

ORDINANCE NO. 5017

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, RELATING TO TRANSACTION PRIVILEGE TAXES; AMENDING MESA PRIVILEGE AND EXCISE TAX CODE SECTIONS 5-10-595 AND REGULATION 5-10-300.1; PROVIDING FOR EFFECTIVE DATES THEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. Mesa Privilege and Excise Tax Code Section 5-10-595, subsection (C), is amended to read:

5-10-595: COLLECTION OF TAXES WHEN THERE IS SUCCESSION IN AND/OR CESSATION OF BUSINESS:

- (C) Any person who purchases or who acquires by foreclosure, by sale under trust deed or warranty deed in lieu of foreclosure, or by any other method improved real property or a portion of improved real property for which the Privilege Tax imposed by this Chapter has not been paid shall be responsible for payment of such tax as a speculative builder or owner builder as provided in Sections 5-10-416 and 5-10-417.
- (1) **ANY PERSON WHO IS A CREDITOR OR AN AFFILIATE OF CREDITOR, WHO ACQUIRES IMPROVED REAL PROPERTY DIRECTLY OR INDIRECTLY FROM THE CREDITOR'S DEBTOR BY ANY MEANS SET FORTH IN THIS SUBSECTION, SHALL PAY THE TAX BASED ON THE AMOUNT RECEIVED BY THE CREDITOR OR ITS AFFILIATE IN A SUBSEQUENT SALE OF SUCH IMPROVED REAL PROPERTY TO A PARTY UNRELATED TO THE CREDITOR, REGARDLESS OF WHEN SUCH SUBSEQUENT SALE TAKES PLACE. SUCH TAX SHALL BE DUE IN THE MONTH FOLLOWING THE MONTH IN WHICH THE SALE OF THE IMPROVED REAL PROPERTY BY THE CREDITOR OR ITS AFFILIATE OCCURS. NOTWITHSTANDING THE FOREGOING, IF THE REAL PROPERTY MEETS THE DEFINITION OF PARTIALLY IMPROVED RESIDENTIAL REAL PROPERTY IN SECTION 5-10-416(A)(4) AND ALL OF THE REQUIREMENTS OF SECTION 5-10-416(B)(4) ARE MET BY THE PARTIES TO THE SUBSEQUENT SALE TRANSACTION, THEN THE TAX SHALL NOT APPLY TO THE SUBSEQUENT SALE .**
 - (2) **IN THE EVENT A CREDITOR OR ITS AFFILIATE USES THE ACQUIRED IMPROVED REAL PROPERTY FOR ANY BUSINESS PURPOSE, OTHER THAN OPERATING THE PROPERTY IN THE MANNER IN WHICH IT WAS OPERATED, OR WAS INTENDED TO BE OPERATED, BEFORE THE ACQUISITION OR IN ANY OTHER MANNER UNRELATED TO SELLING THE PROPERTY, THE TAX SHALL BE DUE. THE GROSS INCOME UPON WHICH THE TAX SHALL BE DETERMINED PURSUANT TO SECTIONS 5-10-416 AND 5-10-417 SHALL BE THE FAIR MARKET VALUE OF THE IMPROVED REAL PROPERTY AS OF THE DATE OF ACQUISITION. THE TAX SHALL BE DUE IN THE MONTH FOLLOWING THE MONTH IN WHICH SUCH FIRST BUSINESS USE OCCURS. WHEN APPLICABLE, THE CREDIT BID SHALL BE DEEMED TO BE THE FAIR MARKET VALUE OF THE PROPERTY AS OF THE DATE OF ACQUISITION.**
 - (3) **ONCE THE SUBSEQUENT SALE BY THE CREDITOR OR ITS AFFILIATE HAS OCCURRED AND THE CREDITOR OR ITS AFFILIATE HAS PAID THE TAX DUE FROM IT PURSUANT TO THIS SUBSECTION, NEITHER THE CREDITOR NOR ITS AFFILIATE, NOR ANY FUTURE OWNER, SHALL BE LIABLE FOR ANY OUTSTANDING TAX, PENALTIES OR INTEREST THAT MAY CONTINUE TO BE DUE FROM THE DEBTOR BASED ON THE TRANSFER FROM THE DEBTOR TO THE CREDITOR OR ITS AFFILIATE.**

- (4) IF THE TAX LIABILITY IMPOSED BY EITHER SECTION 5-10-416 OR SECTION 5-10-417 ON THE TRANSFER OF THE IMPROVED REAL PROPERTY TO THE CREDITOR OR ITS AFFILIATE, OR ANY PART THEREOF, IS PAID TO THE TAX COLLECTOR BY THE DEBTOR SUBSEQUENT TO PAYMENT OF THE TAX BY THE CREDITOR OR ITS AFFILIATE, THE AMOUNT SO PAID MAY CONSTITUTE A CREDIT, AS EQUITABLY DETERMINED BY THE TAX COLLECTOR IN GOOD FAITH, AGAINST THE TAX IMPOSED ON THE CREDITOR OR ITS AFFILIATE BY EITHER PARAGRAPH 1 OR PARAGRAPH 2 OF THIS SUBSECTION.
- (5) NOTWITHSTANDING ANYTHING IN THIS CHAPTER TO THE CONTRARY, IF A CREDITOR OR ITS AFFILIATE IS SUBJECT TO TAX AS DESCRIBED IN PARAGRAPH 1 OR PARAGRAPH 2 OF THIS SUBSECTION AND SUCH CREDITOR OR AFFILIATE HAS NOT PREVIOUSLY BEEN REQUIRED TO BE LICENSED, SUCH CREDITOR OR AFFILIATE SHALL BECOME LICENSED NO LATER THAN THE DATE ON WHICH THE TAX IS DUE.

SECTION 2. Regulation 5-10-300.1, subsection (B), of the Mesa Privilege and Excise Tax Code (Mesa City Code Title 5, Chapter 10) is amended to read:

5-10-300.1: WHO MUST APPLY FOR A LICENSE:

- (B) For the purposes of obtaining a Privilege License, a person who has less than ~~three~~ **TWO (2)** apartments, houses, trailer spaces, or other lodging spaces available for rent, lease, or license within the State is not considered to be regularly engaged in business and need not obtain a Privilege License; provided, however, if that person is also receiving income from the activity of renting, leasing, or licensing one (1) or more commercial properties or units within a commercial property, he is considered to be regularly engaged in business and must obtain licenses for all his rental, lease, or license property.

SECTION 3. Retroactive Effect. Section 1 of this ordinance shall be effective from and after May 1, 2010.

SECTION 4. Retroactive Effect. Section 2 of this ordinance shall be effective from and after October 1, 2008.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona,

This 13th day of December, 2010.