

Chapter 26

TAXATION AND FINANCE*

Article I. In General

Sec. 26-1. Fiscal year; expiration of licenses.
Secs. 26-2--26-35. Reserved.

Article II. Capital Reserve Water and Sewer Fund

Sec. 26-36. Established.
Sec. 26-37. Charges and fees to be deposited.
Sec. 26-38. Expenditures authorized.
Sec. 26-39. Designation of depositories.
Sec. 26-40. Withdrawals generally.
Secs. 26-41--26-65. Reserved.

Article III. Capital Reserve Recreation Fund

Sec. 26-66. Established.
Sec. 26-67. Revenues to be deposited.
Sec. 26-68. Expenditures authorized.
Sec. 26-69. Designation of depositories.
Sec. 26-70. Withdrawals generally.
Sec. 26-100 Gross Receipts Tax (Adopted 7-10-00)

* Cross References: Administration, ch. 2; perpetual care trust fund, § 12-46 et seq.

State Law References: Local government finance, G.S. 159-1 et seq.; authority of city to tax, G.S. 160A-206--160A-214.

ARTICLE I. IN GENERAL**Sec. 26-1. Fiscal year; expiration of licenses.**

The fiscal year of the city shall be from July 1 to June 30. All licenses issued by the city shall expire on June 30 of each year.
(Code 1973, § 8-1)

Secs. 26-2--26-35. Reserved.**ARTICLE II. CAPITAL RESERVE WATER AND SEWER FUND*****Sec. 26-36. Established.**

A capital reserve water and sewer fund is hereby established under the authority of G.S. 159-18--159-22 which is cited as the Local Government Budget and Fiscal Control Act.
(Code 1973, §§ 8-6, 8-11)

Sec. 26-37. Charges and fees to be deposited.

The surplus revenues from charges and fees for water service in excess of funds required for the operation, maintenance and debt service of such water systems shall be placed in the capital reserve fund established by this article, which shall accumulate for such periods of time as the city council may designate from time to time and in amounts reasonably necessary to accomplish the purposes of this article.
(Code 1973, §§ 8-7, 8-12)

Sec. 26-38. Expenditures authorized.

Expenditure of moneys in the capital reserve fund may be made at any time or from time to time for all or part of the cost of constructing, reconstruction or enlargement of an extension to systems, plants, works and properties used or useful in connection with the water and sewer service.
(Code 1973, §§ 8-8, 8-13)

Sec. 26-39. Designation of depositories.

A bank shall be designated as the depository in which moneys of the capital reserve fund shall be deposited.
(Code 1973, §§ 8-9, 8-14)

* **Cross References:** Utilities, ch. 30; sewers, § 30-16 et seq.

Sec. 26-40. Withdrawals generally.

Any withdrawal of moneys in the capital reserve fund shall only be by a resolution adopted by the city council.

(Code 1973, §§ 8-10, 8-15)

State Law References: Withdrawals from capital reserve funds, G.S. 159-22.

Secs. 26-41--26-65. Reserved.**ARTICLE III. CAPITAL RESERVE RECREATION FUND****Sec. 26-66. Established.**

A capital reserve fund is hereby established under the authority of G.S. 159-18--159-22.
(Code 1973, § 8-16)

Sec. 26-67. Revenues to be deposited.

Contributions or appropriations which the council may designate shall be placed in the capital reserve fund established by this article, which shall accumulate for such periods of time as the city council may designate from time to time and in amounts reasonably necessary to accomplish the purposes of this article.
(Code 1973, § 8-17)

Sec. 26-68. Expenditures authorized.

Expenditures of moneys in the capital reserve fund may be made at any time or from time to time for all or part of the cost of constructing, operating or maintaining recreational facilities.
(Code 1973, § 8-18)

Sec. 26-69. Designation of depositories.

A bank shall be designated the depository in which moneys of the capital reserve fund shall be deposited.
(Code 1973, § 8-19)

Sec. 26-70. Withdrawals generally.

Any withdrawal of moneys in the capital reserve fund shall only be by a resolution adopted by the city council.

(Code 1973, § 8-20)

Sec. 26-100. Levying Tax on Gross Receipts.

In addition to the common meaning of words, the following definition shall be applicable herein:

(A) “*Customer*” shall mean any person that leases or rents a vehicle on a short-term lease or rental basis.

(B) “*General Statutes*” shall refer to the North Carolina General Statutes and may be from time to time amended, modified, supplemented, revised or superseded.

(C) “*Gross receipts*” shall mean the total lease or rental price charged to a customer for the short-term lease or rental at retail of vehicles, excluding sales taxes and excluding the taxes imposed by this Ordinance.

(D) “*Lease or rental*” shall mean a transfer, for consideration of the use but not the ownership of property to another for a period of time. [G.S. S 105-164.3 (7a)].

(E) “*Long-term lease or rental*” shall mean a lease or rent property to the same person for a period of at least three hundred sixty-five (365) continuous days. [G.S. S 105-187.1 (3)].

(F) “*Person*” shall mean any individual, trustee, executor, other fiduciary corporation, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.

(G) “*Short-term lease or rental*” shall mean any lease or rent of a vehicle that is not a long-term lease or rental [G.S. S 160A-215.1 (c)(2) and G.S. S 105-187.1 (4)].

(H) “*Tax Collector*” shall refer to that individual appointed by the governing body pursuant to G.S. S 105-349, to collect taxes on behalf of the City and any other person authorized to carry out the duties and functions of such individual.

(I) “*Vehicle*” shall mean any of the following:

- (i) a motor vehicle of the private passenger type, including a passenger van, minivan, or sport utility vehicle.
- (ii) a motor vehicle of the cargo type, including a cargo van, pickup truck, or truck with a gross vehicle weight of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight, and that does not require the operator to possess a commercial driver’s license.

(iii) a trailer or semi trailer with a gross vehicle weight of 6,000 pounds or less [G.S. S 160A-215.1(e)(1)].

Sec. 26-101 Levy of Tax.

A tax is hereby imposed and levied in an amount equal to one and one-half percent (1.5%) of the gross receipt derived from the short-term lease or rental of vehicles at retail to the general public. This tax on gross receipts is in addition to the privilege taxes authorized by G.S. S 160A-211.

Sec. 26-102 Collection of the Tax.

Every person engaged in the business of the short-term lease or rental of vehicles at retail to the general public shall collect at the time of the lease or rental the tax herein levied, place the tax so collected in a segregated account, and thereafter remit such tax to the Tax Collector in accordance with the provisions of this Ordinance. The taxpayer shall include a provision in each retail short-term lease or rental agreement stating that the percentage amount enacted by this Ordinance of the total lease or rental price, excluding sales tax, is being charged as a tax on gross receipt. The amount of the tax shall be stated separately from the lease or rental and shown separately on the taxpayer’s records. The tax shall be paid by the customer to the taxpayer as trustee for an on account of the City. The taxpayer shall be liable for the collection thereof and for its payment to the Tax Collector and the taxpayer’s failure to charge or to collect said tax from the customer shall not affect such liability.

Sec. 26-103 Report and Payment of Tax.

Taxes levied under this Ordinance are due and payable when a return is required to be filed. Every taxpayer shall within the time specified, submit a return to the Tax Collector on the form prescribed by the Tax Collector. A return must be signed by the taxpayer or the taxpayer’s agent. Returns of taxpayers are due to the Tax Collector each month on or before the fifteenth (15th) day of the month following the month in which the tax accrues. As provided in G.S. S 160A-208.1 a return shall not be considered a public record and information contained in a return may be disclosed only in accordance therewith.

Sec. 26-104 Taxpayer to Keep Records.

The taxpayer shall keep and preserve suitable records of the gross receipts received by such taxpayer in the conduct of business and such other books or accounts as

may be necessary to determine the amount of the tax for which such taxpayer is liable under provisions of this Ordinance. It shall be the duty of the taxpayer to keep and preserve for a period of three (3) years all such as records of gross receipts and other book and accounts described. All records, books and accounts herein described shall be open for examination at all reasonable hours during the day by the Tax Collector or his duty authorized agent.

Sec. 26-105 Tax Collector to Provide Forms.

The Tax Collector shall design, prepare, print and make available to all taxpayers operating within the municipal boundaries of the City, forms and instructions for filing returns to insure a full collection of and an accounting for taxes due. The failure of any taxpayer to obtain or receive forms shall not relieve such taxpayer from the payment of the tax at the time and in the manner provided.

Sec. 26-106 Situs.

The transaction giving rise to the tax herein levied shall be deemed to have occurred at the local of the entity from which the customer taxes delivery of the vehicle. [G.S. S 160A-215.1(b)]

Sec. 26-107 Penalties and Remedies.

The provisions with respect to remedies and penalties applicable to Subchapter VIII (Local Government Sales and Use Tax) of Chapter 105 of the General Statutes as contained in Article 5 and Article 9, Subchapter 1, Chapter 105 thereof, shall be applicable in like manner to the tax authorized to be levied and collected under this Ordinance, to the extent that the same are not inconsistent with the provisions hereof. The governing body of the City may exercise any power the Secretary of Revenue may exercise in collecting sales and use taxes. [G.S. S 160A-215.1(f)]

Without limiting the foregoing, and subject to any changes in the General Statutes with respect to penalties, interest and remedies, the following shall be applicable with respect to the levy and collection of the taxes imposed herein.

(a) Any taxpayer who fails to file a return on the date it is due, determined with regard to any extension of time for filing, shall pay a penalty equal to five percent (5%) of the amount of the tax if the failure to file is for not more than one (1) month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues not exceeding twenty-five percent (25%)

in the aggregate, or \$5.00, whichever is greater.

(b) Any taxpayer who fails to pay the tax levied herein when due, without intent to evade the tax, shall pay a penalty equal to ten percent (10%) of the tax, except that the penalty shall in no event be less than \$5.00

(c) Taxes shall be payable at par or face amount if paid on or before the filing dates as set forth in Section 26-103. Taxes paid after the filing date will be delinquent and shall be subject to interest charges. Interest shall accrue at the rate of three-fourths of one percent (3/4%) a month or fraction thereof until the principal amount of the taxes, the accrued interest, and any penalties are paid.

(d) When the bank upon which any uncertified check tendered to the Tax Collector in payment of taxes, penalties or interest returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Tax Collector shall assess a penalty equal to ten percent (10%) of the check, subject to minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000.00)

(e) Any taxpayer who willfully attempts, or any person who aids or abets any taxpayer to attempt in any manner to evade or defeat a tax imposed herein or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.

(f) Any taxpayer required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor.

(g) Any taxpayer required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times as required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. If a corporation or a limited liability company fails to file any return or pay the tax required for 90 days after it is due. The Tax Collector shall inform the Secretary of State of this failure pursuant to the provisions of Section 260 of Chapter 105 of the General Statutes.

(h) The Tax Collector shall have the rights of attachment and garnishment as set forth in sections 212 and 368 of chapter 105 of the General Statutes in enforcing the collection of taxes imposed herein. In addition to any other

remedies authorized by law.

Sec. 26-108 Administration.

The Tax Collector shall administer and collect the taxes levied herein from every person engaged in the business of short term leasing or rental of vehicles and the Tax Collector may promulgate additional rules and regulations necessary for implementation of the taxes. In addition to the same manner as the Sales and Use Tax as provided in Article 5, Subchapter 1, Chapter 105 of the General Statutes. [G.S. S 160A-215.1(d)]

Sec. 26-109 Assessment Procedure.

If the Tax Collector discovers that any return of tax is due from a taxpayer, the taxpayer shall be notified in writing of the failure to file and of the proposed assessment, if known by the Tax Collector. The assessment may be made on the best information of the Tax Collector. A proposed assessment is presumed to be correct. The notice shall be delivered either in person or by United States mail sent to the taxpayer's last known address. The notice is presumed to have been received by the taxpayer unless the taxpayer makes an affidavit to the contrary within 90 days after the notice was mailed. If the taxpayer makes this affidavit, the time limitations for a request for hearing as hereafter provided apply as if the notice had been delivered on the date the taxpayer makes the affidavit.

A taxpayer who objects to the proposed assessment or the requirement to file a return is entitled to a hearing upon written request within 30 days after the date of personal delivery. If no request for a hearing is timely made, the proposed assessment becomes final without further notice.

If a taxpayer files a timely request for hearing, the Tax Collector shall set a hearing date within 90 days, and notify the taxpayer at least 10 days prior to the hearing date. Within 90 days after the hearing, the Tax Collector shall notify the taxpayer of the final decision. The taxpayer may then appeal the decision as set forth in Section 26-110 of this Ordinance. The Tax Collector shall have not authority to waive or compromise any interest or penalty imposed by this ordinance.

Sec. 26-110 Appeals.

The City Council, exercising the powers of the Secretary of Revenue in collecting sales and use taxes, designates the City Manager, his designee, to act as deputy for the purpose of compromising or forgiving for good

cause shown any penalty or additional tax imposed herein, and for conducting any hearings and making decisions to determine the validity of a tax imposed by the Tax Collector. If a taxpayer claims that a tax, additional tax, penalty or interest is excessive, a notice of appeal must be filed by the taxpayer within 30 days after the final notice of the Tax Collector is mailed or personally delivered to the taxpayer as provided in Section 10 of this Ordinance. The final decision of the deputy shall be made and mailed or delivered to the taxpayer within 30 days after the hearing. The taxpayer may file suit for a refund in the Superior Court of Gaston County pursuant to the provisions of Section 267 of Chapter 105 of the General Statutes.

Sec. 26-111

All ordinance or portions of ordinances in conflict herein are hereby repealed.

Sec. 26-112

Should any provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Sec. 26-113

This ordinance shall take effect and be in force from and after July 1, 2000.

Adopted this 10th day of July 2000.

○

11

○

○