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ORDINANCE NO. 42-05

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE REVISED ORDINANCES OF THE CITY BY ESTABLISHING A SALES TAX REFUND PROGRAM.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

Section 1. That Chapter 39 of the Revised Ordinances of Sioux Falls, SD, is hereby amended by adding the following article to be numbered X to read:

Article X. Retail Sales and Service Tax and Use Tax Refund

Section 39-160. Definitions.

Terms used in this article mean:

- (1) "Capital Assets," means tangible and intangible personal property which is subject to depreciation or amortization under §§ 167 and 168 of the Internal Revenue Code of 1986, as amended to the date of adoption of this ordinance.
- (2) "Construction commencement," means the date earth is first excavated for the purpose of constructing a new business facility.
- (3) "Department," means the finance department of the city.
- (4) "Finance Director," means the finance director of the city.
- (5) "New business facility," means a new building or structure that is part of a project that satisfies the requirements of § 39-162 and is not ineligible under the provisions of § 39-163.
- (6) "Person," means any individual, firm, partnership, joint venture, association, limited liability company, limited liability partnership, corporation, trust, or any group or combination thereof acting as a unit.
- (7) "Project," means the construction, equipping, and furnishing of a new business facility at a single site, and for which the commencement of construction or the ordering of equipment to be used in a new business facility occurred on or after April 11, 2005.

- (8) "Sales tax," means the sales and service and use taxes imposed by the city pursuant to §§ 39-16 and 39-16.1.

Section 39-161. Refund of retail sales and service tax and use tax on capital assets.

As provided in this ordinance, any person may apply for and obtain a refund or credit for sales tax paid by such person on the costs incurred in the furnishing and equipping of a new business facility that satisfies all requirements of this article. Except as provided in the last sentence of this paragraph, the refund allowed under this section pertains only to project costs incurred and paid within thirty-six months of the approval of the application required by § 39-164. Upon a showing of good cause, the time limits prescribed by this section may be extended by the finance director for a period not to exceed twenty-four months. The refund shall not apply to capital assets purchased to replace capital assets for which a refund has been claimed during such thirty-six month period or extended period. There is no refund if the person fails to make application with the finance director as set forth in § 39-164.

The 30-day advance application requirement found in § 39-164 shall not apply to any project for which the commencement of construction or the ordering of equipment occurs between April 11, 2005, and the effective date of this ordinance. However, all such projects shall submit an application to the finance director within thirty days of the effective date of the ordinance and receive the finance director's approval prior to receiving a refund.

Section 39-162. Eligible projects.

No refund may be made unless:

- (1) The project includes new construction that adds at least \$5,000,000 in taxable value to the city's property tax base, or an investment in non-realty capital assets of not less than \$10,000,000, or if the combination of new construction and non-realty capital assets exceeds \$10,000,000.
- (2) The facility is used directly in (a) the manufacture or processing or fabricating or compounding of personal property which is intended to be sold or leased for final use consumption, or (b) data processing, hosting and related services including payroll services, financial transactions processing as those terms are defined by 2002 NAICS, or (c) research and development in the (i) social sciences, (ii) humanities, and (iii) physical, engineering, and life sciences as those terms are defined by 2002 NAICS; and
- (3) The person makes application for the refund from the finance director as set forth in § 39-164.
- (4) The project is not ineligible under § 39-163.

Section 39-163. Ineligible projects.

A project shall not be eligible for tax refunds under this article if it is:

- (1) Used predominantly for the sale of products at retail to individual consumers;
- (2) Used predominantly for residential housing or transient lodging;
- (3) Used predominantly to provide health care services; or
- (4) Not subject to ad valorem real property taxation or equivalent taxes measured by gross receipts.

Section 39-164. Application for refund.

Any person desiring to claim a refund pursuant to this article shall make application to the finance director at least thirty days prior to the earlier of the construction commencement or the ordering of equipment to be used in a new business facility. The application shall be submitted on a form prescribed by the finance director. A separate application shall be submitted for each project. Upon the finance director's approval of the application, the finance director shall notify the applicant that he is eligible to submit refund claims and to receive refunds as provided in this article. Such refund claims are not assignable or transferable except as collateral or security pursuant to SDCL Chapter 57A-9.

Section 39-165. Amount of refund.

The refund shall be 100 percent of the sales taxes paid to the city with respect to the project. The person receiving a refund shall be entitled to retain 100 percent of the amount refunded if the project remains in operation in the city for at least five (5) years. If the project ceases operation in the city before the end of such five (5) year period, the city shall be entitled to repayment of all or a portion of the amount refunded, such refund being prorated based upon the time remaining in the five (5) year minimum term. Any amount the city is entitled to recover under this section shall constitute a debt to the city and a lien in favor of the city upon all property and rights to property whether real or personal belonging to the claimant and may be recovered in an action of the debt.

Section 39-166. Submission of returns and payment.

Any person who is eligible for a refund pursuant to this article shall submit a return to the department no more frequently than on or before the last day of each month and no less frequently than on or before the last day of each month following each calendar quarter. The finance director shall determine and pay 95 percent of the amount of the tax refund within thirty days of receipt of the return. Five percent of the refund shall be withheld by the department. No interest shall be paid on the refund amount.

Section 39-167. Payment of amount withheld.

The amounts withheld by the department in accordance with § 39-166 shall be retained until the project has been completed and the claimant has met all the conditions of this article, at which time all sums retained shall be paid to claimant.

Section 39-168. Improper claims.

If any claim has been fraudulently presented or supported as to any item in the claim, or if the claimant fails to meet all the conditions of this article, then the claim may be rejected in its entirety and all sums previously refunded to the claimant shall constitute a debt to the city and a lien in favor of the city upon all property and rights to property whether real or personal belonging to the claimant and may be recovered in an action of debt.

Section 39-170. Appeals.

Any person aggrieved by a decision of the finance director under this ordinance may file an appeal according to the procedure set forth in Sioux Falls, SD, Revised Ordinances, Chapter 2, Article VI, § 2-65 at sequence (1992).

Section 39-171. Appropriations.

All monies refunded pursuant to this ordinance shall be deemed to be continually appropriated without further action by the Sioux Falls city council.

Section 2. The city shall publish this ordinance after its passage. This ordinance will become effective on the twentieth day following publication thereof unless within such period there shall be filed with the city a petition requesting a referendum in the form required by, and signed by the requisite number of voters as provided in, § 9-20-6 of the South Dakota Codified Laws.

Section 3. All prior resolutions or ordinances which conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict. Any project in compliance with Ordinance 121-04 is deemed to be in compliance with the terms and requirements of this ordinance.

Date adopted: 04/18/05.

Dave Munson
Mayor

ATTEST:
Dianne Metli
City Clerk