall be cumulative and in addition to any and all other taxing provisions of the City.

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## **SECTION 7-620 PURPOSE OF REVENUES**

It is hereby declared to be the purpose of this ordinance to provide revenues for the following specific purposes, and no others, to-wit:

- A. 1.67% or 1.67 cents per dollar earmarked and dedicated to be utilized for the restricted purpose of the maintenance, care and improvement of the Kiowa Community Building for the benefit of the City of Kiowa.
- B. 1.67% or 1.67 cents per dollar earmarked and dedicated to be utilized for the maintenance, care and improvement of the Kiowa Cemetery Care Fund for the benefit of the City of Kiowa.

C. 1.66% or 1.66 cents per dollar earmarked and dedicated to be utilized for the maintenance, care and improvement of the Kiowa Water Treatment Plant for the benefit of the City of Kiowa.

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## **SECTION 7-621 SPECIAL FUND FOR HOTEL/MOTEL TAX DEPOSITS**

Pursuant to 68 O.S. § 2701, a limited-purpose fund is hereby created. The municipal governing body shall create a limited-purpose fund and deposit therein any revenue generated by any tax levied pursuant to this subsection.

Money in the fund shall be accumulated from year to year. The fund shall be placed in an insured interest-bearing account and the interest which accrues on the fund shall be retained in the fund. The fund shall be non-fiscal and shall not be considered in computing any levy when the municipality makes its estimate to the excise board for needed appropriations. Money in the limited-purpose tax fund shall be expended only as accumulated and only for the purposes specifically described in the taxing ordinance as approved by the voters.

*Adopted August 29, 2008.*