

# **Occupation Taxes and Regulatory Fees:**

*Make them Work for Your City*

**Second Edition  
May 2015**



## FOREWORD

The Georgia Municipal Association is pleased to provide for municipal officials an overview of the current law governing occupation taxes and regulatory fees. We trust that this publication will be helpful to officials in implementing occupation tax and regulatory fee ordinances that will best meet the needs of their city. We welcome your comments and suggestions for revision and improvement of the publication after you review its contents.

We are indebted to Sam L. Brannen, Jr., Associate General Counsel with GMA and Gwin Copeland Hall, Senior Associate General Counsel with GMA, for their work on this and prior versions of this manual and on sample occupation tax and regulatory fee ordinances.

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This publication is intended to assist municipal officials in identifying issues so that they can discuss them and appropriately consult with their city attorney. This publication is provided for general informational purposes only, does not constitute legal advice and may not apply to your specific situation. Municipal officials should consult with their city attorney before taking any action based on the content of this publication.

Additional references for occupation taxes and regulatory fees in Georgia include *A Move Toward Equity: Taxing and Licensing Businesses and Occupations under Georgia Law* by Les A. Schneider and Robert E. Sellers, published by the Carl Vinson Institute of Government in 1994. In 1996, the Carl Vinson Institute published *Update on Georgia's Occupation Tax Law*, authored by Betty J. Clements, as a supplement to *A Move Toward Equity* due to substantial revisions to the occupation tax law in 1995.

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## **Introduction**

Article IX, Section IV, Paragraph I of the Georgia Constitution authorizes municipal governments to levy and collect taxes and fees within the municipal limits. Among the charges permitted by the General Assembly are occupation taxes, levied on businesses and practitioners, and regulatory fees, assessed to recover the cost of regulating business activities.

The purpose of this publication is to familiarize city officials with some of the important basics in the areas of occupation taxes and regulatory fees. Because of the complexities of the laws concerning these subjects, it is not advisable to adopt an occupation tax or regulatory fee ordinance without consultation with legal counsel.

This summary provides guidance for city officials working with the city attorney to craft municipal ordinances tailored to their community's specific needs. Again, this publication is not intended to provide legal advice. Legal counsel should be consulted for guidance on the appropriate occupation tax and regulatory fee ordinances for your municipality and to ensure compliance with current law.

## **Background Information**

In 1993, the Georgia General Assembly passed House Bill 362, substantially revising the general law authorizing cities and counties to impose business and occupation taxes and regulatory fees. This law was again amended in 1995, and has received several alterations in recent years as well. The law is codified in O.C.G.A. § 48-13-5 through § 48-13-29.

Under the revised law, a city or county may levy and collect occupation taxes on businesses and practitioners that have an office or location within the local government jurisdiction.<sup>1</sup> These occupation taxes may be used to raise revenue for the local government. Significantly, the law uses the term "occupation tax" rather than "business license." As a result, cities now provide a business with an occupation tax certificate, signifying the payment of annual occupation taxes, instead of a business license. While some local government ordinances still refer to business licenses, the term is out of date.

With respect to regulatory fees, they may not be used for the purpose of raising general revenue. Instead, a local government may impose regulatory fees solely to cover the cost of business regulation that is performed by the city. Notably, a local government may not impose a regulatory fee on any business or occupation subject to state licensure or regulation, unless the state law specifically permits additional local regulation. A local government may charge multiple regulatory fees for the same project or business provided regulatory activities are performed and the fee charged reasonably approximates the cost of regulation. For example, a local government regulating the construction of new homes may impose separate regulatory fees for the cost of reviewing plans, inspecting the worksite, and inspecting the finished facility to ensure compliance with building codes. State law prescribes the methods that may be used for calculating regulatory fees, and care should be taken to ensure the methodology employed complies with state law.<sup>2</sup>

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<sup>1</sup> O.C.G.A. § 48-13-6 permits municipalities to levy occupation taxes within the city limits and counties to levy occupation taxes in the unincorporated areas of counties.

<sup>2</sup> O.C.G.A. § 48-13-9(e).

## **What is an Occupation Tax?**

An occupation tax is a tax enacted by a local government for the purpose of raising revenue. It may be imposed on persons, partnerships, corporations or other entities pursuant to a local ordinance or resolution establishing the levy, assessment and collection of an occupation tax. The occupation tax may include an administrative fee to cover the cost of administering the tax. Occupation tax ordinances should include remedies for failure to pay taxes in a timely manner. Local governments must conduct a public hearing prior to adopting any ordinance or resolution concerning an occupation tax.

### Practice Tip

Administrative fees may not exceed the cost of administration, but must approximate the reasonable cost of processing the occupation tax. A city will open itself up to challenges if the administrative fee appears unreasonable. Since the amount of occupation taxes generally are not subject to scrutiny as long as they follow the statutory criteria, a city might consider eliminating the administrative fee and simply include a flat tax equal to the average administrative cost as part of the total occupation tax.

## **Who Can Be Taxed?**

Georgia law authorizes local governments to assess occupation taxes on both in-state and out-of-state businesses provided certain criteria are met. Georgia law does not, however, authorize municipalities to levy a tax on an individual merely for the privilege of working within or being employed within the limits of a municipality.<sup>3</sup> For example, a city may not impose an occupation tax on a plumber or electrician who provides services within City X but who does not have an office or location within City X. City X may, however, still impose regulatory fees on the plumber or electrician to cover the costs of regulating his or her business activities within the city limits.

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<sup>3</sup> O.C.G.A. § 48-13-19(a).

Taxation of In-State Businesses

Cities may impose an occupation tax on businesses and practitioners of professions and occupations that have one or more locations or offices inside the city limits.<sup>4</sup> Note that “practitioners of professions and occupations” does not include an employee of a business *if* the business itself pays an occupation tax.

<u>Location or Office</u> <sup>5</sup>	<u>Not a Location or Office</u>
<ul style="list-style-type: none"><li>• Any structure where a business, profession or occupation is conducted;</li><li>• Any vehicle where a business, profession or occupation is conducted.</li></ul>	<ul style="list-style-type: none"><li>• A temporary or construction worksite serving a single customer or project;</li><li>• A vehicle used for sales or delivery by a business or practitioner that has a separate location/office;</li><li>• Real property that is the location of rented or leased personal property of another is not an office or location for the personal property’s owner or lessor;</li><li>• Property that is rented or leased to another unless the owner conducts business on the site.</li></ul>

Leased real property is not an office or location for the real property’s owner or lessor unless the owner or lessor conducts business there other than merely maintaining the property or showing the property to prospective lessees. Thus, for an in-state business a local government may not levy an occupation tax on the business of renting a house or operating an apartment complex if the leasing or management office is not also located within the local government’s jurisdiction.

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<sup>4</sup> O.C.G.A. § 48-13-6(b).

<sup>5</sup> O.C.G.A. § 48-13-5(3).

## Taxation of Out-of-State Businesses

If certain criteria are met, cities may impose occupation taxes on out-of-state businesses.<sup>6</sup> Occupation taxes may be imposed on businesses and practitioners of professions and occupations with no location or office in Georgia if:

- The business or practitioner has one or more employees or agents who “*exert substantial effort*” inside the city limits in order to solicit business or serve customers; or
- The business or practitioner owns income-generating property, personal or real, that is located in the city limits.

### Practice Tip

Only the Georgia local government for the city or county in which the largest dollar volume of business is done or service is performed may impose an occupation tax on an out-of-state business or practitioner.<sup>7</sup> For example, if an out-of-state business exerts substantial efforts in City X accounting for \$100,000 in gross receipts and exerts substantial efforts in City Y accounting for \$200,000 in gross receipts, the business would only be required to pay an occupation tax to City Y (assuming City Y imposes an occupation tax).

If an out-of-state business or practitioner provides proof it has paid to another state occupation taxes on its Georgia business activities, the business or practitioner will be exempt from occupation tax in Georgia.<sup>8</sup>

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<sup>6</sup> O.C.G.A. § 48-13-7(b).

<sup>7</sup> O.C.G.A. § 48-13-7(e).

<sup>8</sup> O.C.G.A. § 48-13-7(f).

### Taxation of Door-to-Door Sales

Georgia law provides that traveling salespersons and other individuals who conduct business in a municipality *may* be taxed as if they have a location in the municipality. If a person sells *and* delivers goods from a vehicle, the vehicle may constitute a location for occupation tax purposes. A salesperson who delivers goods previously ordered from a business without an office or location in a municipality is *not* subject to occupation tax based on the delivery. Likewise, a salesperson that takes orders but does not deliver goods is not subject to occupation taxation based on the sale.

If a business has employees who do business in Georgia, such as traveling salespersons, but does not have a location in Georgia, that business is taxed as an out-of-state business. Accordingly, if an out-of-state business has employees who serve as door-to-door salespersons, and those salespersons “exert substantial efforts... for the purpose of soliciting business or serving customers or clients,”<sup>9</sup> the business might be subject to a local government’s occupation tax. Again, only the local government in which the largest dollar volume of business is conducted or service is provided by the business may collect occupation tax from an out-of-state business.

### Taxation of Real Estate Brokers

As a general rule, local governments may only levy or collect an occupation tax on a real estate broker at its principal and branch offices, and may not the broker’s principal or branch office, and other than state licenses issued pursuant to O.C.G.A. § 43-40-1 *et seq.*, may not require additional licenses or tax certificates on associate brokers or salespersons.

A municipality or county that levies an occupation tax on a gross receipts basis may, however, levy and collect an occupation tax on a real estate broker (regardless of whether a principal or branch office is located in the jurisdiction) based on the gross receipts derived from transactions of property within the boundaries of the local government.<sup>10</sup>

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<sup>9</sup> O.C.G.A. § 48-13-7(b)(1).

<sup>10</sup> O.C.G.A. § 48-13-17.

## Taxation of Insurance Companies

Local governments may *not* impose occupation taxes on insurance companies. Instead, state law permits municipalities to impose and collect the following license fees upon insurance companies for the privilege of engaging in the business of insurance within the municipality.<sup>11</sup> Imposing each will require adoption of a specific ordinance by the municipality.

### *Annual License Fee*

A municipality may impose an annual license fee on each insurance company doing business within the city limits, and an additional annual license fee in the same amount for each separate business location in excess of one, not to exceed the following schedule:

<u>Population of Municipal Corporation</u>	<u>Amount</u>
Under 1,000 .....	\$ 15.00
1,000 - 1,999 .....	\$ 25.00
2,000 - 4,999 .....	\$ 40.00
5,000 - 9,999 .....	\$ 50.00
10,000 - 24,999 .....	\$ 75.00
25,000 - 49,999 .....	\$100.00
50,000 and over.....	\$150.00

Additionally, a city may levy an annual license fee of \$10.00 or 35 percent of the above schedule, whichever amount is greater, on an insurance company for each additional business location that is not otherwise subject to an annual municipal license fee. This second license fee only applies to a business organization that lends money or transacts sales involving term financing and, in connection with the loans or sales involving term financing, offers, solicits, or takes applications for insurance through a licensed agent of an insurance company.<sup>12</sup> As an example, a car dealership that offers gap insurance would be such a business organization.

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<sup>11</sup> O.C.G.A. § 33-8-8 (only municipalities are authorized to impose this license fee).

<sup>12</sup> O.C.G.A. § 33-8-8(b)(2).

### *Life Insurance Companies*

In addition to the annual license fee, municipalities (and counties, as well) may impose a corporation tax on each life insurance company doing business within Georgia.<sup>13</sup> The tax must be based on gross direct premiums received during the preceding calendar year from policies insuring persons residing within the corporate limits of the municipal corporation. The rate of the tax may not exceed 1 percent of the premiums, and the tax may not apply to annuity considerations.

A portion of the total amount of life insurance premiums taxable by the State is allocated to local governments and distributed to individual local governments imposing the tax based on the ratio of the local government's population to the total state population. These taxes are distributed by the state insurance commissioner to local governments based on the tax rate levied by each city.<sup>14</sup>

### *General Insurance Companies*

In addition to the annual license fee, municipalities may tax the gross direct premiums of all foreign, alien, and domestic insurance companies doing business in Georgia, other than life insurance companies, at a rate up to 2.5 percent.<sup>15</sup> The tax is in addition to other permitted taxes and may be calculated based on the gross direct premiums received by the companies during the preceding calendar year.

### Taxation of Depository Financial Institutions

Cities and counties may levy and collect a tax from depository financial institutions<sup>16</sup> with an office located in the respective jurisdiction. The tax rate may not exceed 0.25 percent of the Georgia gross receipts of the depository financial institution. Cities and counties may provide that the minimum annual amount of this tax on any depository financial institution will be \$1,000.00 or such lesser amount as determined by the governing authority.<sup>17</sup>

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<sup>13</sup> O.C.G.A. § 33-8-8.1.

<sup>14</sup> In order to receive its portion of the tax, a city must file its gross receipts insurance premiums tax ordinance with the state insurance commissioner.

<sup>15</sup> O.C.G.A. § 33-8-8.2.

<sup>16</sup> O.C.G.A. § 48-6-90 defines a "depository financial institution" as a "bank or a savings and loan association" (excluding credit unions, which are largely exempt from taxation other than ad valorem, *see* O.C.G.A. § 7-1-662).

<sup>17</sup> O.C.G.A. § 48-6-93.

## Exempted Businesses

State law exempts a number of persons, businesses and services from local occupation taxation. Many of these exemptions are applicable statewide; however, some are applicable at the option of each taxing local government.

### Statewide Exemptions

Georgia law expressly exempts the following people and businesses from paying occupation taxes:

- Disabled veterans of any war or armed conflict in which any branch of the United States armed forces was involved, whether under United States command or otherwise;<sup>18</sup>
- Blind persons;<sup>19</sup>
- Veterans of peace-time service in the United States armed forces who have a physical disability which was incurred during that service;<sup>20</sup>
- A practitioner whose office is maintained by, and who is employed exclusively by, the United States, the State of Georgia, a city or county in Georgia, or instrumentalities thereof;<sup>21</sup>
- Any state or local authority, nonprofit organization, or vendor acting pursuant to a contract with a tax-exempt agricultural fair;<sup>22</sup>
- Businesses regulated by the Georgia Public Service Commission;<sup>23</sup>
- Electrical service businesses organized under Chapter 3 of Title 46 of the Georgia Code;<sup>24</sup>
- Any farm operation producing agricultural products, but not including agribusiness;<sup>25</sup>
- Persons purchasing guano, meats, meal, flour, bran, cottonseed, or cottonseed meal and hulls in carload lots for distribution among the purchasers for use and not sale;<sup>26</sup>

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<sup>18</sup> O.C.G.A. § 43-12-1; O.C.G.A. § 48-12-2 (setting forth qualifications for exemptions).

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> O.C.G.A. § 48-13-13(3).

<sup>22</sup> O.C.G.A. § 48-13-13(5).

<sup>23</sup> O.C.G.A. § 48-13-16(a)(1). However, O.C.G.A. § 48-13-16(a) also maintains that these businesses “shall be subject to taxation and regulation as otherwise provided by general law and municipal charter,” making it possible that cities can tax and regulate businesses regulated by the Public Service Commission as well as other businesses presumably exempted from occupation taxation.

<sup>24</sup> O.C.G.A. § 48-13-16(a)(2).

<sup>25</sup> O.C.G.A. § 48-13-16(a)(3).

- Persons selling or introducing into the city agricultural products or livestock raised in Georgia, including animal products, when the sale and introduction are made by the producer of the product and the sale is made within ninety (90) days of the introduction of the product into the city;<sup>27</sup>
- Non-profit, agricultural product cooperative marketing associations;<sup>28</sup>
- Depository institutions (except as above);<sup>29</sup>
- Real estate brokers (except at the principal or branch office of a real estate broker);<sup>30</sup>
- Businesses, trades, or occupations operating motor vehicles required to be registered with the Department of Public Safety;<sup>31</sup>
- The provision of broadband or VOIP services;<sup>32</sup> or
- Any business on which the levy of an occupation tax is otherwise prohibited by the laws of the United States or the State of Georgia.

#### Local Exemptions for Economic Development Purposes

A local government may by ordinance or resolution provide an exemption or reduction in occupation tax, or a credit against occupation tax owed, to one or more types of businesses or practitioners in order to promote economic development or attract and maintain certain selected types of businesses or practitioners.<sup>33</sup> These exemptions, reductions and credits may not be arbitrary and capricious. In order to avoid an “arbitrary and capricious” claim, a local government should, in its ordinance or resolution, outline the specific economic benefits expected as a result exemptions, reductions or credits. The following non-exhaustive list provides examples of occupation tax exemptions, reductions and credits:

- Dollar amount limitations on the total amount of tax, either by criterion or a combination of criteria used for classification. A local government providing an absolute dollar amount limitation may collect the tax only once on each business or practitioner,

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<sup>26</sup> O.C.G.A. § 48-5-355.

<sup>27</sup> O.C.G.A. § 48-5-356.

<sup>28</sup> O.C.G.A. § 2-10-105.

<sup>29</sup> See O.C.G.A. § 48-6-93 for the proper method of imposing an occupation tax on depository institutions.

<sup>30</sup> O.C.G.A. § 48-13-17.

<sup>31</sup> O.C.G.A. § 48-13-18.

<sup>32</sup> O.C.G.A. § 46-5-1(a)(3); O.C.G.A. § 46-5-221(1), (2).

<sup>33</sup> O.C.G.A. § 48-13-10(f).

regardless of the number of offices or locations a business or practitioner has in the jurisdiction;

- Tax credits for the creation or retention of jobs;
- Tax credits for other taxes paid to the local government, such as ad valorem taxes;<sup>34</sup>
- A tax exemption or reduction for sales to customers located outside the jurisdiction of the local government;<sup>35</sup>
- A credit or rebate to businesses or practitioners who paid occupation taxes the previous year;<sup>36</sup>
- A limit on the dollar or percentage increase in tax from a base year to a subsequent year. This limit must be made applicable to new businesses and practitioners by imputing the gross receipts, profitability ratio, or number of employees of the subsequent year to the base year in determining the tax for the base year, tax for the subsequent year, and the increase in tax;<sup>37</sup> and,
- A credit or reduction as an adjustment for seasonal and other fluctuations in the number of employees.

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<sup>34</sup>While a local government may not provide a property tax exemption to an individual business, the law permits local governments to ease the tax burden of local businesses by reducing occupation tax liability.

<sup>35</sup>For example, if a business that specializes in farm equipment is located within a city's jurisdiction, but all local agricultural property is located in the unincorporated area, that business's customer base will be primarily residents of the unincorporated area. As an incentive to the business to remain in the city, the city may exempt the business' sales to customers who reside outside the city from occupation taxation.

<sup>36</sup>Many local governments rebate or credit businesses with any overpayment of occupation taxes from the previous year, as occupation tax payments are often based on expected revenues or numbers of employees.

<sup>37</sup>Local governments can use this type of reduction to help a business adjust when a local government changes from one method of determining occupation taxes to another method that may otherwise dramatically increase the occupation tax liability of that business.

## **How Is the Tax Determined?**

Local governments must classify all businesses or practitioners by the same criterion or combination of criteria for occupation tax purposes.<sup>38</sup> Local governments may classify businesses and practitioners and may assess different taxes on different classes of businesses and practitioners.<sup>39</sup> A city may use one or more of the following four criteria for classification of businesses subject to the occupation tax.

Changes between methods of imposing occupation taxes can be accomplished the same way as an occupation tax is implemented, by ordinance or resolution of the governing authority.<sup>40</sup> Pursuant to O.C.G.A. § 48-13-6(c), a city must "conduct at least one public hearing before adopting any ordinance or resolution regarding the occupation tax."

### **Four Methods of Classification for Taxation**

#### **1. Number of Employees.**

Local governments may tax based on the number of employees working for a business.<sup>41</sup> This criterion is computed on a full-time position basis or full-time position equivalent basis. An employee who works 40 hours or more a week is considered a full-time employee. The average weekly hours of employees who work less than 40 hours weekly are added together and divided by 40 to produce full-time position equivalents. For example, if a business has 10 employees, all of whom work 36 hours a week, the total number of hours worked would be 360. The total number of hours worked, 360, divided by 40, equals the equivalent of 9 full time jobs. Thus instead of taxing this business for having 10 employees, the local government would tax based on 9 full time employees.

Local governments using this classification may adopt more than one rate of taxation per employee. For example, a local government may choose to utilize a regressive rate table in which the per employee occupation tax decreases as the number of employees increases. For example, a local government may wish to tax businesses with fewer than 10 full time employees

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<sup>38</sup> O.C.G.A. § 48-13-10.

<sup>39</sup> O.C.G.A. § 48-13-6(b).

<sup>40</sup> O.C.G.A. § 48-13-5(b).

<sup>41</sup> O.C.G.A. § 48-13-10(a)(1). For an example of this method of taxation, please see Appendix B, which provides a sample per employee occupation tax ordinance.

at the rate of \$50 per employee, businesses with 11 to 50 full time employees at the rate of \$40 per employee and businesses with more than 50 employees at the rate of \$25 per employee.

What is an “Employee?” An “employee” is a person who works under the direction and supervision of an employer if that employer:

- Withholds FICA, federal income tax, or state income tax from the employee’s wages; or
- Issues a W-2 form, but not a 1099 tax form, to the person in order to document compensation.

An “employee” may also be a contract employee who works for one business under the terms of a contract or agreement with the recruiting business. In this scenario, the person is an employee of the business issuing the person a W-2 form.

## **2. Profitability Ratio.**

Local governments may use the profitability ratio for the type of business, profession or occupation, as measured by nation-wide averages from statistics, classifications, or other information published by the United States Office of Management and Budget, the IRS, or successor agencies, to calculate occupation tax.<sup>42</sup> Profitability ratio is determined by dividing net income by gross receipts. Profitability ratios for specific types of businesses may be found on the Internal Revenue Service (IRS) website or in other IRS “Statistics of Income” documents. Many local governments use the North American Industry Classification System (NAICS) code to classify businesses into subgroups. This classification system may be found on the NAICS page of the United States Census Bureau Website.

Local governments using profitability ratio or gross receipts to calculate occupation tax are required to classify, or rank, businesses and practitioners according to profitability ratio.<sup>43</sup> The classifications used must not overlap, and any increase in the tax rate among classifications must be progressive.<sup>44</sup>

A local government may apply different rates of taxation to businesses within the same classification based on differences in the dollar amount of gross receipts.<sup>45</sup>

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<sup>42</sup> O.C.G.A. § 48-13-10(a)(2).

<sup>43</sup> O.C.G.A. § 48-13-10(c).

<sup>44</sup> Id.

<sup>45</sup> Id.

**3. Gross Receipts.**

Local governments may base their occupation tax on the gross receipts of a business or practitioner in combination with the profitability ratio for the business or practitioner.<sup>46</sup> Local governments using the gross receipts classification may limit the geographic area in which gross receipts will be taxed by the local government.

**What Are Gross Receipts?<sup>47</sup>**

Include as Gross Receipts	Do Not Include as Gross Receipts
<ul style="list-style-type: none"> <li>• Total income, without deduction for the cost of goods sold or expenses incurred;</li> <li>• Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;</li> <li>• Proceeds from commissions on the sale of property, goods or services;</li> <li>• Proceeds from fees charged for services rendered; and</li> <li>• Proceeds from rent, interest, royalty or dividend income.</li> </ul>	<ul style="list-style-type: none"> <li>• Sales, use, or excise taxes;</li> <li>• Sales returns, allowances and discounts;</li> <li>• Certain interorganizational sales or transfers;</li> <li>• Payments made to a subcontractor or independent agent for services that contributed to the gross receipts;</li> <li>• Governmental and foundation grants, charitable contributions, or interest income derived from these funds, received by a nonprofit organization that employs salaried practitioners <i>if the funds constitute 80 percent or more of the organizations receipts</i>; and</li> <li>• Proceeds from sales of goods or services that are delivered to or received by customers who are outside the state at the time of delivery.</li> </ul>

**4. Flat Fee.**

Local governments may impose a flat fee occupation tax.<sup>48</sup> The flat fee classification must be applied uniformly to all businesses and practitioners of professions and occupations. Under this classification, each business or practitioner pays the same amount of tax for each office or location.

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<sup>46</sup> O.C.G.A. § 48-13-10(a)(3).

<sup>47</sup> O.C.G.A. § 48-13-5.

<sup>48</sup> O.C.G.A. § 48-13-10(a)(4).

## **The 400 Club**

Certain businesses<sup>49</sup> and practitioners of occupations are authorized by state law to choose between the local government's method of classification for occupation taxes and a fee set by the local government.<sup>50</sup> This fee may not exceed \$400 per practitioner who is licensed to provide the service. This tax must be paid based on the practitioner's office or location. A local government may not require a practitioner paying this set fee to provide information on the gross receipts of the business or practitioner.

### **400 Club Members**

Lawyers; Physicians; Osteopaths; Chiropractors; Podiatrists; Dentists; Optometrists; Psychologists; Veterinarians; Landscape Architects; Land Surveyors; Practitioners of Physiotherapy; Public Accountants; Embalmers; Funeral Directors; Civil, Mechanical, Hydraulic, or Electrical Engineers; Architects; and Marriage and Family Counselors. Social Workers, and Professional Counselors.

## **Taxation of Out-of-State Businesses**

An occupation tax on an out-of-state business is determined in the same manner as for in-state businesses, with slight modifications.<sup>51</sup>

- Gross receipts of an out-of-state business or practitioner may include only the gross receipts of the business that are reasonably attributable to sales or service in Georgia.
- For taxation according to the number of full-time employees of a business or practitioner, "employees" may only include employees engaged in "substantial efforts" in Georgia.
- Finally, nationwide profitability ratios only apply to types of business transacted in Georgia.

Again, only the local government for the city or county in which the largest dollar volume of business is done, or service is performed, in Georgia may impose an occupation tax on an out-of-state business or practitioner.<sup>52</sup>

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<sup>49</sup> Examples of these businesses are listed in O.C.G.A. § 48-13-9(c).

<sup>50</sup> O.C.G.A. § 48-13-10(g).

<sup>51</sup> O.C.G.A. § 48-13-7(d).

## Special Circumstances

### Classification of Businesses and Practitioners With More Than One Service or Product

The law provides two methods for levying an occupation tax on businesses or practitioners with more than one type of service or product.

- A local government that does not use the gross receipts classification must classify the business or practitioner according to the dominant service or product, unless the local government only uses the flat fee classification.<sup>53</sup>
- A local government using the gross receipts method of taxation must specify in its occupation tax ordinance whether the local government will classify the entire gross receipts by dominant service or product or apportion the gross receipts by category or service in proportion to the gross receipts generated by each service or product.<sup>54</sup> If the local government chooses the apportionment method, the government must tax each portion of the gross receipts according to the profitability ratio for that type of business. The government must then add the tax for all portions to determine the total occupation tax.

### Taxation of Businesses Located in More Than One Local Government

Georgia law has special rules relating to collection of occupation taxes based on gross receipts or the number of employees imposed on businesses or practitioners with multiple locations in Georgia.<sup>55</sup>

#### *Using Gross Receipts*

With respect to imposing occupation taxes on a business or practitioner with a location or office in more than one jurisdiction, local governments using gross receipts must allocate the gross receipts of the business or practitioner in one of two ways.<sup>56</sup>

- If the business or practitioner can reasonably allocate the dollar amount of its gross receipts to one or more of its locations or offices based on the product manufactured, sales or other services, each local government may tax the gross receipts generated by the location or office inside the jurisdiction of the local government;

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<sup>52</sup> O.C.G.A. § 48-13-7(e).

<sup>53</sup> O.C.G.A. § 48-13-12(1).

<sup>54</sup> O.C.G.A. § 48-13-12(2).

<sup>55</sup> O.C.G.A. § 48-13-14.

- If the business or practitioner cannot reasonably allocate the dollar amount of its gross receipts among its locations or offices, the business must divide its total gross receipts reported in Georgia by the number of locations or offices that contributed to those gross receipts. The business or practitioner must then allocate an equal percentage of its gross receipts to each location or office.

In the event of a dispute between the local government and the business or practitioner concerning the allocation of gross receipts, the business or practitioner will have the burden of proof as to the reasonableness of the allocation.<sup>57</sup>

Practice Tip

The sum of the portions of the gross receipts taxed by all local governments may not exceed 100 percent of the total gross receipts of the business or practitioner. Thus the percentage taxed by each local government levying a gross receipts tax may not exceed the percentage of gross receipts generated within that local government's jurisdiction.

*Using Number of Employees*

When a business or practitioner has locations or offices in multiple jurisdictions, local governments that use the number of employees to determine occupation taxation may tax the number of the business' employees who work inside the local government's jurisdiction.<sup>58</sup> If an employee works for the same business in more than one jurisdiction, the city or county in which the employee works the most in a calendar year may count the employee for occupation tax purposes. Again, this criterion is based on a full-time employee or full-time employee equivalent basis, with a 40-hour work week constituting a full-time position.

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<sup>56</sup> O.C.G.A. § 48-13-14(a).

<sup>57</sup> O.C.G.A. § 48-13-14(c).

<sup>58</sup> O.C.G.A. § 48-13-14(e).

## Taxation of Attorneys

In 2013 the Georgia Supreme Court considered the case of *Moss v. City of Dunwoody*<sup>59</sup> and affirmed the ability of local governments to impose and enforce occupational taxes on lawyers so long as the tax is merely a means to generate revenue and does not act as a precondition or license for engaging in the practice of law, rendering it a regulatory fee. The challenged ordinance, which provided for: (1) payment in arrears (with occupation tax due within 120 days of end of the calendar year), (2) issuance of executions for collection, and (3) reporting of delinquent attorneys to the State Bar, was upheld.

Local governments are prohibited by statute from imposing regulatory fees on attorneys.<sup>60</sup> Occupation tax ordinances have been held to be unconstitutional preconditions on the practice of law in several instances, and for that reason care should be taken in drafting and enforcing your ordinance against attorneys. See *City of Atlanta v. Barnes*<sup>61</sup> and *Sexton v. City of Jonesboro*.<sup>62</sup>

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<sup>59</sup> 293 Ga. 858 (2013).

<sup>60</sup> O.C.G.A. § 48-13-9(c)(1).

<sup>61</sup> 276 Ga. 449 (2003).

<sup>62</sup> 267 Ga. 571 (1997).

## **Collection of Taxes**

### When Taxes Are Due

By default, occupation taxes are due and payable annually within 30 days following January 1 of each year. Local governments may, however, set an alternative due date in its occupation tax ordinance. If a person begins business on any date other than the due date, the tax will be due and payable 30 days following the commencement of the business.<sup>63</sup>

If a business opens on or after July 1 of any year, the occupation tax for the remainder of the year will be 50 percent of the tax imposed for the entire year.<sup>64</sup> Administrative fees charged along with occupation taxes are not offset or reduced based on the time of year in which the business commences.<sup>65</sup> A practitioner who elects to pay occupation taxes as a member of the “400 Club” must pay the full amount of the fee for any portion of a year.

### Penalties for Delinquent Payments or Failure to Pay

#### *Local Ordinance*

A local government may include a penalty for failure to properly pay occupation taxes in its occupation tax ordinance. Local governments may provide in their ordinances for interest on delinquent occupation taxes, regulatory fees, and administrative fees at a rate not to exceed 1.5 percent per month.<sup>66</sup>

The court with jurisdiction to enforce local government ordinances may, if authorized by the local ordinance, impose a civil fine for failure to pay the occupation tax or regulatory fee. This fine may not exceed \$500.00 and may be enforced by the contempt power of the court.<sup>67</sup>

Refund claims are subject to 3 year limitation period and the requirements of O.C.G.A. § 48-5-380.

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<sup>63</sup> O.C.G.A. § 48-13-20(a).

<sup>64</sup> O.C.G.A. § 48-13-22.

<sup>65</sup> *Id.*

<sup>66</sup> O.C.G.A. § 48-13-21(b).

<sup>67</sup> O.C.G.A. § 48-13-26.

### *Additional Remedies*

Under general state law, if any occupation tax or license fee remains due and unpaid for 90 days from the due date of the tax or fee, the person liable for the tax or fee is subject to a penalty of 10 percent of the tax or fee due.<sup>68</sup>

The officer charged with the collection of the tax or fee may issue executions against delinquent taxpayers for any or all of the following:<sup>69</sup>

- The amount of the taxes or fees due when the taxes or fees become due;
- A penalty of 10 percent of the tax or fee due; and
- Any interest imposed by the local ordinance.

### *Nulla Bona*

A local government may use an entry of “nulla bona” as a means of compelling delinquent taxpayers to pay their occupation taxes. An entry of nulla bona may be made upon an execution issued against a person defaulting on a tax obligation when the governing authority is unable to locate any property that may be levied and sold to obtain payment. An entry of nulla bona precludes the person against whom the entry is made from collecting any fees or charges whatsoever for services rendered after the entry of the nulla bona.<sup>70</sup> Upon payment of the delinquent amounts, the entry of nulla bona must be cancelled.

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<sup>68</sup> O.C.G.A. § 48-13-21(a).

<sup>69</sup> O.C.G.A. § 48-13-26.

<sup>70</sup> O.C.G.A. § 48-13-25.

## **Confidentiality**

### Disclosure of Information—Businesses with Multiple Locations

At the request of a local government, a business or practitioner with a location or office in more than one jurisdiction must provide the local government with financial information to allocate the gross receipts of the business or practitioner, and information concerning the allocation of gross receipts of the business or practitioner by other local governments.<sup>71</sup>

Generally, information on gross receipts provided to a local government by a business or practitioner, for the purpose of determining occupation tax liability, is confidential and exempt from the Open Records Act.<sup>72</sup> Violation of confidentiality is punished as a misdemeanor.

Information on gross receipts received from a business or practitioner of an occupation or profession provided to one local government for the purpose of determining occupation tax liability may, however, be disclosed to another local government for occupation tax purposes (for example, to aid in allocation or enforcement) or pursuant to a court order.<sup>73</sup>

### Disclosure of Tax Information—General

Current law permits local governments to access state tax returns for occupation tax purposes. Specifically, the Commissioner of the Department of Revenue, as well as each tax receiver, tax collector and tax commissioner in Georgia may furnish to the tax officials of any other state, political subdivision of any other state, political subdivision of this state, the District of Columbia, or the United States and its territories any information contained in tax returns, reports, and related schedules and documents filed pursuant to Georgia tax law or contained in the report of an audit or investigation made with respect to any tax return, report, schedule, or document, as long as the jurisdiction to which the information is furnished grants similar privileges to Georgia, and if the information is to be used only for tax purposes.<sup>74</sup> It is our understanding, however, that the Georgia Department of Revenue does not generally cooperate with extra-judicial requests for tax return data.

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<sup>71</sup> O.C.G.A. § 48-13-14(d).

<sup>72</sup> O.C.G.A. § 48-13-15.

<sup>73</sup> O.C.G.A. § 48-13-15(c).

## **Public Hearings—Excess Revenue**

If a local government’s revenue from occupation taxes exceeds the occupation tax revenue collected the previous year, the local government must hold at least one public hearing as part of the process for determining how to use the extra revenue.<sup>75</sup>

## **Occupation Tax “DON’Ts”**

Local governments may not:

- Divide a business into its constituent parts and impose a separate occupation tax on each portion of the business (except with respect to businesses with more than one type of service or product that is taxed under the gross receipts method, where the local government has an option to apportion by category of service or product and apply the appropriate profitability ratio rate to the allocated receipts);<sup>76</sup>
- Levy occupation tax on more than 100 percent of the total gross receipts of a business or practitioner;<sup>77</sup>
- Determine taxation by the size or square footage of the office or location;<sup>78</sup>
- Require payment of a fee by a business or practitioner for the cost of determining if that business or practitioner has paid occupation tax to another local government;<sup>79</sup> or
- Use any criterion other than those specifically authorized to determine the amount of occupation tax to levy on a business.<sup>80</sup>

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<sup>74</sup> O.C.G.A. § 48-2-16.

<sup>75</sup> O.C.G.A. § 48-13-28.

<sup>76</sup> O.C.G.A. § 48-13-11(1).

<sup>77</sup> O.C.G.A. § 48-13-13(2).

<sup>78</sup> O.C.G.A. § 48-13-11(2).

<sup>79</sup> O.C.G.A. § 48-13-13(4).

<sup>80</sup> O.C.G.A. § 48-13-11(3).

### **Recent court decisions regarding occupation taxes**

In *City of Atlanta v. City of College Park*, 292 Ga. 741 (2013), the Georgia Supreme Court held that the City of Atlanta, as a lessor of property for revenue, was acting in its proprietary capacity (and not carrying out a governmental function). When acting in such a capacity within the city limits of an adjacent municipality, the City was liable for occupation taxes.

In *Moss v. City of Dunwoody*, 293 Ga. 858 (2013), the Georgia Supreme Court concluded that the City's ordinance requiring attorneys to register and pay occupation taxes within 120 days of the end of the calendar year, as a flat fee or based on the prior year's gross receipts, was not an unconstitutional precondition to the practice of law.

In *City of Atlanta v. Barnes*, 276 Ga. 449 (2003), the Georgia Supreme Court struck down the City of Atlanta's occupation tax ordinance. Relying on its decision in *Sexton*, the Court concluded that because the Atlanta ordinance required payment of the occupation tax prior to the commencement of business and provided for the possibility of incarceration for failure to pay the tax, constituted impermissible preconditions on the practice of law.

In *Sexton v. City of Jonesboro*, 267 Ga. 571 (1997), the Georgia Supreme Court held the City of Jonesboro's occupation tax ordinance, as applied to attorneys, was an unconstitutional precondition on the practice of law. The Jonesboro ordinance required registration and payment of the tax on January 1, with penalties and fines applicable to attorneys that failed to comply.

## Regulatory Fees

### What is a Regulatory Fee?

A regulatory fee is a payment required by a local government to fund the government's regulation of an occupation, profession or business.

#### Practice Tips

Local governments **may not** use regulatory fees to raise money for general purposes. Moreover, a regulatory fee **may not** include an administrative fee or registration fee.<sup>81</sup>

Georgia law allows local governments to impose regulatory fees on a business or practitioner of a profession or occupation “only if the local government customarily performs investigation or inspection of such business or practitioners of such profession or occupation” in order to protect the public health, safety or welfare, or in an effort to enforce a state or local building, health or safety code.<sup>82</sup>

Note that regulatory fees *do not* include development impact fees (*see* O.C.G.A. § 36-71-2) or other fees related to zoning or land development.<sup>83</sup>

#### Practice Tip

Cities may not classify businesses and practitioners of professions or occupations based on whether the businesses and practitioners have a location in the city and impose different regulatory fees on the basis of this classification.

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<sup>81</sup> O.C.G.A. § 48-13-5(6).

<sup>82</sup> O.C.G.A. § 48-13-9(a).

<sup>83</sup> O.C.G.A. § 48-13-5(6).

## **Types of Businesses That May Be Required to Pay Regulatory Fees**

### ***May be . . .***

Georgia law provides a non-exhaustive list of examples of businesses that may be subject to local government regulatory fees.<sup>84</sup> These examples include the following: Building and construction contractors, taxicab and limousine operators, pawnbrokers, food service establishments, nursing homes, assisted living communities, and personal care homes, landfills, hotels and motels, massage parlors, hotels and motels, handwriting analysts, fortune tellers, burglar and fire alarm installers, garbage collectors, health clubs and locksmiths.

### ***Cannot be . . .***

The law also contains a non-exhaustive list of businesses upon which local governments may *not* impose a regulatory fee.<sup>85</sup> Businesses on this list include the following: *lawyers, physicians, chiropractors, dentists, veterinarians, public accountants, architects, certain engineers, marriage and family therapists, social workers, counselors, land surveyors, landscape architects, funeral directors, embalmers, motor vehicle dealers, and any other business, profession or occupation that is required to be licensed or registered with the state, unless the state law regulating the business, profession or occupation specifically permits local government regulation.*

### **Express Exemptions from Regulatory Fees**

Georgia law expressly exempts the following groups of people and organizations from paying regulatory fees:

- Disabled veterans of any war or armed conflict in which any branch of the United States armed forces was involved, whether under United States command or otherwise;<sup>86</sup>
- Veterans of peace-time service in the United States armed forces who have a physical disability which was incurred during that service;<sup>87</sup>
- Blind persons;<sup>88</sup>

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<sup>84</sup> O.C.G.A. § 48-13-9(b).

<sup>85</sup> O.C.G.A. § 48-13-9(c).

<sup>86</sup> O.C.G.A. §§ 43-12-1 and 43-12-2.

- A local board of education (as to building permits, inspection and impact fees);<sup>89</sup> and
- Any state or local authority, nonprofit organization, or vendor acting pursuant to a contract with a tax-exempt agricultural fair.<sup>90</sup>

### **When Regulatory Fees Are Due**

Generally, regulatory fees must be paid before commencing business, as a condition precedent for transacting business or practicing a profession.<sup>91</sup> Regulatory fees may be paid after commencing business or the practice of a profession when:<sup>92</sup>

- The work done or services provided are necessary for the health, comfort or safety of one or more individuals;
- The work done or services provided have no adverse effect on any other person;
- Regulatory fees are tendered to the local government within two business days after commencing business or the practice of a profession; and
- The work begins or the services are provided within 24 hours of receiving the request for the work or service and it is impossible for the person doing the work or providing the service to obtain a permit before beginning due to the hours of operation of the local government's offices.

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<sup>87</sup> *Id.*

<sup>88</sup> O.C.G.A. §§ 43-12-1 and 49-4-51.

<sup>89</sup> O.C.G.A. § 20-2-261.

<sup>90</sup> O.C.G.A. § 48-13-13(5).

<sup>91</sup> O.C.G.A. § 48-13-20(b).

<sup>92</sup> O.C.G.A. § 48-13-20(c).

## Amount of Regulatory Fee and Methods for Calculating: Statutory Limits

Georgia law requires any regulatory fee to “approximate the reasonable cost of the actual regulatory activity performed by the local government.”<sup>93</sup>

A local government may only use one of the following methods to determine the regulatory fee charged to each business, profession or occupation:<sup>94</sup>

- A flat fee for each business or practitioner of a profession or occupation doing business in the jurisdiction;
- A flat fee for each type of permit or inspection requested;
- An hourly rate determined by the hourly wage or salary, including employee benefits, of the person or persons assigned to investigate or inspect multiplied by the number of hours estimated for the investigation or inspection to be performed;
- An hourly rate as determined above with the addition of other expenses reasonably related to such regulatory activity, such as administrative and travel expenses, multiplied by the number of hours estimated for the investigation or inspection to be performed;
- For construction projects that are classified as new construction, the number of square feet of construction or the number of square feet of construction to be served by the system to be installed, in conjunction with and limited by the building valuation data, as established from time to time by the International Code Council or by similar data, and in conjunction with and limited by the hourly rate described above; or
- For construction projects that are classified as renovation and all other construction projects other than those classified as new construction, the cost of the project in conjunction with and limited by the building valuation data that conforms with the principles and methods established from time to time by the International Code Council or by similar data, and in conjunction with and limited by the hourly rate described above.

### *Methods of Payment*

The most common method of payment of regulatory fees includes the requirement that the applicant tender the application and fee at City Hall. A municipality may require that a *first-time applicant* with the municipality appear in person.

For other than first time applicants, the law requires municipalities to accept applications and payment for permits by mail or through electronic means, including but not limited to facsimile, email, and websites, for: installation, replacement or improvement of heating, ventilation, air-conditioning, plumbing or electrical equipment or systems.<sup>95</sup> Local governments may add an additional fee for processing payments that are made by check, money order, credit card, bank draft, wire transfer, a municipal account, or deferred payment arrangement.

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<sup>93</sup> O.C.G.A. § 48-13-5.

<sup>94</sup> O.C.G.A. § 48-13-9(e).

<sup>95</sup> O.C.G.A. § 48-13-29.

### **Recent court decisions relating to regulatory fees**

In *Moss v. City of Dunwoody*, 293 Ga. 858 (2013), the Georgia Supreme Court concluded that the City's ordinance requiring attorneys to register and pay occupation taxes within 120 days of the end of the calendar year, as a flat fee or based on the prior year's gross receipts, was not an impermissible regulatory fee or an unconstitutional precondition to the practice of law.

In *City of Atlanta v. Barnes*, 276 Ga. 449 (2003), the Georgia Supreme Court struck down the City of Atlanta's occupation tax ordinance. Relying on its decision in *Sexton*, the Court concluded that because the Atlanta ordinance required payment of the occupation tax prior to the commencement of business and provided for the possibility of incarceration for failure to pay the tax, constituted impermissible preconditions on the practice of law.

In *Cherokee County v. Greater Atlanta Homebuilders Association, Inc.*, 255 Ga. App. 764 (2002), the Georgia Court of Appeals upheld an impact fee ordinance on grounds that the fees collected did not exceed a proportionate share of the cost of system improvements.

In *Greater Atlanta Homebuilders Association, Inc. v. DeKalb County, Georgia*, No. 00-01290-CV-GET-1 (2002), the United States District Court for the Northern District of Georgia ruled that certain regulatory fees imposed by DeKalb County were excessive. From 1997 through 2000, the County imposed and collected permit and inspection fees that exceeded the costs of the regulatory activity. The Court relied on O.C.G.A. § 48-13-9, which states local governments may not use the regulatory fees to raise revenue for general purposes and that such fees must reasonably approximate the cost of the actual regulatory activity performed.

In *Hadley v. City of Atlanta*, 232 Ga. App. 871 (1998) the Georgia Court of Appeals held that the City of Atlanta's annual renewal charge for Certificates of Public Necessity and Convenience, which was required of taxicab drivers and companies, was a proper regulatory fee as opposed to a tax. Although the funds collected were deposited in the general fund, taxi regulation was funded from the general budget and the costs of regulation exceeded the amounts collected.

\*\*\* These Questions & Answers are provided for general informational purposes only,  
do not constitute legal advice, and may not apply to your specific situation. \*\*\*

### Questions & Answers

1. *What is the difference between a tax and a fee?*

A tax is levied for revenue purposes and a fee is to recoup the cost of the city's services. The city determines the method and amount of occupation taxes based on its revenue needs, and may also charge an administrative fee that reasonably approximates the cost of processing the occupation tax. Regulatory fees must be imposed and calculated in compliance with one of the methods set forth in O.C.G.A. § 48-13-9(e).

2. *How does the flat tax method work?*

O.C.G.A. § 48-13-10(a)(4) authorizes local governments to use a flat occupation tax. Under this method, each business or practitioner pays the same amount of tax for each office or location. The flat tax must be uniformly applied to every business and practitioner.

3. *How would occupation taxes be done by a "combination of methods"?*

O.C.G.A. § 48-13-10(a) authorizes local governments to use any combination of the four approved methods for levying occupation taxes. This means that a city could levy occupation taxes based on the following methods:

- flat tax plus number of employees;
- flat tax plus gross receipts;
- profitability ratios plus number of employees;
- flat tax plus number of employees plus gross receipts; or
- any other combination of the four methods.

However, all businesses must be treated uniformly. Local governments cannot tax retail and service businesses using gross receipts while taxing manufacturing concerns based on a flat tax plus number of employees.

4. *When does the city need to hold public hearings on its occupation taxes?*

Pursuant to O.C.G.A. § 48-13-6(c), a city must "...conduct at least one public hearing before adopting any ordinance or resolution regarding the occupation tax."

In addition, O.C.G.A. § 48-13-28 requires a local government that collects more occupation tax revenue in one year than the previous year to hold a public hearing "...as part of the process of determining how to use the additional revenue." The public hearing should be held as part of the budget process determining the manner of expenditure.

5. *How are real estate brokers, associate brokers, and salespeople treated for occupation tax purposes?*

Real estate brokers are only subject to occupation taxes where they have a principal or branch office, except jurisdictions levying a gross receipts occupation tax may tax transactions occurring within its boundaries. Payment of an applicable occupation tax by a real estate broker also covers the broker's affiliated associate brokers and salespersons, and such persons may not be separately taxed. "Broker," "associate broker," and "salesperson" are defined in O.C.G.A. § 43-40-1 and such persons are required to be licensed by the state pursuant to O.C.G.A. §§ 43-40-1(5) and 43-40-7. A city may require proof of state licensure in determining occupation tax treatment.

6. *Can businesses required to obtain an alcoholic beverage license also be required to pay an occupation tax?*

Yes. The portions of Title 3 that relate to alcoholic beverage licensing and the portions of Title 48 relating to occupation taxes operate independently. Businesses that possess an alcoholic beverage license from a local government are also subject to any occupation tax imposed by the local government.

7. *How are delivery vehicles and people who sell from vehicles treated?*

O.C.G.A. § 48-13-5(3) states that a "location or office" does not include "... a vehicle used for sales or delivery by a business or practitioner of a profession which has a location or office." Thus, a mere delivery vehicle, such as one from a furniture store or moving business with a separate physical business location, does not constitute a location of office for occupation tax purposes. Similarly, vehicles used solely for taking orders for later delivery of goods are not considered a "location or office" for occupation tax purposes.

A vehicle used for contemporaneous sale and delivery may, however, be considered a "location" for occupation tax purposes. For example, produce trucks, food trucks, and others who sell directly from their vehicles and lack an independent business location are subject to occupation tax.

8. *How are investment companies affiliated with larger companies treated when calculating gross receipts for occupation tax purposes?*

Sales or transfers between certain wholly owned or closely affiliated organizations are excluded from gross receipts. *See* O.C.G.A. § 48-13-5(2)(B)(iii). Income generated from the sale of products or services to third-parties outside the organization would not fall within this exclusion.

9. *When must the gross receipts of a business be apportioned?*

Cities using the gross receipts method must state in their occupation tax ordinance whether they will classify the entire gross receipts of a business by the dominant service or product or whether they will apportion the gross receipts attributable to each service or product to that profitability class and then add all of these together for the total occupation tax.

If a business has offices or locations in more than one Georgia jurisdiction, the city can tax the gross receipts generated by the location or office in the jurisdiction. If the gross receipts cannot be reasonably allocated among multiple offices, the total gross receipts derived from Georgia business activities are divided by the number of offices and an equal percentage are allocated to each office.

10. *Can a city collect a building permit fee as well as subsequent regulatory fees?*

Yes, so long as regulatory activity is performed pursuant to each. O.C.G.A. § 8-2-26 permits local governments to require permits concerning building inspections to ensure compliance with state minimum building codes. Further, O.C.G.A. § 48-13-9 authorizes a local government to require a regulatory fee in the course of enforcing a state or local building, health or safety code.

11. *Can a city charge an occupation tax on a business or contractor whose office is in another city or county?*

For in-state businesses or contractors, generally no. The ability to levy an occupation tax hinges on the presence of an office or location in the jurisdiction. O.C.G.A. § 48-13-5(3) specifically excludes a “temporary or construction worksite which serves a single customer or project” from the definition of “location or office.” Therefore, a business or contractor that has an office in one city and a construction worksite in a different city is not subject to occupation tax based on the presence of the construction worksite. A city may, however, impose regulatory fees on activity occurring within its jurisdictional boundaries.

A city where an out-of state contractor doing business in Georgia has its highest dollar volume of business may impose and collect an occupation tax on the contractor. *See* O.C.G.A. § 48-13-7. If an out-of-state business pays Georgia’s portion of occupation taxes to another state, however, it may not be required to pay occupation taxes in Georgia as well.

12. *Is it within the authority of local governments to require ride sharing services and their associated drivers to pay an occupational tax?*

Local governments are prohibited from imposing occupational taxes on businesses regulated by the Public Service Commission and the Department of Public Safety. O.C.G.A. §§ 48-13-16(a). Under H.B. 225 (2015), ride share services are regulated by the Department of Public Safety. For that reason, it appears they are exempt from occupation taxes.

13. *Is a condominium association subject to occupation tax?*

A condominium association may either be a business corporation or a non-profit membership corporation. If it is a for-profit business corporation, a condominium association will be subject to occupation taxation. If it is a non-profit membership corporation, it is not subject to occupation tax. O.C.G.A. § 48-13-13(5) prohibits local governments from levying an occupation tax, regulatory fee or administrative fee on a non-profit organization.

14. *Can insurance companies and insurance agents be subject to an occupation tax?*

Local governments may charge insurance companies a license fee under O.C.G.A. § 33-8-8, and may tax them under O.C.G.A. §§ 33-8-8.1 and 33-8-8.2. These code provisions preempt other local taxes on insurance companies other than ad valorem taxes on real property and tangible personal property. Independent insurance agencies and brokers that are not taxed under the Code sections cited above may, however, be subject to occupation taxes.

15. *Can local governments levy an occupation tax on UPS and Federal Express retail locations?*

It appears so. Neither 49 U.S.C. § 40116 nor O.C.G.A. § 48-13-4 prohibit the imposition of an occupation tax on parcel delivery service retail locations. There is perhaps a question, however, of whether the non-retail operations of such airline parcel delivery services are subject to occupation taxes. *See, e.g., Aloha Airlines, Inc. v. Director of Taxation of Hawaii*, 464 U.S. 7 (1983) (taxation of gross receipts derived from sale of air transportation prohibited by federal statute).

## APPENDIX A

### Sample Gross Receipts Ordinance

**(This sample ordinance is designed to provide assistance to city attorneys drafting ordinances on the subject. It is provided with the understanding that the Georgia Municipal Association is not rendering legal advice or services.)**

#### AN ORDINANCE

To impose occupation taxes on businesses subject to the jurisdiction of the City of \_\_\_\_\_; to provide definitions; to provide penalties and enforcement; to repeal conflicting ordinances; to provide an effective date; and for other purposes.

#### BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF \_\_\_\_\_, GEORGIA:

**Section 1.** Chapter \_\_\_ of the Code of the City of \_\_\_\_\_, Georgia, is repealed in its entirety and the following new Code Chapter \_\_\_\_\_ is inserted in lieu thereof to read as follows:

**Chapter \_\_\_\_\_.** Occupation Taxes.

**Section \_\_\_\_.** Definitions. The following words, terms and phrases shall, for the purposes of this chapter, have the following meaning:

- (A) "Administrative fee" means a component of an occupation tax that approximates the reasonable cost of handling and processing the occupation tax.
- (B) "Business" shall refer to its ordinary and customary meaning according to context but also may be used to generally identify a person or entity carrying on a trade, occupation, profession, or other commercial or non-commercial enterprise.
- (C) "Certificate" means a document issued to the person after registration of a business and full payment of any required occupation tax.
- (D) "City" means the City of \_\_\_\_\_.
- (E) "Dominant line" means the type of business, within a multiple-line business, from which the greatest amount of income is derived.

(F)(1) “Gross receipts” means total revenue of the business or practitioner for the period, including without being limited to the following:

- (a) Total income without deduction for the cost of goods sold or expenses incurred;
- (b) Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
- (c) Proceeds from commissions on the sale of property, goods, or services;
- (d) Proceeds from fees for services rendered; and
- (e) Proceeds from rent, interest, royalty or dividend income.

(2) Gross receipts shall not include the following:

- (a) Sales, use, or excise taxes;
- (b) Sales returns, allowances, and discounts;
- (c) Interorganizational sales or transfers between or among the units of a parent-subsidiary controlled group of corporations, as defined by 26 U.S.C. section 1563(a)(1), between or among the units of a brother-sister controlled group of corporations, as defined by 26 U.S.C. section 1563(a)(2), between or among a parent corporation, wholly owned subsidiaries of such parent corporation, and any corporation in which such parent corporation or one or more of its wholly owned subsidiaries owns stock possessing at least 30 percent of the total value of shares of all classes of stock of such partially owned corporation, or between or among wholly owned partnerships or other wholly owned entities;
- (d) Payments made to a subcontractor or an independent agent for services that contributed to the gross receipts in issue;
- (e) Governmental and foundation grants, charitable contributions, or the interest income derived from such funds, received by a non-profit organization which employs salaried practitioners otherwise covered by this ordinance, if such funds constitute 80 percent or more of the organization’s receipts; and

(f) Proceeds from the sale of goods or services that are delivered to or received by customers who are outside the state at the time of delivery or receipt.

(C) "Location or office" shall include any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or vehicle used for sales or delivery by a business of practitioner of a profession or occupation which has a location or office.

(D) "Occupation Tax" means a tax levied on persons, partnerships, corporations, or other entities for engaging in an occupation, profession or business and enacted by the City of \_\_\_\_\_ for the purpose of raising revenue.

(E) "Practitioners of professions and occupations" does not include a practitioner who is an employee of a business if the business pays an occupation tax.

(F) "North American Industry Classification System [NAICS]" means categories of occupations and industries established by and promulgated by the Office of Management and Budget of the United States of America and found in the 1997 NAICS Manual.

**Section \_\_\_\_.** Occupation Tax Levied; Occupation Tax Schedule; Limitations.

(A) An occupation tax based upon gross receipts of the business or practitioner in combination with the profitability ratio for the business or profession is levied on businesses and practitioners that:

(1) Have one or more locations or offices within the corporate limits of the City; or

(2) Are an out-of-state businesses or practitioners with no location or office in the City but:

(a) Have employees or agents engaging in substantial efforts to solicit business or serve customers or clients in the State of Georgia; or

(b) Own personal or real property that generates income and is located within the corporate limits of the City.

- (B) The tax rate determined by profitability ratios in combination with gross receipts for each business or profession shall be as set forth in Appendix A.<sup>1</sup>
- (D) The City shall not require the payment of more than one occupation tax for each location of a business or practitioner.
- (E) The City shall not levy the occupation tax upon more than 100 percent of a business's gross receipts.
- (F) The City shall levy the occupation tax on a business or practitioner that has offices or locations in multiple locations in Georgia according to the following methods:
  - (1) If the business or practitioner can reasonably allocate the dollar amount of its gross receipts to one or more of its locations or offices based on the product manufactured, sales or other services, each local government may tax the gross receipts generated by the location or office inside the jurisdiction of the local government; or
  - (2) If the business or practitioner cannot reasonably allocate the dollar amount of gross receipts among its locations or offices, the business must divide its total gross receipts reported in Georgia by the number of locations or offices that contributed to those gross receipts. The business or practitioner must allocate an equal percentage of its gross receipts to each location or office.
- (G) A business or practitioner that is subject to an occupation tax by another local government and claiming an exemption from or limitation to the occupation tax imposed by this ordinance shall submit documentation satisfactory to the city as to current payment of the occupation tax to the other local government and the basis of such tax.
- (H) Gross receipts of an out-of-state business or practitioner may include only the gross receipts of the business that are reasonably attributable to sales or service in Georgia.

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<sup>1</sup> Appendix A should present NAICS codes, grouped according to their respective profitability ratios, and corresponding tax rates for each group.

(1) A business or practitioner with no location or office in Georgia shall only be required to pay occupation tax to the local government in Georgia where the largest dollar volume of business is done or service is performed by such business or practitioner. This limitation shall only apply when the business or practitioner has provided to the City satisfactory proof of as to the applicability of this subsection.

(2) If a business or practitioner with no location or office in Georgia provides to the City proof of payment of a local business or occupation tax in another state that includes sales or services in this state, then the business or practitioner shall be exempt from this occupation tax.

(I) Real estate brokers shall be subject to occupation tax pursuant to this ordinance only if they maintain a principal or branch office in the City.

**Alternative Flat Fee Classification**

**Section \_\_\_\_.** Occupation Tax Levied; Flat Fee Classification.

Each business shall pay an occupation tax in the amount of \$\_\_\_\_\_ per office or location in the City.

**Section \_\_\_\_.** Practitioners of Professions and Occupations. Practitioners of professions and occupations enumerated in O.C.G.A. 48-13-9(c) shall pay the occupation tax as set forth in Section \_\_\_\_ above or shall pay an occupation tax of \_\_\_\_\_ [**an amount not to exceed \$400.00**] per practitioner. On the tax return for [**year ordinance enacted**] or such later time as the practitioner first commences business in the City, the practitioner shall elect a method of taxation. Such election shall be changed for subsequent calendar years only by a written request filed by the practitioner on or before February 1 of the year in which the election is to be changed.

**Section \_\_\_\_.** Insurance Companies and Agents.<sup>4</sup>

Each insurance company doing business in the City shall pay an annual fee of [**insert appropriate amount allowed by O.C.G.A. § 33-8-8**] and an additional fee in the same

amount for each separate business location in excess of one operated and maintained by such company within the City. Each separate business location of an insurance company operated and maintained by a business organization which is engaged in the business of lending money or transacting sales involving term financing and which, in connection with the loans or sales involving term financing, offers, solicits, or takes applications for insurance through a licensed agent of the insurance company shall pay an annual fee of **[\$10.00 or thirty-five percent (35%) of the schedule set forth in O.C.G.A. § 33-8-8(b)(1), whichever is greater]**.

**Section \_\_\_\_.** Exemptions.

(A) No occupation tax shall be levied on the following:<sup>2</sup>

- (1) Disabled veterans of any war or armed conflict in which any branch of the United States armed forces was involved, whether under United States command or otherwise;
- (2) Blind persons;
- (3) Veterans of peace-time service in the United States armed forces who has a physical disability which was incurred during that service;
- (4) Any practitioner whose office is maintained by and who is employed in practice exclusively by the United States, the state, a municipality or county of the state, or instrumentality of the United States, the state, or a municipality or county of the state;
- (5) Any state or local authority, nonprofit organization, or vendor acting pursuant to a contract with a tax-exempt agricultural fair;
- (6) Real estate brokers, except at the principal or branch office of a real estate broker;
- (7) Motor vehicles required to be registered with the Department of Public Safety;
- (8) Those businesses regulated by the Georgia Public Service Commission;

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<sup>4</sup> See O.C.G.A. §§ 33-8-8 and 33-8-8.1 regarding taxation of insurance companies.

<sup>2</sup> The City may allow exemption(s) from occupation taxes for economic development purposes. If so, a separate ordinance provision setting forth the exemption and reciting its purpose should be enacted. *See* O.C.G.A. § 48-13-10(f).

- (9) Those electrical service businesses organized under Chapter 3 of Title 46 of the Official Code of Georgia;
- (10) Any farm operation for the production from or on the land of agricultural products, but not including any agribusiness;
- (11) Non-profit, agricultural product cooperative marketing associations pursuant to O.C.G.A. § 2-10-105;
- (12) Motor common carriers, pursuant to O.C.G.A. § 40-1-116;
- (13) Persons purchasing guano, meats, meal, flour, bran, cottonseed, or cottonseed meal and hulls in carload lots for distribution among the purchasers for use and not sale pursuant to O.C.G.A. § 48-5-355;
- (14) Pursuant to O.C.G.A. § 48-5-356 for persons selling or introducing into the City agricultural products or livestock, including animal products, raised in this state when the sale and introduction are made by the producer of the product and the sale is made within ninety (90) days of the introduction of the product into the City;
- (15) Depository financial institutions except as authorized in O.C.G.A. § 48-6-93; or
- (16) Any business on which the levy of such occupation tax is prohibited by the laws of the State of Georgia or the United States.

(B) The exemptions and limitations contained in this ordinance shall not be construed to repeal or otherwise affect in any way any franchise fees, business taxes or other fees or taxes otherwise allowed by law.<sup>5</sup>

**Section \_\_\_\_.** Evidence of State Registration When Required.

Each person who is licensed under Title 43 of the Official Code of Georgia Annotated by the Examining Boards of the Secretary of State's Office shall provide evidence of proper and current State licensure before any City occupation tax certificate may be issued.

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<sup>5</sup> See Title 3, Chapter 4 of the Official Code of Georgia and consult with your city attorney regarding taxation of alcoholic beverage manufacturers, retailers, distributors and wholesalers.

**Section \_\_\_\_.** Evidence of Qualification Required If Applicable.

- (A) Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of an occupation tax certificate, show evidence of such qualification.
- (B) Any business required to submit an annual application for continuance of the business shall do so before the registration is issued.
- (C) The City shall not impose registration or other regulatory requirements on attorneys authorized to practice law by the State Bar of Georgia.

**Section \_\_\_\_.** Filing Returns; Other Information Required or Requested.

- (A) On or before \_\_\_\_\_ of each year, an individual, business or practitioner subject to this occupation tax ordinance shall file with **[insert title of person administering this ordinance]**, on a form approved by and available from the City, a signed return attesting to the gross receipts of such business or practitioner during the calendar year.
- (B) Individuals, businesses and practitioners doing business in the City shall submit to the **[insert title of person administering this ordinance]** or make available to the City **[within 30 days or such longer time period as the City deems appropriate]** such information as may be required or requested by the City to determine the applicability and amount of the occupation tax or to facilitate levying or collecting the occupation tax.

**Section \_\_\_\_.** Confidentiality. Information provided by a business or practitioner to the City for the purpose of determining the applicability and amount of the occupation tax or levying or collecting the occupation tax is confidential and exempt from disclosure under Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia. Such information may be provided to the governing authority of another local government for occupation tax purposes or pursuant to court order or for the purpose of collecting occupation tax or prosecution for failure or refusal to pay occupation tax.

**Section \_\_\_\_.** Date Due; Penalty and Interest.

- (A) Any occupation tax due pursuant to this ordinance shall be due and payable annually within thirty (30) days of January 1 for the preceding calendar year. Occupation taxes imposed on businesses commencing after January 1 will be due and payable 30 days following the commencement of business.
- (B) If a business or practitioner commences business in the City on or after July 1 in any year, the occupation tax for the remaining portion of the year shall be fifty percent (50%) of the tax imposed for the entire year.
- (C) Payment of an occupation tax shall not be required prior to the commencement of business, nor shall it in any other manner act as a precondition on the practice of law.
- (D) Any individual, business or practitioner subject to any occupation tax imposed by this ordinance that is unpaid for ninety (90) days after the date on which payment was due shall be subject to a penalty of ten percent (10%) of the tax or fee due, and interest at the rate of 1.5 percent (1.5%) per month.

**Section \_\_\_\_.** Enforcement; Violations.

- (A) It is the duty of **[insert title of person responsible for administering this ordinance]** to administer and enforce the provisions of this ordinance, to perform all functions necessary to administer and enforce this ordinance and to summon violators of this ordinance to appear before the Municipal Court. The **[insert title of person responsible for administering this ordinance]** may issue executions against individuals, businesses and practitioners for taxes or fees which are due and owing; any penalty imposed by section \_\_\_\_; and any interest imposed by section \_\_\_\_.
- (B) The **[insert title of person responsible for administering this ordinance]** shall issue executions against individuals, businesses and practitioners for taxes or fees which are due and owing, penalties, or interest. Such executions shall bear interest at the rate authorized by O.C.G.A. § 48-2-40 or, if such statute should be repealed or ruled invalid by a court of competent jurisdiction, one percent (1%) per month. The lien shall cover the property of the individual, business or

practitioner liable for payment of the delinquent occupation tax and become fixed as of the date and time the occupation tax became delinquent. The execution shall be levied by **[insert title of appropriate officer]** of the City upon property of the delinquent tax or fee payer located in the City and sufficient property shall be advertised and sold to pay the amount of the execution, including penalty, interest and costs. All other proceedings in relation thereto shall be as provided by the Code and Charter of the City and the laws of Georgia. The defendants at execution shall have the rights of defense, by affidavit of illegality of the tax or otherwise as provided by the Charter of the City and the laws of Georgia in regard to tax executions.

- (C) When a nulla bona entry has been entered upon an execution, the person against whom the entry is made shall not be allowed or entitled to have or collect any fees or charge for services rendered after the entry of the nulla bona. If, at any time after the nulla bona entry has been made, the person against whom the execution issues pays the tax in full together with all interest and costs accrued on the tax, the person may collect any fees and charges due to such person as if such person had never defaulted in the payment of the tax.
- (D) Individuals, businesses and practitioners who fail or refuse to pay any occupation tax charged pursuant to this ordinance shall be subject to **[insert civil fine, to be imposed by court of competent jurisdiction over enforcement of City's ordinances, not more than \$\_\_\_\_\_, that may be enforced by the contempt power of the court]**.
- (E) Individuals, businesses and practitioners who fail or refuse to make a timely or truthful tax return or make available truthful and accurate information the City requests or requires for determining applicability or amount of occupation tax, or for levying or collecting such occupation tax shall be subject to **[insert legal and appropriate penalty]**.

- **Check to ensure any penalties imposed are within the limitations of your city's charter.**

(F) All persons subject to the occupation tax imposed by this ordinance shall be required to file for and pay such tax or fee. For failure to do so, any officers or agents soliciting for or obtaining business for such person, business or practitioner shall be subject to the same penalty as other persons, businesses or practitioners who fail to obtain the required certificate or make a return for or pay the applicable occupation tax.

**Section \_\_\_\_.** Public Hearings.

(A) After January 1, **[insert year following enactment of ordinance]**, the City shall conduct at least one public hearing before adopting any ordinance or resolution to change the occupation tax.

(B) In any year when revenue from occupation taxes is greater than revenue from occupation taxes for the preceding year, the City shall hold \_\_\_\_ **[insert one or more]** public hearing[s] as part of the process of determining how to use the additional revenue.

**Section \_\_\_\_.** Prior Ordinance. To the extent that any occupation taxes are owed pursuant to an ordinance passed prior to this one, such amounts remain due and owing and the provisions of that prior ordinance will remain in effect with respect to such unpaid occupation taxes until such time as they are paid in full.

**Section \_\_\_\_.** Severability. In the event any portion of this ordinance shall be declared or adjudged invalid or unconstitutional, it is the intention of the City Council of the City of \_\_\_\_\_ that such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this ordinance which shall remain in full force and effect as if the invalid or unconstitutional section, sentence, clause or phrase were not originally part of the ordinance.

**Section \_\_\_\_.** Repeal of Conflicting Provisions. All ordinances or parts of ordinance in conflict with this ordinance are hereby repealed.

**Section** \_\_\_\_ Effective Date. This ordinance shall become effective \_\_\_\_\_, 19\_\_.

So Ordained this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

## APPENDIX B

### Sample Ordinance Based on Number of Employees

(This sample ordinance is designed to provide assistance to city attorneys drafting ordinances on the subject. It is provided with the understanding that the Georgia Municipal Association is not rendering legal advice or services.)

#### AN ORDINANCE

To impose occupation taxes on businesses subject to the jurisdiction of the City of \_\_\_\_\_; to provide definitions; to provide penalties and enforcement; to repeal conflicting ordinances; to provide an effective date; and for other purposes.

#### BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF \_\_\_\_\_, GEORGIA:

**Section 1.** Chapter \_\_\_ of the Code of the City of \_\_\_\_\_, Georgia, is repealed in its entirety and the following new Code Chapter \_\_\_\_\_ is inserted in lieu thereof to read as follows:

**Chapter \_\_\_\_\_.** Occupation Taxes.

**Section \_\_\_\_.** Definitions. The following words, terms and phrases shall, for the purposes of this chapter, have the following meaning:

(A) "City" means the City of \_\_\_\_\_.

(B) (1) Except as otherwise provided in subparagraph (2) of this paragraph, "employee" means an individual whose work is performed under the direction and supervision of an employer who withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation a form I.R.S. W-2 but not a form I.R.S. 1099.

(2) An individual who performs work under the direction and supervision of one business or practitioner in accordance with the terms

of a contract or agreement with another business which recruits such individual is an employee of the business or practitioner that issues to such individual for purposes of documenting compensation a form I.R.S. W-2.

(3) With respect to the taxation of businesses or practitioners with no location or office in Georgia, "employees" may only include employees working substantially in Georgia.

(C) "Location or office" shall include any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office. A location that is the site of personal property which is rented or leased from another does not constitute a location or office for the real property's owner, lessor, or the agent of the owner or lessor, unless the real property's owner, lessor, or the agent of the owner or lessor, in addition to showing the property to prospective lessees or tenants and performing maintenance or repair of the property, otherwise conducts the business of renting or leasing the real property at such site or otherwise conducts any other business, profession, or occupation at such site.

(D) "Occupation Tax" means a tax levied for revenue purposes on persons, partnerships, corporations, or other entities for engaging in an occupation, profession, or business in the City of \_\_\_\_\_.

(E) "Practitioners of professions and occupations" does not include a practitioner who is an employee of a business, if the business pays an occupation tax.

**Section \_\_\_\_.** Occupation Tax Levied; Computation of Full-Time Employees; Occupation Tax Schedule; Limitations.

(A) An occupation tax based upon number of employees is levied upon businesses and practitioners of professions and occupations if the business or practitioner:

- (1) Has one or more locations or offices within the corporate limits of the City; or

(2) Is an out-of-state businesses or practitioners with no location or office in the City but:

(a) Has employees or agents engaging in substantial efforts to solicit business or serve customers or clients within the corporate limits of the City; or

(b) Owns personal or real property that generates income and is located within the corporate limits of the City.

(B) The occupation tax is levied based on the number of employees of the business or practitioner as computed on a full-time basis or full-time position equivalent basis, provided that for the purposes of this computation an employee who works 40 hours or more weekly shall be considered a full-time employee and that the average weekly hours of employees who work less than 40 hours weekly shall be added and such sum shall be divided by 40 to produce full-time position equivalents.

(C) The occupational tax is levied in accordance with the following schedule:

<b>[Option 1.</b>	<b>\$_____ per employee.]</b>	
<b>[Option 2.</b>	<b>1-10</b>	_____
	<b>11 - 25</b>	_____
	<b>26 - 50</b>	_____
	<b>51 - 75</b>	_____
	<b>76 - 100</b>	_____
	<b>More than 100</b>	_____ ]

(C) The City shall not require the payment of more than one occupation tax for each location of a business or practitioner.

(D) A business or practitioner that has locations in Georgia and is subject to occupation tax by more than one local government in Georgia shall only be subject to occupation tax by the City of \_\_\_\_\_ for the number of employees who are employed within the corporate limits of the City.

- (1) This limitation shall only apply when the business or practitioner has provided to the City satisfactory proof of current payment of the occupation tax of the other local government(s).
- (2) If an employee works for the same business in more than one jurisdiction, the city or county in which the employee works the most in a calendar year may count the employee for occupation tax purposes.

(F) A business or practitioner with no location or office in Georgia shall only be required to pay occupation tax to the local government in Georgia where the largest dollar volume of business is done or service is performed by such business or practitioner.

- (1) This limitation shall only apply when the business or practitioner has provided to the City satisfactory proof of as to the applicability of this subsection.
- (2) If a business or practitioner with no location or office in Georgia provides to the City proof of payment of a local business or occupation tax in another state that purports to tax the business's or practitioner's sales or services in this state, then the business or practitioner shall be exempt from this occupation tax.

(G) Real estate brokers shall be subject to occupation tax pursuant to this ordinance only if they maintain a principal or branch office in the City.

**Alternative Flat Fee Classification**

**Section \_\_\_\_.** Occupation Tax Levied; Flat Fee Classification.

Each business shall pay an occupation tax in the amount of \$300 per office or location.

**Section \_\_\_\_.** Practitioners of Professions and Occupations. Practitioners of professions and occupations enumerated in O.C.G.A. 48-13-9(c) shall pay the occupation tax as set forth in Section \_\_\_\_ above or shall pay an occupation tax of \_\_\_\_\_ **[an amount not to exceed \$400.00]** per practitioner. On the tax return for **[year ordinance enacted]** or such later time as the practitioner first commences business in the City, the practitioner shall elect either

method of taxation. Such election shall be changed for subsequent calendar years only by a written request filed by the practitioner on or before February 1 of the year in which the election is to be changed.

**Section \_\_\_\_.** Insurance Companies and Agents.

Each insurance company doing business in the City shall pay an annual license fee of **[insert appropriate amount allowed by O.C.G.A. § 33-8-8]** and an additional fee in the same amount for each separate business location in excess of one operated and maintained by such company within the City. Each separate business location of an insurance company operated and maintained by a business organization which is engaged in the business of lending money or transacting sales involving term financing and which, in connection with the loans or sales involving term financing, offers, solicits, or takes applications for insurance through a licensed agent of the insurance company shall pay an annual fee of **[\$10.00 or thirty-five percent (35%) of the schedule set forth in O.C.G.A. § 33-8-8(b)(1), whichever is greater]**.

<p><b>Consult with your city attorney regarding collection of an insurance premium tax and an insurance corporation tax.</b></p>
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**Section \_\_\_\_.** Exemptions.

- (A) No occupation tax shall be levied on the following:<sup>1</sup>
- (1) Disabled veterans of any war or armed conflict in which any branch of the United States armed forces was involved, whether under United States command or otherwise;
  - (2) Blind persons;
  - (3) Veterans of peace-time service in the United States armed forces who has a physical disability which was incurred during that service;

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<sup>1</sup> The City may wish to allow an exemption from the occupation tax for economic development purposes. If so, the ordinance provision providing this exemption should recite that the exemption is part of a plan by the City to encourage such business pursuant to O.C.G.A. § 48-13-10 (f).

- (4) Any practitioner whose office is maintained by and who is employed in practice exclusively by the United States, the state, a municipality or county of the state, or instrumentality of the United States, the state, or a municipality or county of the state;
- (5) Any state or local authority, nonprofit organization, or vendor acting pursuant to a contract with a tax-exempt agricultural fair;
- (6) Real estate brokers, except at the principal or branch office of a real estate broker;
- (7) Motor vehicles required to be registered with the Public Service Commission;
- (8) Those businesses regulated by the Georgia Public Service Commission;
- (9) Those electrical service businesses organized under Chapter 3 of Title 46 of the Official Code of Georgia;
- (10) Any farm operation for the production from or on the land of agricultural products, but not including any agribusiness;
- (11) Non-profit, agricultural product cooperative marketing associations pursuant to O.C.G.A. § 2-10-105;
- (12) Motor common carriers pursuant to O.C.G.A. § 46-7-15;
- (13) Persons purchasing guano, meats, meal, flour, bran, cottonseed, or cottonseed meal and hulls in carload lots for distribution among the purchasers for use and not sale pursuant to O.C.G.A. § 48-5-355;
- (14) Pursuant to O.C.G.A. § 48-5-356 for persons selling or introducing into the City agricultural products or livestock, including animal products, raised in this state when the sale and introduction are made by the producer of the product and the sale is made within ninety (90) days of the introduction of the product into the City;
- (15) Depository institutions pursuant to O.C.G.A. § 48-6-93;<sup>2</sup> or
- (16) Any business on which the levy of such occupation tax is prohibited by the laws of the State of Georgia or the United States.<sup>3</sup>

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<sup>2</sup> See this statute regarding collection of an occupation tax from such businesses.

<sup>3</sup> See O.C.G.A. §§ 33-8-8 and 33-8-8.1 regarding taxation of insurance companies. Licensing and taxation of insurers

- (B) The exemptions and limitations contained in this ordinance shall not be construed to repeal or otherwise affect in any way any franchise fees, business taxes or other fees or taxes otherwise allowed by law.<sup>4</sup>

**Section \_\_\_\_.** Evidence of State Registration When Required. Each person who is licensed under Title 43 of the Official Code of Georgia Annotated by the Examining Boards of the Secretary of State's Office shall provide evidence of proper and current State licensure before any City occupation tax certificate may be issued.

**Section \_\_\_\_.** Evidence of Qualification Required If Applicable.

- (A) Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of an occupation tax certificate, show evidence of such qualification.
- (B) Any business required to submit an annual application for continuance of the business shall do so before the registration is issued.
- (C) The City shall not impose registration or other regulatory requirements on attorneys authorized to practice law by the State Bar of Georgia.

**Section \_\_\_\_.** Filing Returns; Other Information Required or Requested.

- (A) On or before \_\_\_\_\_ of each year, an individual, business or practitioner subject to this occupation tax ordinance shall file with **[insert title of person administering this ordinance]**, on a form approved by and available from the City, a signed return attesting to the number of employees of such business or practitioner during the calendar year.
- (B) Individuals, businesses and practitioners doing business in the City shall submit to the **[insert title of person administering this ordinance]** or make available to the City **[within 30 days or such longer time period as the City deems**

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should be covered by a separate ordinance.

<sup>4</sup> See Title 3 Chapter 4 of the Official Code of Georgia and consult with your city attorney regarding taxation of alcoholic beverage manufacturers, retailers, distributors and wholesalers. See also Distilling the Basics of Municipal Alcoholic Beverage Regulation, a publication of the Georgia Municipal Association.

**appropriate]** such information as may be required or requested by the City to determine the applicability and amount of the occupation tax or to facilitate levying or collecting the occupation tax.

**Section \_\_\_\_.** Date Due; Penalty and Interest.

- (A) Any occupation tax due pursuant to this ordinance shall be due and payable annually within thirty (30) days of January 1 for the preceding calendar year. Occupation taxes imposed on businesses commencing after January 1 will be due and payable 30 days following the commencement of business. If a person commences business on or after July 1, the occupation tax for the remaining portion of the year shall be 50 percent of the tax imposed for the entire year.
- (B) If a business or practitioner commences business in the City on or after July 1 in any year, the occupation tax for the remaining portion of the year shall be fifty percent (50%) of the tax imposed for the entire year.
- (C) Payment of an occupation tax shall not be required prior to the commencement of business, nor shall it in any other manner act as a precondition on the practice of law.
- (D) Any individual, business or practitioner subject to any occupation tax imposed by this ordinance which is unpaid for ninety (90) days after the date on which payment was due shall be subject to a penalty of ten percent (10%) of the tax or fee due, and interest at the rate of 1.5 percent (1.5%) per month.

<p><b>Consult with your city attorney about the appropriate collection and enforcement procedures for your city.</b></p>
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**Section \_\_\_\_.** Enforcement; Violations.

- (A) It is the duty of **[insert title of person responsible for administering this ordinance]** to administer and enforce the provisions of this ordinance, to perform all functions necessary to administer and enforce this ordinance and to summon violators of this ordinance to appear before the Municipal Court. The

**[insert title of person responsible for administering this ordinance]** may issue executions against individuals, businesses and practitioners for taxes or fees which are due and owing; any penalty imposed by section \_\_\_\_; and any interest imposed by section \_\_\_\_.

- (B) The **[insert title of person responsible for administering this ordinance]** shall issue executions against individuals, businesses and practitioners for taxes or fees which are due and owing, penalties, or interest. Such executions shall bear interest at the rate authorized by O.C.G.A. § 48-2-40 or, if such statute should be repealed or ruled invalid by a court of competent jurisdiction, one percent (1%) per month. The lien shall cover the property of the individual, business or practitioner liable for payment of the delinquent occupation tax and become fixed as of the date and time the occupation tax became delinquent. The execution shall be levied by **[insert title of appropriate officer]** of the City upon property of the delinquent tax or fee payer located in the City and sufficient property shall be advertised and sold to pay the amount of the execution, including penalty, interest and costs. All other proceedings in relation thereto shall be as provided by the Code and Charter of the City and the laws of Georgia. The defendants at execution shall have the rights of defense, by affidavit of illegality of the tax or otherwise as provided by the Charter of the City and the laws of Georgia in regard to tax executions.
- (C) Individuals, businesses and practitioners who fail or refuse to pay any occupation tax charged pursuant to this ordinance shall be subject to **[insert civil fine, to be imposed by court of competent jurisdiction over enforcement of City's ordinances, not more than \$500, that may be enforced by the contempt power of the court]**.
- (D) Individuals, businesses and practitioners who fail or refuse to make a timely or truthful tax return or make available truthful and accurate information the City requests or requires for determining applicability or amount of occupation tax or for levying or collecting such occupation tax shall be subject to **[insert legal and appropriate penalty]**.

**Please check to ensure that any penalties are within the limitations of your city's charter.**

(E) All persons subject to the occupation tax imposed by this ordinance shall be required to file for and pay such tax or fee. For failure to do so, any officers or agents soliciting for or obtaining business for such person, business or practitioner shall be subject to the same penalty as other persons, businesses or practitioners who fail to make a return for or pay the applicable occupation tax.

**Section \_\_\_\_.** Public Hearings.

(A) After January 1, **[insert year following enactment of ordinance]**, the City shall conduct at least one public hearing before adopting any ordinance or resolution which will increase the occupation tax rate specified in Section(s) \_\_\_\_\_.

(B) In any year when revenue from occupation taxes is greater than revenue from occupation taxes for the preceding year, the City shall hold \_\_\_\_ **[insert one or more]** public hearing[s] as part of the process of determining how to use the additional revenue.

**Section \_\_\_\_.** Prior Ordinance. To the extent that any occupation taxes are owed pursuant to an ordinance passed prior to this one, such amounts remain due and owing and the provisions of that prior ordinance will remain in effect with respect to such unpaid occupation taxes until such time as they are paid in full.

**Section \_\_\_\_.** Severability. In the event any portion of this ordinance shall be declared or adjudged invalid or unconstitutional, it is the intention of the City Council of the City of \_\_\_\_\_ that such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this ordinance which shall remain in full force and effect as if the invalid or unconstitutional section, sentence, clause or phrase were not originally part of the ordinance.

**Section \_\_\_\_.** Repeal of Conflicting Provisions. All ordinances or parts of ordinance in conflict with this ordinance are hereby repealed.

**Section** \_\_\_\_ Effective Date. This ordinance shall become effective \_\_\_\_\_, 20\_\_.

So Ordained this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

**APPENDIX C**

**Sample Regulatory Fee Ordinance**

**(This sample ordinance is designed to provide assistance to city attorneys drafting ordinances on the subject. It is provided with the understanding that the Georgia Municipal Association is not rendering legal advice or services.)**

**AN ORDINANCE**

To impose regulatory fees on businesses subject to the jurisdiction of the City of \_\_\_\_\_; to provide definitions; to provide penalties and enforcement; to repeal conflicting ordinances; to provide an effective date; and for other purposes.

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF  
THE CITY OF \_\_\_\_\_, GEORGIA:**

**Section 1.** Chapter \_\_\_\_ of the Code of the City of \_\_\_\_\_, Georgia, is repealed in its entirety and the following new Code Chapter \_\_\_\_\_ is inserted in lieu thereof to read as follows:

**Chapter \_\_\_\_\_.** Regulatory Fees.

**Section \_\_\_\_.** Definitions. The following words, terms and phrases shall, for the purposes of this chapter, have the following meaning:

- (A) "Regulatory fees" means payments, whether designated as license fees, permits fees, or by any other name, which are required by the City to approximate the cost of regulatory activity by the City. The regulatory fee does not include an administrative fee or registration fee. Regulatory fees do not include development impact fees as defined by paragraph (8) of Code Section 36-71-2, other costs or conditions of zoning or land development or local alcoholic beverage license fees authorized by Title 3 of the O.C.G.A.
- (B) "Regulatory Fee Certificate" means a document issued by the City of \_\_\_\_\_ acknowledging payment of a regulatory fee.

**Section \_\_\_\_.** Regulatory Fee.

- (A) Businesses and individuals engaging in the occupations or businesses set forth in Appendix \_\_\_\_, following O.C.G.A. § 48-13-9(b)(1-31), must pay a non-refundable regulatory fee in accordance with the rate set forth in Appendix \_\_\_\_ [ See O.C.G.A. § 48-13-9(e) for permissible methods of calculation ].
- (B) If a business or individual initially engages in an activity regulated by the City on or after July 1 in any year, the regulatory fee for the remaining portion of the year shall be fifty percent (50%) of the regulatory fee for the entire year.
- (C) Every business, individual and location subject to payment of a regulatory fee levied by this ordinance shall display a current regulatory fee certificate in a conspicuous place at the location for which such certificate was issued. If the taxpayer does not have a permanent location within the City, the regulatory fee certificate or an unaltered duplicate of such certificate shall be shown to any police officer, code enforcement officer, or finance department official [**or other person charged with enforcing this ordinance**] upon request.

**Section \_\_\_\_.** Exemptions

The following groups shall be exempt from paying regulatory fees:

- (A) Disabled veterans of any war or armed conflict in which any branch of the United States armed forces was involved, whether under United States command or otherwise;
- (B) Blind persons;
- (C) Veterans of peace-time service in the United States armed forces who have a disability that was incurred during the time of service;
- (D) A local board of education; and
- (E) Any state or local authority, nonprofit organization, or vendor acting pursuant to a contract with a tax-exempt agricultural fair.

**Section \_\_\_\_.** Date Due; Penalty and Interest.

- (A) Regulatory fees authorized by this ordinance shall be paid before commencing

business or the practice of a profession as a condition precedent for transacting business, or practicing a profession.

(B) Regulatory fees may be paid after commencing business or the practice of a profession when:

- (1) The work done or services provided are necessary for the health and safety of one or more individuals;
- (2) The work done or services provided have no adverse effect on any other person; and
- (3) Regulatory fees are tendered to the local government within two (2) business days after commencing business or the practice of a profession.

(C) Any individual, business or practitioner subject to any regulatory fee imposed by this ordinance which is unpaid for ninety (90) days after the date on which payment was due shall be subject to a penalty of ten percent (10%) of the tax or fee due, and interest at the rate of 1.5 percent (1.5%) per month.

- **Consult with your city attorney about the appropriate application, collection and enforcement procedures for your city.**
- **O.C.G.A. § 48-13-29 requires municipalities to accept applications and payment for permits by mail or through electronic means, including but not limited to facsimile, email, and websites, for: installation, replacement or improvement of heating, ventilation, air-conditioning, plumbing or electrical equipment or systems.**
- **Local governments may add an additional fee for processing payments that are made by check, money order, credit card, bank draft, wire transfer, a municipal account, or deferred payment arrangement.**

**Section \_\_\_\_.** Filing Returns; Other Information Required or Requested.

Individuals, businesses and practitioners doing business in the City shall submit to the **[insert title of person administering this ordinance]** or make available to the City **[within 30 days or such longer time period as the City deems appropriate]** such information as may be required or requested by the City to determine the applicability and amount of the regulatory fee or to facilitate levying or collection of the regulatory fee(s).

**Section \_\_\_\_.** Enforcement; Violations.

- (A) It is the duty of **[insert title of person responsible for administering this ordinance]** to administer and enforce the provisions of this ordinance, to perform all functions necessary to administer and enforce this ordinance and to summon violators of this ordinance to appear before the Municipal Court. The **[insert title of person responsible for administering this ordinance]** may issue executions against individuals, businesses and practitioners for taxes or fees which are due and owing; any penalty imposed by section \_\_\_\_; and any interest imposed by section.
- (B) The **[insert title of person responsible for administering this ordinance]** shall issue executions against individuals, businesses and practitioners for taxes or fees which are due and owing, penalties, or interest. Such executions shall bear interest at the rate authorized by O.C.G.A. § 48-2-40 or, if such statute should be repealed, one percent (1%) per month. The lien shall cover the property of the individual, business or practitioner liable for payment of the delinquent regulatory fee and become fixed as of the date and time the regulatory fee became delinquent. The execution shall be levied by **[insert title of appropriate officer]** of the City upon property of the delinquent tax or fee payer located in the City and sufficient property shall be advertised and sold to pay the amount of the execution, including penalty, interest and costs. All other proceedings in relation thereto shall be as provided by the Code and Charter of the City and the laws of Georgia. The defendants at execution shall have the rights of defense, by affidavit of illegality of the tax or otherwise as provided by the Charter of the City and the laws of Georgia in regard to tax executions.
- (C) Individuals, businesses and practitioners who fail or refuse to pay any regulatory fee charged pursuant to this ordinance shall be subject to **[insert civil fine, to be imposed by court of competent jurisdiction over enforcement of City's ordinances, not more than \$500, that may be enforced by the contempt power of the court; may also add criminal penalty]**.

- (D) Individuals, businesses and practitioners who fail or refuse to make available truthful and accurate information the City requests or requires for determining applicability or amount of regulatory fee, or for levying or collecting such regulatory fee shall be subject to **[insert legal and appropriate criminal penalty]**.

▪ **Check to ensure any penalties imposed are within the limitations of your city's charter.**

- (E) All persons subject to the regulatory fee imposed by this ordinance shall be required to file for and pay such tax or fee. For failure to do so, any officers or agents soliciting for or obtaining business for such person, business or practitioner shall be subject to the same penalty as other persons, businesses or practitioners who fail to obtain the required certificate or make a return for or pay the applicable regulatory fee.

**Section \_\_\_\_.** Administrative Remedies

- (A) A civil action to enforce the limitation on regulatory fees may be filed after the exhaustion of administrative remedies. The prevailing party in such an action shall be awarded reasonable attorney's fees.
- (B) In the event that a business or practitioner subjected to regulatory fees pursuant to this ordinance deems such fees to exceed the reasonable cost of the regulatory activity performed, the business or practitioner shall appeal the cost of the regulatory fees to a municipal appeals board. This board shall be comprised of five residents of the municipality, who shall be selected and approved by the members of the council. If the members of the board shall determine that the fees exceed the reasonable cost of the regulatory activity, the board shall impose a fee that does approximate the reasonable cost of the activity.
- (C) In the event that the business or practitioner wishes to appeal the decision of the board, the business or practitioner shall appeal that decision to the full city council. If the city council determines that the decision made by the

municipal appeals board is erroneous, the city council shall overrule that decision and determine a fee that approximates the cost of the service provided.

**Section \_\_\_\_.** Severability. In the event any portion of this ordinance shall be declared or adjudged invalid or unconstitutional, it is the intention of the City Council of the City of \_\_\_\_\_ that such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this ordinance which shall remain in full force and effect as if the invalid or unconstitutional section, sentence, clause or phrase were not originally part of the ordinance.

**Section \_\_\_\_.** Repeal of Conflicting Provisions. All ordinances or parts of ordinance in conflict with this ordinance are hereby repealed.

**Section \_\_\_\_.** Effective Date. This ordinance shall become effective \_\_\_\_\_, 20\_\_.

So Ordained this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

