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Legislation Text

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April 19, 2017 Committee on
Finance

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Chapter 3-20 of the Municipal Code of Chicago is hereby amended by inserting language as follows:

Chapter 3-20

CHICAGO EMPLOYERS' EXPENSE TAX AND DEVELOPMENT INCENTIVE 3-20-010 Title.

- 3-20-020 Definitions and construction.
- 3-20-030 Employer's expense tax.
- 3-20-040 Residence of taxpayer.
- 3-20-050 Payments, returns and extensions of time.
- 3-20-070 Duties of department and director of revenue.
- 3-20-080 Registration.
- 3-20-110 Corporate fund.
- 3-20-130 Severability.

- 3-20-140 Application of uniform revenue procedures ordinance.

3-20-010 Title.

This chapter shall be known and cited as the "Chicago Employers' Expense Tax and Development Incentive Ordinance" and the tax herein imposed shall be known and cited as the "Chicago Employers' Expense Tax." (Prior code § 200.3)

3-20-020 Definitions and construction.

For the purposes of this chapter, when any of the following words or terms are used, they shall have the meaning and construction ascribed to them in this sectionf

- A. "Association" means a partnership, limited partnership, or any other form of unincorporated business, syndicate or enterprise, owned by two or more persons.
- B. "Business" means any activity, enterprise, profession, trade or undertaking of any nature conducted or engaged in, or ordinarily conducted or engaged in, with the object of gain, benefit or advantages, whether direct or indirect, to the employer or to another or others. The term shall include entities which are subsidiary or independent, conducting operations for the benefit of others and at no

benefit to themselves, nonprofit businesses and trade associations.

C. "City" means the City of Chicago.

D. "Commission merchant" means as follows:

1. The term "commission merchant" means a person who, for compensation in

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the form of a commission, or partly commission and partly salary, engages in buying and selling activities, including the solicitation or negotiation of a sale or service requirement, or the forwarding or accepting of sales or service orders, which lead to the sale of services or of goods, wares, commodities, merchandise, shares of stock and insurance policies owned or authorized by some person other than the commission merchant. The term "commission merchant" shall include agents or employees who receive compensation in such form for such activities.

2. For the purpose of this chapter, the term "commission merchant" shall mean only those individuals who earn or to whom are owed commissions, or salaries and commissions together, of at least \$1,000.00 in any calendar quarter, from the same employer who is subject to the tax imposed by this chapter.

3. The business of a commission merchant shall be deemed to include the buying and selling of services, goods, wares, commodities, merchandise, shares of stock and insurance policies by a person to the extent that the person for himself (a) does not engage on a continuing basis in the business of servicing, manufacturing, refining, fabricating, milling, treating or other processing of the goods, wares, commodities, merchandise, shares of stock and insurance policies bought and sold and does not cause goods, wares, commodities or merchandise to be manufactured, refined, fabricated, milled, treated or otherwise processed on a continuing basis; (b) does not obtain or retain title to goods, wares, commodities, or shares of stock except in one or more of the following situations: while such may be in transit, or for short periods of time before transportation commences or after it ceases; and (c) does not store or warehouse such goods, wares, commodities or merchandise except during one or more of the following situations: while such goods, wares, commodities or merchandise are actually in transit or for short periods of time before transportation commences or after it ceases.

E. "Department of revenue" or "department" means the department of revenue of the City of Chicago.

F. "Director of revenue" or "director" means the director of the department of revenue of the City of Chicago.

G. "Employee" means and includes any individual permitted to work for remuneration by any employer in any activity, enterprise, profession, trade or undertaking, of any nature conducted or engaged in, or ordinarily conducted or engaged in, with the object of gain, benefit, or advantages, whether direct or indirect, to the taxpayer or to another or others. For purposes of this chapter, said term excludes any individual performing:

1. Agricultural labor, as that term is defined in Section 214 of the Illinois

Unemployment Insurance Act;

2. Domestic service solely on a daily basis in a private home;
3. Newspaper carrier delivery or distribution service when the individual is under the age of 18 years;
4. Services in the employ of any organization described in Sections 501(c), 501(d), or 401(c) of Title 26 of the United States Code, as qualified by Sections 502 and 503 of said Title 26, unless such organization normally, income shall have the meaning set forth in Sections 511, 512, 513, 514 and 515 of Title 26 of the United States Code;
5. Services in the employ of one's father, mother, son, daughter or spouse;
6. Services in the employ of any governmental unit, including federal, state or local political subdivisions;

H. "Full-time employee" means an individual who earns or to whom are accrued wages from employment of at least \$1,000.00 in any calendar quarter of a year from or for the same employer who is subject to the tax imposed by this chapter.

I. "Employer" means any person that employs one or more employees performing services in whole or in part within the City of Chicago. An employer is subject to the tax imposed by this chapter for any full calendar quarter during which it employs 50 or more full-time employees, or commission merchants, or any combination thereof.

J. "Individual" means a natural person, a human being, as distinguished from -an artificial person such as a corporation or political subdivision. (Prior code § 200.3-1; Amend Coun. J. 12 -12-84, p. 11875; 11-10-94, p. 59125, § 1, effective 7-1-95; Amend Coun. J. 3-31-04, p. 20916, §§ 3.8, 4.16)

3-20-30 Employer's expense tax.

A. A tax is hereby imposed upon every employer who, in connection with the employer's business, engages, hires, employs, or contracts with 50 or more individuals as commission merchants and full-time employees, or any combination thereof, to perform work or render services in whole or in part within the City of Chicago. Beginning April 1, 2017, the amount of the tax shall be \$33.00 per month for each commission merchant and full-time employee to whom commission or employment compensation is paid or to whom such commission or compensation has accrued. The incidence of this tax shall be upon the employer alone as an employer's expense tax and shall not be transferred directly or indirectly to the commission merchant or full-time employee under any circumstances. In calculating the employer's expense tax due, the employer shall not include employees who are permanent residents of a City of Chicago Community Area, which were listed in the top twenty (20) for incidence of violent crime per 1,000 for the prior calendar year, excluding the Loop Community Area. In calculating the employer's expense tax due, the employer shall not include employees who are permanent residents of a City of Chicago Community Area, which were listed in the top twenty (20) hardship index, as calculated by the UIC Great Cities Institute.

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Beginning June 1, 2017, and by January 31 st of each year thereafter, the department will publish a map of the Community Areas, whose residents are exempt from the employer's expense tax.

- B. Such tax shall be levied only upon the number of those commission merchants or employees whose work or service is performed within the City of Chicago, or if partly within and partly without the City of Chicago, the numbers of those individuals who perform 50 percent or more of their work or service per calendar quarter within the City of Chicago.
- C. If it is impractical to apportion such work or service aforesaid either because of the peculiar nature thereof or on account of unusual bases of compensation, or for any other similar reason, then the numbers of such individuals attributable to work performed or services rendered in the City of Chicago shall be determined in accordance with rules and regulations adopted or promulgated by the director of revenue for this purpose, and in furtherance of the purposes of this ordinance. If the director of revenue determines that the percentage of work attributable to the City of Chicago for any one or more employers is a relatively stable percentage, then the director is hereby authorized to establish that percentage as a prima facie percentage of work attributable to the City of Chicago; provided, however, that the director shall condition the establishment of such fixed percentage upon the obligation of the employer to report immediately to the director any significant change in his mode of business which might or will have some effect upon the portion of work performed or service attributable to the City of Chicago.
- D. The tax is due for each calendar quarter the employer has 50 or more full-time employees or commission merchants, or combination thereof, at any time during such quarter except that for any month within such quarter the employer's number of full-time employees or commission merchants, or combination thereof, falls below 50 then no tax shall be due for that month. (Prior code § 200.3-2; Amend Coun. J. 12-12-84, p. 11875; 12-23-85, p. 25827; 5-14-86, p. 30004; 11-10-94, p. 59125, § 1, effective 7-1-95)

3-20-040 Residence of taxpayer.

This tax shall apply only to employers doing business within the City of Chicago. An employer does business within the City of Chicago, for the purposes of this chapter, if he engages, hires, employs or contracts with one or more individuals as commission merchants or full-time employee; to perform work or render services in whole or in part within the City of Chicago and fulfills one or more of the following criteria: (a) such employer maintains a fixed place of business within the City of Chicago, or (b) a commission merchant or employee of said employer maintains a fixed place of business within the City of Chicago for the benefit or partial benefit of such employer, or (c) such employer or his commission merchant or employee owns or leases real property within the City of Chicago for business purposes, or (d) such employer or his commission merchant or employee regularly maintains a stock of tangible personal property in the City of Chicago for sale in the ordinary course of business, or (e) such employer employs or otherwise uses

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real or personal property within the City of Chicago, or (f) such employer or his commission merchant or employee conducts continuous solicitation of business within the City of Chicago. (Prior code § 200.3-3; Amend Coun. J. 10-26-88, p. 18681)

3-20-50 Payments, returns and extensions of time.

- A. The taxes herein imposed shall become due and payable for the preceding calendar quarter on the last day of the month following said calendar quarter and shall be considered delinquent if not paid on or before such date. Each employer subject to the tax herein imposed shall execute and file an employers' expense tax return, on forms prepared for that purpose by the department of revenue, concurrently with the payment of taxes imposed herein.

- B. Each employer in the City of Chicago, whether subject to the tax herein imposed or not, shall prepare and maintain at some accessible place within the City of Chicago permanent, just and accurate books, papers and records setting forth the name and address of each commission merchant or employee performing work or rendering services in whole or in part for said employer in the City of Chicago, designating that portion of the work for each such commission merchant or employee attributable to the City of Chicago, plus the aggregate number of all such individuals whose work or service is attributable to the City of Chicago, and such other and further pertinent information as the director of revenue may require in furtherance of the purposes of this ordinance.

- C. Notwithstanding any other provision of this chapter, for all periods beginning on or after January 1, 2000, (1) all tax returns shall be filed with the department on an annual basis on or before August 15 of each year in accordance with Sections 3-4-186 and 3-4-189 of this Code, (2) all tax payments shall be made in accordance, with either Section 3-4-187 (payment of actual tax liabilities) or Section 3-4-188 (payment of estimated taxes), and (3) the provisions of Sections 3-4-186, 3-4-187, 3-4-188 and 3-4-189 shall control over any contrary provisions in this chapter regarding the subjects covered by those sections. (Prior code § 200.3-4; Amend Coun. J. 12-12-84, p. 11875; 11-14-91, p. 7458; Amend Coun. J. 11-17-99, p. 18040, § 1.2)

3-20-070 Duties of department and director of revenue.

It shall be the duty of the department of revenue to collect and receive the tax imposed by this ordinance. The department shall keep an accurate and separate account of all such tax payments received by it showing the name and address of the taxpayer and the date of each payment. The director of revenue is hereby empowered to adopt and promulgate, and to enforce, rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this ordinance, including provisions for reexamination, correction and amendment of all returns. The director, or any agent or employee designated in writing by him, is hereby authorized to examine the books, papers and records of any employer or alleged employer during regular business hours, in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax imposed by this ordinance. (Prior code § 200.3-6)

3-20-80 Registration.

- A. Every employer subject to the tax imposed by this chapter shall, within ten days after he commences business within the City of Chicago, file in the office of the department of revenue a certificate setting forth the name under which such business is, or is to be, conducted or trans- acted and the full name or names and address or addresses of the individual or individuals conducting or transacting the same, unless the party so certified is a corporation or trustee, in which event it shall set forth its said principal office or place of business and when and where incorporated or organized. Said certificate shall be executed and duly acknowledged by the person or persons so conducting or intending to conduct said

business or by the president or secretary of the corporation, as the case may be.

- B. In the event of a change in the identity of an employer, or termination of his operations, a similar certificate setting forth the facts with respect to such change or termination shall be filed in the office of the department of revenue within ten days thereafter. (Prior code § 200.3-7; Amend Coun. J. 3-31-04, p. 20916, § 3.9)

3-20-110 Transfer to Chicago Public Schools.

By the fifth (5th) day of each month beginning on July 5, 2017, the Director of Revenue shall transfer all collections from the tax imposed by this chapter (the Employer's Expense Tax) to the Chicago Public Schools to support its operations. (Prior code § 200.3-10)

3-20-130 Severability.

If any provision, clause, sentence, paragraph, section, or part of this chapter, or application thereof to any person, or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this chapter and the application of such provision to other persons, firms, corporations, public agencies or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation, public agency, or circumstances involved. It is hereby declared to be the legislative intent of the city council that this chapter would have been adopted had such unconstitutional or invalid provision, clause, sentence, paragraph, section, or part thereof not been included. (Prior code § 200.3-12)

3-20-140 Application of uniform revenue procedures ordinance.

Whenever not inconsistent with the provisions of this chapter or whenever this chapter is silent, the provisions of the uniform revenue procedures ordinance, Chapter 3-4 of the Municipal Code of Chicago, as amended, shall apply and supplement this chapter.

SECTION 2. This ordinance shall be effective April 1, 2017 and the initial payment of the Chicago Employer's Expense will be due on July 1, 2017 and each calendar quarter thereafter. The tax will terminate after two years with the final tax payment due on July 1, 2019. (Added Coun. J. 11-14-91, p. 7458)