

**PROPOSED SUBSTITUTE TO FILE 15-6024
(Finance Committee 11-13-15)**

Sponsored by: TONI PRECKWINKLE, President, Cook County Board of Commissioners

PROPOSED ORDINANCE AMENDMENT

AMUSEMENT TAX ORDINANCE

NOW THEREFORE BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 74 – Taxation, Article X. Amusement Tax, Section 74-390 through 74-398 be amended as follows:

ARTICLE X. AMUSEMENT TAX

Sec. 74-390. Short title.

This article shall be known and may be cited as the Cook County Amusement Tax Ordinance.

Sec. 74-391. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Amusement means any exhibition, performance, presentation or show for entertainment purposes, including, but not limited to, any theatrical, dramatic, musical or spectacular performance, promotional show, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibition, such as boxing, wrestling, skating, dancing, swimming, riding on animals or vehicles, baseball, basketball, softball, soccer, football, tennis, golf, hockey, track and field games, bowling, or billiard and pool games. For purposes of this article, the term "amusement" shall not mean any recreational activity offered for public participation or on a membership or other basis, including, but not limited to, carnivals, amusement park rides and games, bowling, billiards and pool games, dancing, tennis, golf, racquetball, swimming, weightlifting, body building or similar activities. For purposes of this article, the term "amusement" shall not mean raffles, as defined in 230 ILCS 15/1 (Raffles Act—definitions), intertrack wagering facilities, as defined in the Illinois Horse Racing Act of 1975 (230 ILCS 5/1 et seq.), or automatic amusement devices.

Automatic amusement devices means any machine which upon the insertion of a coin, slug, token, or similar object may be operated generally by any person for use as a game, entertainment or amusement, whether or not registering a score, and includes, but is not limited to, such devices as jukeboxes, marble machines, pinball machines, video games, movie or video booths or stands and all games, operations or transactions similar thereto under whatever name by which they may be indicated.

Charges paid means the gross amount of consideration paid for the privilege to enter, to witness or to view an amusement, valued in money, whether received in money or otherwise, including cash, credits, property and services, determined without any deduction for costs or expenses whatsoever, but not including charges that are added on account of the tax imposed by this article or on account of any other tax imposed on the charge.

Department and Department of Revenue mean the County Department of Revenue.

Live theatrical, live musical or other live cultural performance means a live performance in any of the disciplines which are commonly regarded as part of the fine arts, such as live theater, music, opera, drama, comedy, ballet, modern or traditional dance, and book or poetry readings. The term does not include such

amusements as athletic events, races, or performances conducted at adult entertainment cabarets (as defined in Section 14.2.1 of the Cook County Zoning Ordinance ~~of 2001~~).

Maximum capacity means the persons that an auditorium, theater or other space may accommodate as determined by the local fire department or other appropriate governmental agency; provided, however, that maximum capacity shall not exceed the maximum number of tickets or admissions that may be made available for sale to a performance as stated in any binding written agreement relating to that performance. If the number of tickets or admissions actually sold to a performance exceeds the legally permissible limit, then, for purposes of determining the applicable tax, the term "maximum capacity" shall mean such greater number.

Operator means any person who sells or resells a ticket or other license to an amusement for consideration or who, directly or indirectly, receives or collects the charges paid for the sale or resale of a ticket or other license to an amusement. The term includes, but is not limited to, persons engaged in the business of selling or reselling tickets or other licenses to amusement, whether on-line, in person or otherwise.

Owner means:

- (1) With respect to the owner of a place where an amusement is being held, any person who has an ownership or leasehold interest in a building, structure, vehicle, boat, area or other place who presents, conducts or operates an amusement in such place or who allows, by agreement or otherwise, another person to present, conduct or operate an amusement in such place;
- (2) With respect to the owner of an amusement, any person which has an ownership or leasehold interest in such amusement or any person who has a proprietary interest in the amusement so as to entitle such person to all or a portion of the proceeds, after payment of reasonable expenses, from the operation, conduct or presentation of such amusement, excluding proceeds from nonamusement services and from sales of tangible personal property.

Patron means a person who acquires the privilege to enter, to witness or to view an amusement.

Person means any natural individual, firm, society, foundation, institution, partnership, limited liability company, association, joint stock company, joint venture, public or private corporation, receiver, executor, trustee or other representative appointed by the order of any court, or any other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular and plural are included in any circumstance.

Resale means the resale of a ticket or other license to an amusement after the ticket or other license has been sold by the owner, manager or operator of the amusement, or by the owner, manager or operator of the place where the amusement is being held, to an independent and unrelated third party.

Reseller means a person who resells a ticket or other license to an amusement for consideration. The term includes, but is not limited to, ticket brokers and applies whether the ticket is resold by bidding, consignment or otherwise and whether the ticket is resold in person, at a site on the Internet or otherwise.

Ticket means the privilege to enter, to witness or to view an amusement, whether or not expressed in a tangible form.

Sec. 74-392. Tax imposed.

- (a) Except as otherwise provided by this section, an amusement tax is imposed upon the patrons of every amusement which takes place within the County. The rate of the tax shall be equal to three percent of the admission fees or other charges paid for the privilege to enter, to witness or to view such amusement, unless subsection (f) of this section provides for a lower rate.

(b) The tax imposed by subsection (a) of this section may be waived for the following persons or privileges, after approval by the Department of Revenue or, if applicable, the Cook County Board of Commissioners:

- (1) The privilege of witnessing any stock show or business show that is not open to the general public;
- (2) The privilege of witnessing any amateur production or activity such as amateur musicals, plays and athletic events conducted by a not-for-profit organization operated exclusively for charitable, educational or religious purposes; ~~or~~
- (3) Subject to satisfying the requirement contained in subsection (c) of this section, the privilege of witnessing any amusement sponsored or conducted by and the proceeds of which, after payment of reasonable expenses, inure exclusively to the benefit of:
 - a. Religious, educational and charitable institutions, societies or organizations;
 - b. Societies or organizations for the prevention of cruelty to children or animals;
 - c. Societies or organizations conducted and maintained for the purpose of civic improvement;
 - d. Fraternal organizations, legion posts, social and political groups which conduct amusements, sponsored occasionally but not more often than twice yearly; ~~provided, however, that the entities described in subsections (b)(3)a-d of this section are not for profit institutions, organizations, groups or societies, where no part of the net earnings inure to the benefit of any private shareholder or person;~~

Provided, however, that the entities described in subsections (b)(3)a-d of this section are not-for-profit institutions, organizations, groups or societies, where no part of the net earnings inure to the benefit of any private shareholder or person;

- e. Organizations or persons in the armed services of the United States, or National Guard organizations, reserve officers' associations, or organizations or posts of war veterans, or auxiliary units or societies of such posts or organizations, if such posts, organizations, units or societies are organized in the State of Illinois, and if no part of their earnings inure to the benefit of any private shareholder or person;
- f. Organizations or associations created and maintained for the purpose of benefiting the members, or dependents or heirs of members, of the police or fire {departments} of any political subdivision of the State of Illinois; ~~provided that the exemptions contained in subsections (b)(3)a-f of this section shall apply only to benefits or other fundraising events and shall not apply to more than two events per calendar year which shall not exceed a total of 14 calendar days;~~

Provided, however, that the exemptions contained in subsections (b)(3)a-f of this section shall apply only to benefits or other fundraising events and shall not apply to more than two events per calendar year which shall not exceed a total of 14 calendar days;

- g. Societies or organizations conducted for the sole purpose of maintaining symphony orchestras, opera performances or artistic presentations, including, but not limited to, musical presentations ("artistic societies or organizations"), if the artistic society or organization:
 1. Receives substantial support from voluntary contributions;
 2. Is a not-for-profit institution where no part of the net earnings inure to the benefit of any private shareholder or person; and
 3. Either (i) bears all risk of financial loss from its presentation of the amusement, where the amusement takes place at a venue that is owned or operated; by a not-for-profit

institution, no part of whose net earnings inure to the benefit of any private shareholder or person, and where the amusement is limited to an engagement of not more than four calendar days over the course of a calendar year, or (ii) is substantially and materially involved in the production and performance of the amusement. Where an amusement is sponsored or conducted by two or more artistic societies or organizations, the requirements of subsections (b)(3)g.1. and 2. of this section must be met by each of such artistic societies or organizations, but the requirements of subsection (b)(3)g.3. may be met by any of such artistic societies or organizations, individually or in combination.

- (c) None of the exemptions contained in subsection (b)(3) of this section shall be granted unless a written application for exemption is filed with the Department at least 45 calendar days prior to the amusement event or 15 calendar days prior to the date that admission tickets to the amusement are first made available for sale, whichever is earlier. The application shall be on a form prescribed by the Director of Revenue and shall contain all information necessary to permit the Department to determine whether the exemption claimed by the applicant is applicable. If the department determines that by granting the exemption the potential loss of tax revenue will be greater than \$150,000.00 the application shall be submitted to the Cook County Board of Commissioners for final approval. The County Board may deny the exemption application if it finds that the exemption is not in the best economic interest of the County.
- (d) The tax imposed in subsection (a) of this section shall not apply to or be imposed upon:
 - (1) The admission fees to witness in person, live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the County, whose maximum capacity, including all balconies and other sections, is not more than 750 persons.
 - (2) Initiation fees and membership dues paid to a health club, racquetball club, tennis club or a similar club or organization, when such club or organization is organized and operated on a membership basis and for the recreational purposes of its members and its members' guests, shall be exempt from the tax imposed in subsection (a) of this section. This exemption shall not be construed to apply to any fees paid or based upon a per-event or a per-admission basis.
 - (3) Fees or other charges paid by a patron for the privilege of witnessing, viewing or participating in an amusement, solely within the confines of such patron's home, shall be exempt from the imposition of the tax imposed in subsection (a) of this section. For purposes of this exemption, the term "home" means the permanent dwelling residence of the patron. For patrons who live in condominium buildings, apartment buildings or other multiple-unit structures, the individual dwelling unit the patron occupies shall be considered the patron's home.
- (e) For the purpose of determining the amount of the amusement tax due under this article, admission fees or other charges shall be computed exclusive of:
 - (1) ~~Any~~ Federal, State or municipal taxes imposed upon the amusement patron, ~~and~~
 - (2) Any amounts subject to other Cook County taxes (with the exception of County Retailers' Occupation Tax), provided such County taxes are separately listed on the ticket of admission and the corresponding Cook County tax has been paid on that separately stated amount.
 - (3) ~~Any~~ separately stated optional charges for nonamusement services or for sales of tangible personal property.
- (f) It is unlawful for any person to produce, present or conduct any amusement without collection of the tax, except as provided in this article.
 - (1) The rate of the tax imposed in subsection (a) of this section shall be one percent of the admission fees or other charges to witness in person live theatrical, live musical or other live cultural

performances that take place in any auditorium, theater or other space in the County whose maximum capacity, including all balconies and other sections, is more than 750 persons and less than 5,000 persons.

- (2) The rate of the tax imposed in subsection (a) of this section shall be 1.5 percent of the admission fees or other charges to witness in person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the County whose maximum capacity, including all balconies and other sections, is 5,000 persons or more.

(g) It shall be presumed that all amusements are subject to tax under this article until the contrary is established by books, records or other documentary evidence.

(h) It is unlawful for any person to produce, present, conduct, or resell tickets to, any amusement without collection of the tax, except as provided in this article.

Sec. 74-393. Tax additional.

The tax imposed in this article is in addition to all other taxes imposed by ~~the County,~~ the State of Illinois or any municipal corporation or political subdivision thereof ~~of any of the foregoing.~~

Sec. 74-394. Registration.

Every owner, manager or operator of an amusement or of a place where an amusement is being held in the County and every reseller, shall apply for registration as a tax collector with the Department no later than 30 days after commencing such business or 30 days after the effective date of the ordinance from which this article is derived, whichever occurs later. Application for registration shall be made to the Department by use of the form furnished by the Department for such purpose and shall contain such information as the Department may reasonably require.

Sec. 74-395. Collection, payment and accounting.

- (a) It shall be the joint and several duty of every owner, manager, ~~or~~ operator of an amusement, a place where an amusement is being held or place of amusement and every ticket reseller to secure from each patron or buyer the tax imposed by this article; provided, however, that a reseller of tickets shall be required to collect and remit tax to the Department only on that portion of the ticket price that exceeds the amount that the reseller paid for the tickets. For purposes of this provision, it shall be presumed that the amount that the reseller paid for the tickets is the face amount of the tickets, unless the taxpayer or tax collector proves otherwise with books, records or other documentary evidence. Tax payments accompanied by tax returns prescribed by the Department shall be remitted to the Department on or before the 20th day of the month following the month in which payment for the amusement is made.
- (b) Canceled admission tickets and complete and accurate records, books and accounts in detail of all receipts shall be kept at the place of amusement or such other place in the County as may be designated in writing by the person liable for collection of the tax. All such books, records and accounts shall be kept for a period equal to the statute of limitations as identified in the Uniform Penalties, Interest and Procedures Ordinance, 34-60 et seq., and shall be open to inspection by the Department at all reasonable times during business hours.
- (c) Every owner, manager, ~~or~~ operator or reseller who is required to collect the tax imposed by this article shall be considered a tax collector for the County. All amusement taxes collected shall be held by such tax collector as trustee for and on behalf of the County. The failure of the tax collector to collect the tax shall not excuse or release the patron from the obligation to pay the tax.

- (d) Notwithstanding any other provision of this article, in order to permit sound fiscal planning and budgeting by the County, no person shall be entitled to a refund of, or credit for, the tax imposed by this article unless the person files a claim for refund or credit within one year after the date on which the tax was paid or remitted to the Department.

Sec. 74-396. Rules and regulations; authorized.

The Department of Revenue is authorized to adopt, promulgate and enforce rules and regulations pertaining to the interpretation, collection, administration and enforcement of this article, including, but not limited to, the meaning and scope of the exemptions contained in Section 74-392.

Sec. 74-397. Application of uniform penalties, interest and procedures ordinance.

Whenever not inconsistent with the provisions of this article or whenever this article is silent, the provisions of the Uniform Penalties, Interest and Procedures Ordinance shall apply and supplement this article.

Sec. 74-398. Violations; penalty.

Any person violating any of the provisions of this article shall be subject to a fine of \$1,000.00 for the first offense, and a fine of \$2,000.00 for the second and each subsequent offense ~~fined not less than \$200.00 nor more than \$500.00 for each offense.~~ Every day such violation continues shall constitute a separate and distinct offense. It shall be deemed a violation of this article for any person to knowingly furnish false or inaccurate information to the Department. Criminal prosecution pursuant to this article shall in no way bar the right of the County to institute civil proceedings to recover delinquent taxes, interest and penalties due and owing as well as costs incurred for such proceedings.

Effective date: This ordinance shall be in effect immediately upon adoption.