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Port Clinton, OH Code of Ordinances

CHAPTER 175

Watercraft Dockage and Rack Storage Tax

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175.01 DEFINITIONS.

For purposes of this chapter, the following words and phrases shall have the following meanings ascribed to them respectively:

- (a) "Dock" means any structure or surface, such as a pier, wharf, bank of a river, bank of a canal, or boat storage rack, alongside of which, or within which a watercraft may lie.
- (b) "Boat storage rack" means a framework, stand or structure, on or in which a watercraft may be placed for temporary or permanent storage.
- (c) "Structure" means anything constructed or erected that requires location on or in the ground or attachment to something having a location on or in the ground.
- (d) "Watercraft" has the same meaning as is set forth in Ohio R.C. 1547.01.
- (e) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.
- (f) "Marina" means a boat basin that has docks or moorings for seven or more watercraft.
- (g) "Owner of watercraft" includes any person who claims lawful possession of a watercraft by virtue of legal title or equitable interest therein which entitled him to such possession.
- (h) "Boat storage rack facility" means every establishment kept, used, maintained, advertised or held out to the public to be a place where watercraft may be stored or kept in a boat storage rack, on a temporary or permanent basis.
- (i) "Operator" means the person who is proprietor of a marina or boat storage rack facility, whether in the capacity of owner, lessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purpose of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (j) "Treasurer" means the City Treasurer of the City of Port Clinton.
(Ord. 33-85. Passed 12-20-85.)

175.02 IMPOSITION OF TAX.

- (a) Commencing on January 1, 1998, for the purpose of providing revenue with which to meet the needs of the City for general operating expenses, there is levied an annual tax of twenty dollars (\$20.00) on each watercraft that is either docked or kept in a boat storage rack located within the City.

Commencing on January 1, 1999, for the purpose of providing revenue with which to meet the needs of the City for general operating expenses, there is levied an annual tax of twenty-five dollars (\$25.00) on each watercraft that is either docked or kept in a boat storage rack located within the City.

(Ord. 42-97. Passed 1-13-98.)

(b) This tax constitutes a debt owed by the owner of a watercraft to the City, which is extinguished only by payment to an operator as trustee for the City, or to the City directly.

The owner of a watercraft shall pay the tax to the operator of a marina or boat storage rack facility at the time he pays his dock or rack storage rent. If such rent is paid in installments, a proportionate share of the tax shall be paid with each installment. If for any reason the tax due is not paid to the operator of a marina or boat storage rack facility, the Treasurer may require that the tax be paid directly to the Treasurer.

(c) Any person who owns his own dock or boat storage rack, or who docks his watercraft at a dock which is not located in a marina, shall pay his tax directly to the Treasurer of the City and such tax shall be paid in full no later than June 1 of each year.

(Ord. 33-85. Passed 12-20-85.)

175.03 EXEMPTIONS.

No tax shall be imposed under this chapter on watercraft owned by the City, the State, or the United States.

(Ord. 33-85. Passed 12-20-85.)

175.04 TAX TO BE SEPARATELY STATED AND CHARGED.

(a) The tax to be collected shall be stated and charged separately from the dock or boat rack storage rent charged by an operator, and shown separately on any record thereof, on any bill or statement or charge made for such rent issued or delivered by the operator, and the tax shall be paid by the owner of the watercraft to the operator as trustee for and on account of the City, and the operator shall be liable for the collection thereof and for the tax.

(b) No operator of a marina or boat rack storage facility shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the dockage or rack storage rent, or that, if added, any part will be refunded.

(Ord. 33-85. Passed 12-20-85.)

175.05 REGISTRATION.

Within thirty days after the effective date of Ordinance 33-85, or within thirty days after commencing business, whichever is later, each operator of a marina or boat rack storage facility shall register the marina or boat rack storage facility with the Treasurer, and obtain from him a dock or rack storage registration certificate, to be at all times posted in a conspicuous place on the premises. The certificate shall, among other things state the following:

- (a) The name of the operator;
- (b) The address of the marina or boat rack storage facility;
- (c) The date upon which the certificate was issued;
- (d) "This Dock or Boat Rack Storage Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Dock and Boat Rack Storage Tax Ordinance by registering with the Treasurer for the purpose of collecting from owners of watercraft the Dock and Boat Rack Storage Tax and remitting said tax to the Treasurer. This certificate does not constitute a permit."

(Ord. 33-85. Passed 12-20-85.)

175.06 REPORTING AND REMITTING.

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Treasurer, make a return to the Treasurer, on forms provided by him, of the total amount of the tax collected. All claims for exemption from the tax filed by owners of watercraft with the operator during the reporting period shall be filed with the report. At the time the return is filed, the full amount of the tax collected shall be remitted to the Treasurer. The Treasurer may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax, and he may require further information in the return if the information is pertinent to the collection of the tax. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment thereof is made to the Treasurer. All returns and payments

submitted by each operator shall be treated as confidential by the Treasurer, and shall not be released by him except upon order of a court of competent jurisdiction, or to an officer or agent of the United States, the State, the County, or the City, for official use only.

(Ord. 33-85. Passed 12-20-85.)

175.07 PENALTIES AND INTEREST.

(a) Delinquency. Any operator or owner of watercraft who fails to remit any tax imposed by this chapter within the time required shall pay a penalty equal to ten percent (10%) of the amount of the tax, in addition to the tax.

(b) Fraud. If the Treasurer determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty equal to twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsection (a) hereof.

(c) Interest. In addition to the previous penalties imposed, any operator or owner of watercraft who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent (1%) per month, or fraction thereof, on the amount of the tax exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(d) Penalties During Pendency of Hearing or Appeal. No penalty provided under the terms of this chapter shall be imposed during the pendency of any hearing provided for in Section 175.08, nor during the pendency of any appeal to the Board of Review provided for in Section 175.09.

(e) Abatement of Interest and Penalty. In cases where a return has been filed in good faith, and an assessment has been paid within the time prescribed by the Treasurer, the Treasurer may abate any charge of penalty or interest, or both.

(Ord. 33-85. Passed 12-20-85.)

175.08 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY CITY TREASURER.

If any operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax, or any portion thereof required by this chapter, the Treasurer shall proceed in such manner as he deems best to obtain facts and information on which to base his estimate of the tax due. As soon as the Treasurer procures such facts and information upon which to base the assessment of any tax imposed by this chapter, and payable by any operator who has failed or refused to collect the same and to make a report and remittance, he shall proceed to determine and assess against the operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Treasurer shall give notice of the amount so assessed by serving it personally, or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. The operator may, within ten days after the serving or mailing of the notice, make application in writing to the Treasurer for a hearing on the amount assessed. If an application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Treasurer, shall become final and conclusive, and immediately due and payable. If an application is made, the Treasurer shall give not less than five days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for the tax, interest and penalties. At the hearing, the operator may appear and offer evidence why the specified tax, interest and penalties should not be so fixed. After the hearing, the Treasurer shall determine the proper tax to be remitted, and shall give written notice to the person in the manner prescribed herein of the determination and the amount of the tax, interest and penalties. The amount determined to be due shall be payable after fifteen days, unless an appeal is taken as provided in Section 175.09.

(Ord. 33-85. Passed 12-20-85.)

175.09 APPEAL.

Any operator aggrieved by any decision of the Treasurer with respect to the amount of the tax, interest and penalties, if any, may appeal to the Board of Review by filing a notice of appeal with the Treasurer within fifteen days of the serving or mailing of the determination of the tax due. The Board of Review shall fix a time and place for hearing the appeal, and shall give notice in writing to the operator at his last known place of address. The findings of the Board of Review shall be served upon the appellant in the manner prescribed above for service of a notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

(Ord. 33-85. Passed 12-20-85.)

175.10 BOARD OF REVIEW.

(a) A Board of Review, consisting of a chairman and two other individuals each to be appointed by the Mayor and approved by Council, is hereby created. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearings by the Board may be conducted privately and the provisions of Section 175.06 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

(b) The Board shall hear and pass on appeals from any ruling or decision of the Treasurer, and at the request of the operator, person or Treasurer, is empowered to substitute alternate methods of allocation. The Board shall, in hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision or any part thereof.

(Ord. 33-85. Passed 12-20-85.)

175.11 RECORDS.

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of tax as he may have been liable for the collection of and payment to the City which records the Treasurer shall have the right to inspect at all reasonable times.

(Ord. 33-85. Passed 12-20-85.)

175.12 REFUNDS.

(a) Whenever the amount of any tax, interest, or penalty has been overpaid, or paid more than once, or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in subsections (b) and (c) hereof, provided a claim in writing therefor, stating, under penalty of perjury, the specific grounds upon which the claim is founded, is filed with the Treasurer within three years of the date of payment. The claim shall be on forms furnished by the Treasurer.

(b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the Treasurer that the person from whom the tax has been collected was not the owner of a watercraft; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has been refunded to the owner of the watercraft.

(c) An owner of a watercraft may obtain a refund of taxes overpaid, or paid more than once, or erroneously or illegally collected or received by the City, by filing a claim in the manner provided in subsection (a) hereof, but only when the tax was paid by the owner of the watercraft directly to the Treasurer, or when the owner of the watercraft, having paid the tax to the operator, establishes to the satisfaction of the Treasurer that the owner of the watercraft has been unable to obtain a refund from the operator who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by evidence showing entitlement thereto.

(Ord. 33-85. Passed 12-20-85.)

175.13 ACTIONS TO COLLECT.

Any tax required to be paid by an owner of a watercraft under the provisions of this chapter shall be deemed a debt owed by the owner of a watercraft to the City. Any tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of the amount.

(Ord. 33-85. Passed 12-20-85.)

175.14 MONEYS RECEIVED; WHERE CREDITED.

The moneys received under the provisions of this chapter shall be credited to the General Fund of the City.

(Ord. 33-85. Passed 12-20-85.)

175.99 PENALTY.

(a) Whoever violates any provision of this chapter is guilty of a misdemeanor of the first degree.

(b) No operator or other person shall fail or refuse to register as required herein, or furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Treasurer, or render a false or fraudulent return or claim. No person required to make, render, sign or verify

any report or claim, shall make a false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made.
