

# Miami-Dade County PTP Ordinance #02-116

ARTICLE XVI. - ONE HALF OF ONE PERCENT CHARTER COUNTY TRANSIT SYSTEM SALES SURTAX AUTHORIZED BY SECTION 212.055(1) FLORIDA STATUTES (2001)

Sec. 29-121. - Sales surtax levied.

There is hereby levied and imposed a one half of one percent discretionary sales surtax authorized by Section 212.055(1), Florida Statutes (2001) on all transactions occurring in Miami-Dade County which transactions are subject to the state tax imposed on sales, use, rentals, admissions and other transactions by Chapter 212, Florida Statutes (2001).

(Ord. No. 02-116, § 1, 7-9-02)

Sec. 29-122. - Surtax rate, limitations.

The surtax rate shall be one-half of one percent on the amount of taxable sales and taxable purchases representing such transactions. The limitations, conditions and provisions contained in Section 212.054, Florida Statutes (2001) as the same may be amended and supplemented from time to time are hereby incorporated herein.

(Ord. No. 02-116, § 1, 7-9-02)

Sec. 29-122.1. - Exemption from Sales Surtax.

All exemptions applicable to the discretionary sales surtax contained in Chapter 212, Florida Statutes are hereby incorporated herein as the same may be amended and supplemented from time to time including, but not limited to, the following:

1. The sales amount above \$5,000 on any item of tangible personal property shall not be subject to the surtax. However, charges for prepaid calling arrangements, as defined in Section 212.05(1)(e)1.a. Fla. Stats., shall be subject to the surtax. For purposes of administering the \$5,000 limitation of an item of tangible personal property, if two or more taxable items of tangible personal property are sold to the same purchaser at the same time and, under generally accepted business practice or industry standards or usage, are normally sold in bulk or are items that, when assembled, comprise a working unit or part of a working unit, such items must be considered a single item for purposes of the \$5,000 limitation when supported by a charge ticket, sale slip, invoice, or other tangible evidence of a single sale or rental.
2. The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the sales surtax imposed by this article.
  - (1) *Exemptions; General Groceries.*
    - (a) Food products for human consumption are exempt from the sales surtax imposed by this article.
    - (b) For the purpose of this article, as used in this subsection, the term "food products" means edible commodities, whether processed, cooked, raw, canned, or in any other form, which are generally regarded as food. This includes, but is not limited to, all of the following:
      1. Cereals and cereal products, baked goods, oleomargarine, meat and meat products, fish and seafood products, frozen foods and dinners, poultry, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices, salt, sugar and sugar products, milk and dairy products, and products intended to be mixed with milk.
      2. Natural fruit or vegetable juices or their concentrates or reconstituted natural concentrated fruit or vegetable juices, whether frozen or unfrozen, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned with salt or spice,

## Miami-Dade County PTP Ordinance #02-116

- or unseasoned; coffee, coffee substitutes, or cocoa; and tea, unless it is sold in a liquid form.
3. Bakery products sold by bakeries, pastry shops, or like establishments that do not have eating facilities.
- (c) The exemption provided by this subsection does not apply:
1. When the food products are sold as meals for consumption on or off the premises of the dealer.
  2. When the food, products are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware, whether provided by the dealer or by a person with whom the dealer contracts to furnish, prepare, or serve food products to others.
  3. When the food products are ordinarily sold for immediate consumption on the seller's premises or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a "take out" or "to go" order and are actually packaged or wrapped and taken from the premises of the dealer.
  4. To sandwiches sold ready for immediate consumption on or off the seller's premises.
  5. When the food products are sold ready for immediate consumption within a place, the entrance to which is subject to an admission charge.
  6. When the food products are sold as hot prepared food products.
  7. To soft drinks, which include, but are not limited to, any nonalcoholic beverage, any preparation or beverage commonly referred to as a "soft drink," or any noncarbonated drink made from milk derivatives or tea, when sold in cans or similar containers.
  8. To ice cream, frozen yogurt, and similar frozen dairy or nondairy products in cones, small cups, or pints, popsicles, frozen fruit bars, or other novelty items, whether or not sold separately.
  9. To food prepared, whether on or off the premises, and sold for immediate consumption. This does not apply to food prepared off the premises and sold in the original sealed container, or the slicing of products into smaller portions.
  10. When the food products are sold through a vending machine, pushcart, motor vehicle, or any other form of vehicle.
  11. To candy and any similar product regarded as candy or confection, based on its normal use, as indicated on the label or advertising thereof.
  12. To bakery products sold by bakeries, pastry shops, or like establishments that have eating facilities, except when sold for consumption off the seller's premises.
  13. When food products are served, prepared, or sold in or by restaurants, lunch counters, cafeterias, hotels, taverns, or other like places of business.
- (d) As used in this subsection (1), the term:
1. "For consumption off the seller's premises" means that the food or drink is intended by the customer to be consumed at a place away from the dealer's premises.
  2. "For consumption on the seller's premises" means that the food or drink sold may be immediately consumed on the premises where the dealer conducts his or her business. In determining whether an item of food is sold for immediate

## Miami-Dade County PTP Ordinance #02-116

consumption, there shall be considered the customary consumption practices prevailing at the selling facility.

3. "Premises" shall be construed broadly, and means, but is not limited to, the lobby, aisle, or auditorium of a theater; the seating, aisle, or parking area of an arena, rink, or stadium; or the parking area of a drive-in or outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where such meals or beverages are served.
4. "Hot prepared food products" means those products, items, or components which have been prepared for sale in a heated condition and which are sold at any temperature that is higher than the air temperature of the room or place where they are sold. "Hot prepared food products," for the purposes of this subsection, includes a combination of hot and cold food items or components where a single price has been established for the combination and the food products are sold in such combination, such as a hot meal, a hot specialty dish or serving, or a hot sandwich or hot pizza, including cold components or side items.
  - (e) 1. Food or drinks not exempt under paragraphs (a), (b), (c), and (d) shall be exempt, notwithstanding those paragraphs, when-purchased with food coupons or Special Supplemental Food Program for Women, Infants, and Children vouchers issued under authority of federal law.
  2. This paragraph (e) is effective only while federal law prohibits a state's participation in the federal food coupon program or Special Supplemental Food Program for Women, Infants, and Children if there is an official determination that state or local sales taxes are collected within that state on purchases of food or drinks with such coupons.
  3. This paragraph (e) shall not apply to any food or drinks on which federal law shall permit sales taxes without penalty, such as termination of the state's participation.

### (2) *Exemptions medical.*

- (a) There shall be exempt from the sales surtax imposed by this article any medical products and supplies or medicine dispensed according to an individual prescription or prescriptions written by a prescriber authorized by law to prescribe medicinal drugs; hypodermic needles; hypodermic syringes; chemical compounds and test kits used for the diagnosis or treatment of human disease, illness, or injury; and common household remedies recommended and generally sold for internal and external use in the cure, mitigation, treatment, or prevention of illness or disease in human beings, but not including cosmetics or toilet articles, notwithstanding the presence of medicinal ingredients therein, according to a list prescribed and approved by the Department of Health, which list shall be certified to the Department of Revenue from time to time and included in the rules promulgated by the Department of Revenue. There shall also be exempt from the sales surtax imposed by this article artificial eyes and limbs; orthopedic shoes; prescription eyeglasses and items incidental thereto or which become a part thereof; dentures; hearing aids; crutches; prosthetic and orthopedic appliances; and funerals. In addition, any items intended for one-time use which transfer essential optical characteristics to contact lenses shall be exempt from the sales surtax imposed by this article, however, this exemption shall apply only after \$100,000 of the sales surtax imposed by this article on such items has been paid in any calendar year by a taxpayer who claims the exemption in such year. Funeral directors shall pay tax on all tangible personal property used by them in their business.
- (b) For the purposes of this subsection (2):
  1. "Prosthetic and orthopedic appliances" means any apparatus, instrument, device, or equipment used to replace or substitute for any missing part of the body, to

## Miami-Dade County PTP Ordinance #02-116

alleviate the malfunction of any part of the body, or to assist any disabled person in leading a normal life by facilitating such person's mobility. Such apparatus, instrument, device, or equipment shall be exempted according to an individual prescription or prescriptions written by a physician licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466, Florida Statutes, or according to a list prescribed and approved by the Department of Health, which list shall be certified to the Department of Revenue from time to time and included in the rules promulgated by the Department of Revenue.

2. "Cosmetics" means articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleaning, beautifying, promoting attractiveness, or altering the appearance and also means articles intended for use as a compound of any such articles, including, but not limited to, cold creams, suntan lotions, makeup, and body lotions.
  3. "Toilet articles" means any article advertised or held out for sale for grooming purposes and those articles that are customarily used for grooming purposes, regardless of the name by which they may be known, including, but not limited to, soap, toothpaste, hair spray, shaving products, colognes, perfumes, shampoo, deodorant, and mouthwash.
  4. "Prescription" includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist. The term also includes an orally transmitted order by the lawfully designated agent of such practitioner. The term also includes an order written or transmitted by a practitioner licensed to practice in a jurisdiction other than this state, but only if the pharmacist called upon to dispense such order determines, in the exercise of his or her professional judgment, that the order is valid and necessary for the treatment of a chronic or recurrent illness. The term also includes a pharmacist's order for a product selected from the formulary created pursuant to Sec. 465.186 Fla. Stats. A prescription may be retained in written form, or the pharmacist may cause it to be recorded in a data processing system, provided that such order can be produced in printed form upon lawful request.
- (c) Chlorine shall not be exempt from the tax imposed by this article when used for the treatment of water in swimming pools.
  - (d) Lithotripters are exempt.
  - (e) Human organs are exempt.
  - (f) Sales of drugs to or by physicians, dentists, veterinarians, and hospitals in connection with medical treatment are exempt.
  - (g) Medical products and supplies used in the cure, mitigation, alleviation, prevention, or treatment of injury, disease, or incapacity which are temporarily or permanently incorporated into a patient or client by a practitioner of the healing arts licensed in the state are exempt.
  - (h) The purchase by a veterinarian of commonly recognized substances possessing curative or remedial properties which are ordered and dispensed as treatment for a diagnosed health disorder by or on the prescription of a duly licensed veterinarian, and which are applied to or consumed by animals for alleviation of pain or the cure or prevention of sickness, disease, or suffering are exempt. Also exempt are the purchase by a veterinarian of antiseptics, absorbent cotton, gauze for bandages, lotions, vitamins, and worm remedies.

## Miami-Dade County PTP Ordinance #02-116

- (i) X-ray opaques, also known as opaque drugs and radiopaque, such as the various opaque dyes and barium sulphate, when used in connection with medical X-rays for treatment of bodies of humans and animals, are exempt.
- (j) Parts, special attachments, special lettering, and other like items that are added to or attached to tangible personal property so that a handicapped person can use them are exempt when such items are purchased by a person pursuant to an individual prescription.
- (k) This subsection (2) shall be strictly construed and enforced.

(Ord. No. 02-116, § 1, 7-9-02)

Sec. 29-123. - Administration, collection and enforcement.

The Florida Department of Revenue shall administer, collect and enforce the surtax levied hereunder pursuant to the procedures specified in Sec. 212.054(4) Fla. Stats. (2001) as the same may be amended or renumbered from time to time.

(Ord. No. 02-116, § 1, 7-9-02)

Sec. 29-124. - Special fund created; uses of surtax proceeds; and role of Citizens' Independent Transportation Trust.

The surtax proceeds collected by the State and distributed hereunder shall be deposited in a special fund set aside from other County funds in the custody of the Finance Director of the County. Moneys in the special fund shall be expended for the transportation and transit projects (including operation and maintenance thereof) set forth in Exhibit 1 to this article (including those projects referenced in the ballot question presented to the electors to approve this levy) and the adopted Five Year Implementation Plan, subject to any amendments thereto made in accordance with the Transportation Planning Organization ("TPO") process or made in accordance with the procedures specified in subsection (d) of this section.

Expenditure of surtax proceeds for contracts procured by or on behalf of Miami-Dade Transit or for transit-related procurements shall be subject to the following limitations:

- (a) Surtax proceeds shall be applied to expand the Golden Passport Program to all persons (regardless of income level who are over the age of 65 or are drawing Social Security benefits) and to provide fare-free public transportation service on Metromover, including extensions.
- (b) Surtax proceeds may only be expended for the transportation and transit purposes specified in Section 212.055(1)(d)1—4, Fla. Stats., as may be amended from time to time. The use of surtax proceeds for on-demand services as defined in Section 212.055(1)(e), Florida Statutes, shall be limited to on-demand services where the origination or destination of the trip is a South Dade Transitway bus shelter, a Metrorail station, or a public transit park-and-ride facility and the trip is no greater than 5 miles in distance. Park-and-ride facilities shall mean parking lots, garages, or other structures where the public can park their vehicles and board public transit, which includes but is not limited to buses and rail.
- (c) The County shall not expend more than five percent of the County's share of surtax proceeds on administrative costs, exclusive of project management and oversight for projects funded by the surtax.
- (d) The Trust shall in consultation with the Mayor recommend to the County Commission a Five Year Implementation Plan. The Five Year Implementation Plan shall include a detailed scope of work, schedule and budget, consistent with the federal requirements for the TPO TIP and Long Range Plan, for each project included in Exhibit 1 of the People's Transportation Plan, as amended, anticipated to be implemented in whole or in part during the five year period. The Five Year Implementation Plan shall be approved by the County Commission in accordance with the procedures established in paragraph (f) of this section. The initial Five Year Implementation Plan shall be approved no later than January 1, 2011. The Five Year Implementation Plan shall be

## County PTP Ordinance #02-116

updated annually no later than January 1st of each year and shall be presented to the County Commission and posted online. The annual report shall detail the progress on each project included in the Five Year Work Plan.

- (e) The County Commission shall not delete or materially change any County project contained in the list attached as Exhibit 1 to this article nor add any project to the list or delete, materially change or add any project to the Five Year Implementation Plan except in accordance with the procedures set forth in this subsection (e). The Five Year Implementation Plan and any proposed deletion, material change or addition of a County project shall be initially reviewed by the Citizens' Independent Transportation Trust ("Trust"), which shall forward a recommendation thereon to the County Commission. The County Commission may either accept or reject the Trust's recommendation. If the County Commission rejects the recommendation, the matter shall be referred back to the Trust for its reconsideration and issuance of a reconsidered recommendation to the County Commission. The County Commission may approve, change or reject the Trust's reconsidered recommendation. A two-thirds vote of the Commission membership shall be required to take action other than as contained in the reconsidered recommendation of the Trust. The foregoing notwithstanding, the list of County projects contained in Exhibit 1 and the Five Year Implementation Plan may be changed as a result of the metropolitan planning organization process as mandated by federal and state law as applied to the TPO.
- (f) (i) No surtax proceeds may be used to pay the costs of a contract unless the Trust has submitted a recommendation to the County Commission regarding said contract award. The County Commission, if in agreement with the Trust's recommendation, may award a contract by majority vote. The County Commission may modify or reject the recommendation of the Trust by a two-thirds (2/3) vote of the Commission's membership. If the Trust has failed to forward a recommendation to the County Commission within 45 days of the County Mayor or County Mayor's designee filing an award recommendation with the Clerk of the Board, the County Commission may take action on the contract award recommendation without any Trust recommendation. Notwithstanding any other provision to the contrary, a committee of the Commission may consider a contract award recommendation prior to receipt of a recommendation of the Trust.
- (ii) Where no surtax proceeds are used to fund a contract, no County funds may be used to pay the costs of a contract where the portion procured by or on behalf of Miami-Dade Transit or for transit-related procurements is valued at over one million dollars (\$1,000,000.00) unless the Trust has submitted a recommendation to the County Commission regarding said contract award. The County Commission, if in agreement with the Trust's recommendation, may award a contract by majority vote. The County Commission may modify or reject the recommendation of the Trust by a majority vote. If the Trust has failed to forward a recommendation to the County Commission within 45 days of the County Mayor or County Mayor's designee filing an award recommendation with the Clerk of the Board, the County Commission may take action on the contract award recommendation without any Trust recommendation. Notwithstanding any other provision to the contrary, a committee of the Commission may consider a contract award recommendation prior to receipt of a recommendation of the Trust.
- (iii) Where no surtax proceeds are used to fund a contract eligible for award under the County Mayor's delegated authority and where the portion procured by or on behalf of Miami-Dade Transit or for transit-related procurements is valued at one million dollars (\$1,000,000.00) or less, the Trust shall be provided with a Semi-Annual Report detailing all such contract awards. If the Trust takes exception with a contract award the County Mayor or County Mayor's designee will provide the Trust with any additional information necessary to resolve any outstanding issue and, if necessary and appropriate, work in collaboration with the Trust to take any corrective action that may be available.
- (iv) The Trust shall, in consultation with the County Mayor or County Mayor's designee, schedule Trust meetings monthly so as to ensure that a Trust recommendation is provided to the Commission with the Commission's agenda package.

## County PTP Ordinance #02-116

- (g) On a quarterly basis, the Executive Director of the CITT shall submit a written report to the Commission and the Mayor of all expenditures made pursuant to Section 29-124 herein.
- (h) Twenty percent of surtax proceeds shall be distributed annually to those cities existing as of November 5, 2002 that meet the following conditions:
  - (i) That continue to provide the same level of general fund support for transportation that is in their FY 2001-2002 budget in subsequent Fiscal Years. Any surtax proceeds received shall be applied to supplement, not replace a city's general fund support for transportation. Where the general fund support for FY 2001-2002 exceeded the general fund support in the preceding year by more than 150 percent, the maintenance of effort requirement may be calculated as the average general fund support for the five years preceding FY 2001-2002 and applied beginning FY 2001-2002;
  - (ii) That apply 20 percent of any surtax proceeds received to transit uses in the nature of circulator buses, bus shelters, bus pullout bays, on-demand transportation services as defined in Section 212.055(1)(e), Florida Statutes, as may be amended from time to time, or other transit-related infrastructure. The use of surtax proceeds for on-demand transportation services must be authorized by an interlocal agreement with the County which has been approved by the Board of County Commissioners. The interlocal agreement shall require, among other things, that the city, operator, vehicles and chauffeurs comply with applicable safety, mechanical and vehicular standards required by the County, and any applicable state or federal requirements, and shall detail the implementation plan and fare structure for the on-demand services. The use of surtax proceeds for on-demand transportation services shall be limited to providing transportation services where the trip is no greater than 5 miles in distance and (1) where the origination or destination of the trip is solely within city boundaries; (2) where the origination of a trip is within city boundaries and the destination is the nearest Metrorail station or South Dade Transitway bus shelter; (3) where the origination of a trip is the Metrorail station or South Dade Transitway bus shelter closest to the city boundary of the city where the intended destination of the trip is located; or (4) where the origination or destination of the trip is a public transit park-and-ride facility. Each city that uses surtax proceeds for on-demand transportation services shall provide an annual report to the County describing the city's implementation of the on-demand transportation services in accordance with this paragraph. Any city that cannot apply the 20 percent portion of surtax proceeds it receives as provided in this paragraph, may contract with the County for the County to apply such proceeds on a County project that enhances traffic mobility within that city and immediately adjacent areas. If the city cannot expend such proceeds in accordance with this paragraph and does not contract with the County as described in this paragraph, then such proceeds shall carry over and be added to the overall portion of surtax proceeds to be distributed to the cities in the ensuing year and shall be utilized solely for the transit uses enumerated in this subsection (ii);
  - (iii) Surtax proceeds distributed amongst the existing cities shall be distributed on a pro rata basis based on the ratio such city's population bears to the total population in all such cities (as adjusted annually in accordance with the Estimates of Population prepared by the Bureau of Economic and Business Research of the University of Florida) annually to those cities that continue to meet the foregoing conditions. For purposes of the foregoing, whenever an annexation occurs in an existing city, the number of persons residing in such annexed area at the time it is annexed shall be excluded from all calculations. Increases in population in areas annexed over and above the population in such area at the time of annexation which occur after annexation shall be included in subsequent years' calculations; and
  - (iv) That do not expend more than 5% of its municipal share of surtax proceeds on administrative costs, exclusive of project management and oversight for projects funded by the surtax. Administrative costs shall be defined as overhead expenses which are not readily attributable to any one particular project funded in whole or in part by transit surtax funds.

## County PTP Ordinance #02-116

- (i) Newly incorporated municipalities shall have the right to negotiate with the County for a pro rata share of the sales surtax, taking into consideration the neighborhood and municipal projects identified in Exhibit 1, as amended, within the boundaries of the new municipalities. The preceding sentence shall not affect the twenty (20) percent share provided herein for municipalities existing on November 5, 2002.

(Ord. No. 02-116, § 1, 7-9-02; Ord. No. 06-138, § 1, 9-26-06; Ord. No. 07-56, § 1, 4-24-07; Ord. No. 10-53, § 2, 9-21-10; Ord. No. 11-13, § 2, 3-15-11; Ord. No. 16-09, § 1, 1-20-16; Ord. No. 18-23, § 2, 2-21-18; Ord. No. 18-46, § 1, 5-1-18; Ord. No. 19-06, § 1, 1-23-19)