

Chapter 15

TAXATION AND REVENUE*

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ARTICLE I. IN GENERAL

Sec. 15-1. Malt beverage excise tax.

There is hereby set and levied a tax on the sale of malt beverages as follows:

- (1) Where malt beverages, commonly known as tap or draft beer, are sold in or from a barrel or bulk container, a tax of \$6.00 on each container sold containing not more than 15½ gallons and a proportionate tax at the same rate on all fractional parts of 15½ gallons; and
- (2) Where malt beverages are sold in bottles, cans, or other containers, except barrel or bulk containers, a tax of \$0.05 per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces.

(Code 1978, § 16-2)

State law reference—Levy and amount of tax, O.C.G.A. § 3-5-80.

Sec. 15-2. Distilled spirits and wine excise tax.

(a) *Rate of levy.* Except where exempted by law, there is hereby set and levied on the sale of distilled spirits and wine an excise tax in the sum of \$0.22 per liter or fraction thereof.

(b) *Against whom levied.* The alcoholic beverage excise tax shall be paid by each licensed wholesale dealer in alcoholic beverages in the City.

(c) *Date due and required report.* The alcoholic beverage excise tax shall be paid on or before the tenth day of the month following the calendar month in which the beverages are sold or disposed of, and payment shall be accompanied by a report itemizing the exact quantities of alcoholic beverages sold for the preceding calendar month by size of container.

(d) *Enforcement.* The tax levied by this section may be enforced by execution in the same manner as other taxes of the City, and, in addition, any

failure of payment of such tax shall be grounds for revocation or refusal of the business license of the delinquent taxpayer.

(Code 1978, § 16-3)

State law references—Levy of tax on sale of distilled spirits by the package authorized, O.C.G.A. § 3-4-80; imposition of excise tax on malt beverages, O.C.G.A. § 3-5-80; authorization to levy tax on wine, O.C.G.A. § 3-6-60.

Sec. 15-3. Public utility franchise tax.

(a) *Rate of levy.* There is hereby set and levied on each electric light and power company, gas company, telephone company, telegraph company, water company, cable television company and other public utility making use of the streets, alleys or other public ways or places of the City, a franchise tax in the amount prescribed by the City Council, a certain percentage of the annual gross revenue received from residential, commercial and industrial sales.

(b) *Due date and required report.* The public utility franchise tax shall be paid annually, and payment shall be accompanied by a report showing the volume of gross sales by service classification (residential, commercial, industrial) for the preceding year.

(Code 1978, § 16-4)

State law reference—Ad valorem taxation of special franchise, O.C.G.A. § 48-5-420 et seq.

Sec. 15-4. Franchise fee for state-issued cable or video franchise.

The City hereby requires a franchise fee of five percent of gross revenues generated within the City for any cable or video State franchise issued in its corporate boundaries by the State.

(Ord. No. 2008-01, § 1, 3-20-2008)

Sec. 15-5. Authorized designee.

The City hereby authorizes the City Manager, upon receipt of notice to the City of its right to designate a franchise fee for an applicant or holder or an existing State franchise, to provide written notice to the Secretary of State and each applicant for or holder of a State franchise within a service area that is wholly or partially located

within the City limits of the five percent franchise fee rate applicable to such applicant or holder of a State franchise.

(Ord. No. 2008-01, § 2, 3-20-2008)

Secs. 15-6—15-24. Reserved.

ARTICLE II. MOTEL EXCISE TAX*

Sec. 15-25. Definitions.

The following words, terms and phrases shall, for the purposes of this article and except where the context clearly indicates a different meaning, be defined as follows:

Due date means the 20th day after the end of the monthly period for which tax is to be computed.

Guestroom means a room occupied, or intended, arranged, or designed for occupancy, by one or more occupants for the purpose of living quarters or residential use.

Monthly period means a calendar month.

Motel means any structure or any portion of a structure, including any motel, lodginghouse, roominghouse, dormitory, Turkish bath, bachelor hotel, hotel, motor hotel, auto court, inn, bed and breakfast inn, public club, or private club, containing guestrooms and which is occupied, or is intended or designed for occupancy by guests, whether rent is paid in money, goods, labor or otherwise. Such term does not include any jail, hospital, asylum, sanitarium, orphanage, prison, detention center, or other buildings in which human beings are housed and detained under legal restraint.

Occupancy means the use or possession, or the right to the use or possession of any room or apartment in a motel, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room.

Occupant or *guest* means any person who, for a consideration, uses, possesses, or has the right to

*State law reference—Motel excise tax authorized, O.C.G.A. § 48-13-90 et seq.

use or possess any room in a motel under any lease, concession, permit, right of access, license to use, or other agreement, or otherwise.

Operator means any person operating a motel in the City, including, but not limited to, the owner or proprietor of such premises, the lessee, sublessee, lender in possession, licensee, or any other person otherwise operating such motel.

Person means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, nonprofit corporation or cooperative nonprofit membership, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, excepting the United States of America, the State, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

Rent means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also the amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.

Return means any return filed or required to be filed as herein provided.

Tax means the tax imposed by this article. (Code 1978, § 16-31; Ord. No. 1994-02, 5-5-1994)

Sec. 15-26. Imposition and rate of tax.

(a) There is hereby levied and imposed, and there shall be paid a tax of five percent of the rent for every occupancy of a guestroom in a motel in the City; provided, that levy and collection of that portion of such tax amounting to two percent of the rent which is required to be expended for the purpose of promoting tourism, conventions, and trade shows, or for other purposes provided in O.C.G.A. § 48-13-51(a)(3), shall be suspended during periods of time during which the City has no contract for the expenditure of such funds with the State, a department of the State government, a State authority, or a private sector nonprofit organization, or a contract with some combination of such entities. Written notice of the dates of

the beginning and end of such periods of suspension shall be given to each operator of a motel in the City on or before the date immediately preceding the date each period begins and ends by the City Clerk or such other person as may be designated by him to give such notice. Such notice shall be deemed sufficient if delivered to any person authorized to collect rent for the operator of the motel to whom notice is required to be given.

(b) No tax shall be levied as provided in this section upon the fees or charged for any rooms, lodging, or accommodations furnished for a period of more than ten consecutive days or for use as meeting rooms.

(Code 1978, § 16-32; Ord. No. 1994-02, 5-5-1994)

Sec. 15-27. Collection of tax by operator.

It shall be the duty of every operator of a motel located within the City to collect from the occu-

pants the tax levied and imposed upon the occupancy of guestrooms by the provisions of this article.

(Code 1978, § 16-33; Ord. No. 1994-02, 5-5-1994)

Sec. 15-28. Exemptions.

Notwithstanding any other provision of this article, no tax shall be levied as provided in this article upon the fees or charges for any rooms, lodgings, or accommodations furnished for use by State or local government officials or employees when traveling on official business.

(Code 1978, § 16-34; Ord. No. 1994-02, 5-5-1994)

Sec. 15-29. Registration of operator.

(a) Every person engaging or about to engage in business as an operator of a motel in this City shall immediately register with the City Clerk on a form provided by the City Clerk. Persons engaged in such business must so register not later than 15 days after the date of this article becomes effective, but such privilege of registration after the imposition of such tax shall not relieve any person from the obligation of payment or collection of tax on and after the date of imposition thereof. Such registration shall set forth the name under which such person transacts business or intends to transact business, the location of his place or places of business and such other information that would facilitate the collection of the tax as the secretary may require. The registration shall be signed by the owner if a natural person; by a member or partner in case of ownership by an association or partnership; and by an executive officer in the case of ownership by a corporation.

(b) A separate registration shall be required for each place of business of an operator.

(c) Should the City Clerk deem it necessary, in order to facilitate registration, he may prescribe administrative provisions therefor other than those provided in this section. Such provisions shall be made to effect the purposes hereof.

(Code 1978, § 16-35; Ord. No. 1994-02, 5-5-1994)

Sec. 15-30. Certificate of taxing authority.

Upon the registration of an operator as hereinbefore provided, the City Clerk shall issue to such operator without charge a certificate of authority to collect the tax from the occupants, stating the name and location of the business to which it is applicable. Such certificates shall be nonassignable and nontransferable, and shall be returned immediately to the Clerk upon cessation of business by the registered operator at the location name, or upon sale or transfer of such business at such location.

(Code 1978, § 16-36; Ord. No. 1994-02, 5-5-1994)

Sec. 15-31. Due date of taxes.

All taxes levied and imposed by this article shall be due and payable to the City monthly on or before the 20th day of every month next succeeding each respective monthly period in which such taxes are collected.

(Code 1978, § 16-37; Ord. No. 1994-02, 5-5-1994)

Sec. 15-32. Returns and time of filing; remittance of tax.

(a) On or before the 20th day of the month following each monthly period, a return for the preceding monthly period shall be filed with the City Clerk, in such form as the Clerk may prescribe, by every operator liable for the payment of tax hereunder.

(b) All returns shall show the gross rent, exempt rent, taxable rent, amount of tax collected or otherwise due for the monthly period for which filed, and such other information as may be required by the Clerk, and shall be accompanied when filed by remittance of the net amount of tax due.

(Code 1978, § 16-38; Ord. No. 1994-02, 5-5-1994)

Sec. 15-33. Collection fee allowed operators.

Operators collecting the tax levied hereunder shall be allowed a percentage of the tax due and accounted for, and shall be reimbursed in the form of a deduction in submitting, reporting, and payment of the amount due, if said amount is not delinquent at the time of payment. The rate of the

deduction shall be the same rate authorized for deductions from State sales and use tax under O.C.G.A. § 48-8-50.
(Code 1978, § 16-39; Ord. No. 1994-02, 5-5-1994)

Sec. 15-34. Deficiency determinations.

(a) *Recomputation of tax, authority to make; basis of recomputation.* If the City Clerk is not satisfied with the return of the tax or the amount of the tax required to be paid to the City by any person, he may compute and determine the amount required to be paid upon the basis of any information in his possession or which may come into his possession. One or more than one deficiency determinations may be made of the amount due for one or more than one monthly period.

(b) *Interest on deficiency.* The amount of the unpaid tax found to be due shall bear interest at the rate of three-fourths of one percent per month from and after the 20th day of the month following the monthly period for which the amount should have been returned until the date of payment of such tax and interest.

(c) *Offsetting of overpayments.* In making a determination, the Clerk may offset overpayments for a period, against unpaid tax found to be due for another period, against penalties, and against the interest on such unpaid tax.

(d) *Notice of determination; service of.* The Clerk, or his designated representative, shall give to the operator written notice of his determination. The notice may be served personally or by mail. If by mail, such service shall be addressed to the operator at this address as it appears in the records of the Clerk.

(e) *Time within which notice of deficiency determination to be mailed.* Except in the case of failure to make a return, every notice of a deficiency determination shall be mailed within three years after the 20th day of the calendar month following the monthly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period shall last expire.
(Code 1978, § 16-40; Ord. No. 1994-02, 5-5-1994)

Sec. 15-35. Determination if no return made.

(a) *Estimate of gross receipts.* If any operator fails to make a return, the City Clerk shall make an estimate of the amount of the gross receipts of the operator or, as the case may be, of the amount of the total rentals in this City which are subject to the tax. The estimate shall be made for the period in respect to which the person failed to make the return and shall be based upon any information that is or may come into the possession of the City Clerk. Upon the basis of this estimate, the City Clerk shall compute and determine the amount required to be paid the City, adding to the sum thus determined a penalty equal to 15 percent thereof. One or more determinations may be made of the amount due for one or for more than one monthly period.

(b) *Offsetting of overpayments.* In making a determination the City Clerk may offset overpayments for a period, against unpaid tax found to be due for another period, against penalties, and against interest on unpaid tax found to be due. The interest on such unpaid tax shall be computed in the manner set forth in section 15-34(b).

(c) *Interest on amount found due.* The amount of the unpaid tax found to be due shall bear interest at the rate of three-fourths of one percent per month from and after the 20th day of the month following the monthly period for which the amount should have been returned until the date of payment of such tax, penalties and interest.

(d) *Notice of determination; service of.* Promptly after making his determination, the City Clerk shall give to the operator written notice of his determination, which notice may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.
(Code 1978, § 16-41; Ord. No. 1994-02, 5-5-1994)

Sec. 15-36. Collection of tax.

(a) *Action for tax; time for.* When it is determined by a return filed, or by the City Clerk having made a determination under the provisions of section 15-34 or 15-35, that tax is due and payable to the City under the provisions of this article, the City Manager may at any time within three years after determination that such tax is

due and payable bring an action in the courts of this State, of any other state, or of the United States in the name of the City to collect the amount of tax payable to the City together with interest thereon and penalties, court costs, attorney's fees and other legal fees incident thereto. The bringing of such an action shall not be a prerequisite for the issuance of a fi. fa. under the provisions of subsection (d) of this section.

(b) *Duty of successors or assignees of operator to withhold tax from purchase money.* If any operator liable for any amount of tax under this article sells or transfers his business, his successors or assignees shall withhold a sufficient amount of the purchase price of the business to cover such amount of tax, interest thereon, and penalties, and pay such sum over to the City unless the operator liable for such tax delivers to such purchaser or transferee, as the case may be, at the time of such sale or transfer, a certificate from the City Clerk showing that all tax returns required of such operator have been filed and all taxes shown as being payable on such returns have been paid in full.

(c) *Liability for failure to withhold; time to enforce successor's liability.* If the purchaser or transferee of a business fails to withhold the required amount of the purchase price, he shall be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells or transfers his business, or at the time that the determination against the operator becomes final, whichever event occurs later.

(d) *Issuance of fi. fa.* The City Clerk is hereby authorized to issue a fi. fa. for execution and levy to satisfy the amount of any tax, penalty or interest due but not paid under the provisions of this article.

(Code 1978, § 16-42; Ord. No. 1994-02, 5-5-1994)

Sec. 15-37. Administration of this article.

(a) *Authority of the City Clerk.* The City Clerk, under supervision of the City Manager, shall administer and enforce the provisions of this article for the levy and collection of the tax imposed by this article.

(b) *Rules and regulations.* The City Clerk shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other ordinances of the City, or the laws of the State, or the constitution of this State or the United States, for the administration and enforcement of the provisions of this article and the collection of the taxes hereunder.

(c) *Records required from operators, etc., form.* Every operator shall keep such records, receipts, invoices and other pertinent papers in such form as the City Clerk may require.

(d) *Examination of records; audits.* The City Clerk or any person authorized in writing by him, may examine the books, papers, records, financial reports, equipment and other facilities of any operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount of tax required to be paid.

(e) *Authority to require reports; contents.* In the administration of the provisions of this article, the City Clerk may require the filing of reports by any person or class of persons having in such person's or persons' possession or custody information relating to rentals of guestrooms which are subject to the tax. The reports shall be filed with the City Clerk when required by the City Clerk and shall set forth the rental charged for each occupancy, the date of occupancy, and such other information as the City Clerk may require.

(f) *Limitation on disclosure of business of operators, etc.* The City Clerk or any person having an administrative duty under this article shall not make known in any manner the business affairs, operations, or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any operator or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not having such administrative duty under this article except in the case of judicial proceedings or other proceedings necessary to collect the tax

hereby levied and assessed. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of unpaid tax or amounts of tax, interest and penalties required to be collected. (Code 1978, § 16-43; Ord. No. 1994-02, 5-5-1994)

Sec. 15-38. Agents for receiving notices.

When registering pursuant to section 15-29, each operator shall appoint, in writing, an agent to receive for the operator any notice required to be given to the operator under the provisions of this article, stating the full name, street address, mailing address and telephone number of such agent. Such agent shall be either an individual resident of the City or an employee of the operator who regularly works at the operator's place of business on a daily basis, and the appointment of the agent must be accompanied by the written consent of such agent to serve as agent for the operator. Such agent may be changed from time to time by written appointment of, and consent of the successor agent. The operator is required to have such an agent at all times and should an agent cease to be a resident of the City or an employee regularly working at the operator's place of business in the City, as the case may be, the operator shall immediately file a written appointment of a new agent and such agent's consent to serve as such with the City Clerk. Any agent so appointed by an operator shall be authorized to receive for and on behalf of the operator any notice required to be given to the operator by the provisions of this article. Delivery of any such notice to such agent, in person or by mail, shall be sufficient to meet the requirements of this article and such notice shall be binding on the operator. This method of giving notice to operators is supplementary and cumulative of the other methods of given notice set forth in this article. (Code 1978, § 16-44; Ord. No. 1994-02, 5-5-1994)

Sec. 15-39. Violations; fines and punishment.

(a) Any person violating any of the provisions of this article shall be deemed guilty of an offense and upon conviction thereof shall be punished as provided in section 1-12. Each such person shall be guilty of a separate offense for each and every

day or portion thereof during which any violation of any provision of this article is committed, continued, or permitted by such person, and shall be punished accordingly.

(b) Any operator or other person who fails to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the City Clerk, or who renders a false or fraudulent return shall be deemed guilty of an offense and upon conviction thereof shall be punished as aforesaid. Any person required to make, render, sign, or verify any report who makes any false or fraudulent report, with intent to defeat or evade the determination of an amount due required by this article to be made shall be deemed guilty of an offense and upon conviction thereof shall be punished as aforesaid. (Code 1978, § 16-45; Ord. No. 1994-02, 5-5-1994)

Secs. 15-40—15-66. Reserved.

ARTICLE III. OCCUPATION TAX*

Sec. 15-67. Construction of terms; definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative fee means a component of an occupation tax that approximates the reasonable cost of handling and processing the occupation tax.

Dominant line means the type of business, within a multiple-line business, that the greatest amount of income is derived from.

Employee means:

- (1) An individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, Federal income tax, or State income tax from such individual's compensation or whose employer issues to such

*State law reference—Local occupation taxes, O.C.G.A. § 48-13-2 et seq.

individual for purposes of documenting compensation a form IRS W-2 but not a form IRS 1099; or

- (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 which issues to such individual for purposes of documenting compensation a form IRS W-2.

Location or office means and 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 a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office. The renter's or lessee's location that is the site of personal property that is rented or leased from another does not constitute a location or office for the personal property's owner, lessor, or the agent of the owner or lessor. The site of real property which is rented or leased to 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.

Occupation tax means a tax levied on persons, partnerships, corporations, or other entities for engaging in an occupation, profession, or business for revenue raising purposes.

Person means and shall include sole proprietors, corporations, partnerships, or any other form of business organization, but specifically excludes nonprofit organizations and any State or local authority.

Practitioner of profession or occupation means one who by State law requires State licensure

regulating such profession or occupation, but shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

Regulatory fees means payments, whether designated as license fees, permit fees, or by another name, which are required by a local government as an exercise of its police power and as a part of or as an aid to regulation of an occupation, profession, or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the local government. A regulatory fee may not include an administrative fee or registration fee. No local government is authorized to require any administrative fee, registration fee, or fee by any other name in connection with a regulatory fee, except an occupation tax, as defined in this section. Regulatory fees do not include development impact fees as defined by O.C.G.A. § 36-71-2(8) or other costs or conditions of zoning or land development.

(Code 1978, § 16-62; Ord. No. 1995-14, 12-7-1995)

State law reference—Similar provisions, O.C.G.A. § 48-13-5.

Sec. 15-68. Occupation tax required; occupation tax required for business dealings in the City.

Each person engaged in any business, trade, profession, or occupation in the City, whether with a location in the City or in the case of an out-of-state business with no location in the State exerting substantial efforts within the State pursuant to O.C.G.A. § 48-13-7, shall pay an occupation tax for such business, trade, profession, or occupation; which tax and any applicable registration shall be displayed in a conspicuous place in the place of business, if the taxpayer has a permanent business location in the City. If the taxpayer has no permanent business location in the City, such business tax registration shall be shown to the City Clerk or this officer's deputies or to any Police Officer of the City, upon request. (Code 1978, § 16-61; Ord. No. 1995-14, 12-7-1995)

State law reference—Occupation tax authorized, O.C.G.A. §§ 48-13-6, 48-13-7.

Sec. 15-69. Administrative and regulatory fee structure.

(a) A nonprorated, nonrefundable administrative fee established in the schedule of fees and charges shall be required on all business and occupation tax accounts for the initial start-up, relocation or reopening of those accounts.

(b) A regulatory fee will be imposed as provided under O.C.G.A. § 48-13-8(b) on all applicable businesses and practitioners as defined in O.C.G.A. § 48-13-9.

(Code 1978, § 16-63; Ord. No. 1995-14, 12-7-1995)
 State law reference—Administrative fee authorized, O.C.G.A. § 48-13-10(e).

Sec. 15-70. Occupation tax levied; schedule; restrictions.

(a) An occupation tax shall be levied upon those businesses and practitioners of professions and occupations with one or more locations or offices in the corporate limits of the City and/or upon the applicable out-of-state businesses with no location or office in the State pursuant to O.C.G.A. § 48-13-7 based upon the number of employees of the business or practitioner.

(b) The tax rate determined by number of employees for each business, trade, profession, or occupation is as follows and will be developed and updated from time to time by the City Clerk for the City:

<i>Employees</i>	<i>Tax Liability</i>
0—5	\$115.00
6—15	230.00
16—30	345.00
31—50	460.00
More than 50	575.00

(c) No business or practitioner shall be required to pay more than one occupation tax for each of its locations.

(d) No occupation tax shall be required from those real estate brokers, real estate agents, or real estate companies whose offices are located outside the jurisdiction and who sell property inside the jurisdiction. No occupation tax shall be

required from those owners of real estate who operate and manage less than five residential dwellings or two commercial places of business.

(e) On or before November 10 of each year, each person required to pay the occupation tax hereunder shall file with the City Clerk the third quarter employer's quarterly tax and wage report (DOL-4) that is required to be filed with the State. The Social Security numbers and salaries of individual employees may be redacted from the employer's quarterly tax and wage report (DOL-4) prior to its submission to the City Clerk so long as the number of individual employees can be ascertained by the City Clerk by reference to the form. In lieu of filing the third quarter employer's quarterly tax and wage report (DOL-4), each person required to pay the occupation tax hereunder may, on or before November 10 of each year, file with the City Clerk a sworn affidavit attested to by a certified public accountant stating the number of employees of the business or practitioner as computed on a full-time position 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.

(f) The number of employees of a business or practitioner is computed on a 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. (Code 1978, § 16-64; Ord. No. 1995-14, 12-7-1995; Ord. No. 2004-10, § I, 12-2-2004)

Sec. 15-71. Paying occupation tax of business with no location in the State.

Registration and assessment of an occupation tax is hereby imposed on those businesses and practitioners of professions with no location or

office in the State if the business's largest dollar volume of business in the State is in the City and the business or practitioner:

- (1) Has one or more employees or agents who exert substantial efforts within the jurisdiction of the City for the purpose of soliciting business or serving customers or clients; or
 - (2) Owns personal or real property which generates income and which is located within the jurisdiction of the City.
- (Code 1978, § 16-65; Ord. No. 1995-14, 12-7-1995)

Sec. 15-72. Dominant line of business to be identified on business registration.

The business registration of each business operated in the City shall identify the dominant line of business that the business conducts.
(Code 1978, § 16-66; Ord. No. 1995-14, 12-7-1995)

Sec. 15-73. The number of businesses considered to be operating in City.

Where a person conducts business at more than one fixed location, each location or place shall be considered a separate business for the purpose of occupational taxes.
(Code 1978, § 16-67; Ord. No. 1995-14, 12-7-1995)

Sec. 15-74. Professionals.

(a) Practitioners of professions as described in O.C.G.A. § 48-13-9(c)(1)—(8) shall elect as their entire occupation tax one of the following:

- (1) The occupation tax based on number of employees; or
- (2) A fee of \$300.00 per practitioner who is licensed to provide the service, such tax to be paid at the practitioner's office or location; provided, however, that a practitioner paying according to this subsection shall not be required to provide information to the local government relating to the gross receipts of the business or practitioner. The per-practitioner fee applies to each person in the business who qualifies as a practitioner under the State's regulatory guidelines and framework.

(b) This election is to be made on an annual basis and must be done by January 1, of each year.

(Code 1978, § 16-68; Ord. No. 1995-14, 12-7-1995)

Sec. 15-75. Practitioners exclusively practicing for a government.

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, instrumentalities of the United States, the State, or a municipality or county of the State shall not be required to obtain a license or pay an occupation tax for that practice.

(Code 1978, § 16-69; Ord. No. 1995-14, 12-7-1995)

Sec. 15-76. Purpose and scope of tax.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any such profession, trade, or calling. The occupation tax only applies to those businesses and occupations that are covered by the provisions of O.C.G.A. §§ 48-13-4—48-13-28. All other applicable businesses and occupations are taxed by the City pursuant to the pertinent general and/or local law and ordinance.
(Code 1978, § 16-70; Ord. No. 1995-14, 12-7-1995)

Sec. 15-77. When occupation tax due and payable; effect of transacting business when tax delinquent.

(a) The amount of occupation tax shall be payable to the City, at the office of the City Clerk, on January 1 each year and delinquent if not paid on or before January 1 each year.

(b) Each such occupation tax shall be for succeeding calendar years thereafter unless otherwise specifically provided. Should the occupation tax remain due and unpaid 90 days from the due date provided in this article, the person liable for the tax shall be subject to and shall pay a penalty of ten percent of the tax due. Interest shall also be collected on all delinquent occupation taxes, regulatory fees and administrative fees at an interest rate of 1½ percent per month.

(c) Every person commencing business in the City after January 1, of each year shall obtain the registration required before commencing such business. Each such registration shall be for the calendar year in which the registration was obtained unless otherwise specifically provided. The registration herein provided for shall be issued by the City Clerk, and if any person, firm, or corporation whose duty it is to obtain a registration shall, after such occupation tax becomes delinquent, transact or offer to transact, in the City, any of the kind of business, trade, profession, or occupation without having first obtained such registration, such offender shall be subject to criminal prosecution as provided in section 15-82. The right of the City to criminally prosecute such persons shall be in addition to all other penalties herein provided.

(d) In addition to the above remedies, the officer charged with the collection of the occupation tax may proceed to collect in the same manner as provided by law for tax executions. (Code 1978, § 16-71; Ord. No. 1995-14, 12-7-1995)

Sec. 15-78. Exemption on grounds that entity is nonprofit organization, State or local authority.

No occupation tax, regulatory fee, or administrative fee shall be levied against nonprofit organizations or against any State or local authority. (Code 1978, § 16-72; Ord. No. 1995-14, 12-7-1995)

Sec. 15-79. Evidence of State registration required if applicable; State registration to be displayed.

(a) Each person who is licensed by the secretary of State pursuant to O.C.G.A. title 43 shall provide evidence of proper and current State licensure before the City registration may be issued.

(b) Each person who is licensed by the State shall post the State license in a conspicuous place in the licensee's place of business and shall keep the license there at all times while the license remains valid. (Code 1978, § 16-73; Ord. No. 1995-14, 12-7-1995)

Sec. 15-80. Evidence of qualification required if applicable.

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 a City business registration, show evidence that such requirements have been met.

(Code 1978, § 16-74; Ord. No. 1995-14, 12-7-1995)

Sec. 15-81. Liability of officers and agents; registration required; failure to obtain.

All persons subject to the occupation tax levy pursuant to this article shall be required to obtain the necessary registration for such business as described in this article, and in default thereof the officer or agent soliciting for or representing such persons shall be subject to the same penalty as other persons who fail to obtain a registration. Every person commencing business in the City after January 1, of each year shall likewise obtain the registration herein provided for before commencing the same; and any person transacting, or offering to transact in the City, any of the kinds of business, trade, profession, or occupation without first having so obtained such registration, shall be subject to penalties provided herein.

(Code 1978, § 16-75; Ord. No. 1995-14, 12-7-1995)

Sec. 15-82. Penalty for article violation.

(a) It shall be unlawful for any person to violate a provision of this article, or fail to comply therewith, or with any of the requirements thereof. Each such person shall be considered guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this article is committed or continued, and upon conviction of any such violation such person shall be fined not more than \$500.00 or imprisoned for not more than 60 days, or both, and in addition shall pay all costs and expenses involved in the case.

(b) Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

(Code 1978, § 16-76; Ord. No. 1995-14, 12-7-1995)

Sec. 15-83. Businesses not covered by this article.

The following businesses are not covered by the provisions of this article but may be assessed an occupation tax or other type of tax pursuant to the provisions of other general laws of the State or by local law:

- (1) Those businesses regulated by the State Public Service Commission;
 - (2) Those electrical service businesses organized under O.C.G.A., chapter 3 of title 46 (O.C.G.A. § 46-3-1 et seq.);
 - (3) Any farm operation for the production from or on the land of agricultural products, but not including agribusiness;
 - (4) Cooperative marketing associations governed by O.C.G.A. § 2-10-105;
 - (5) Insurance companies governed by O.C.G.A. § 33-8-8 et seq.;
 - (6) Motor common or contract carriers governed by O.C.G.A. § 46-7-15;
 - (7) Those businesses governed by O.C.G.A. § 48-5-355 (businesses that purchase car-load lots of guano, meats, meal, flour, bran, cottonseed, or cottonseed meal and hulls);
 - (8) Agricultural products and livestock raised in the State governed by O.C.G.A. § 48-5-356;
 - (9) Depository financial institutions governed by O.C.G.A. § 48-6-93, except as provided in section 15-84; and
 - (10) Facilities operated by a charitable trust governed by O.C.G.A. § 48-13-55.
- (Code 1978, § 16-77; Ord. No. 1995-14, 12-7-1995)

Sec. 15-84. Financial institutions; levy of tax.

(a) In accordance with O.C.G.A. § 48-6-93, there is hereby levied for each year an annual business license tax upon all depository financial institutions located within the City at a rate of 0.25 percent of the gross receipts of such depository financial institutions. The term "gross receipts" shall mean gross receipts as defined in

O.C.G.A. § 48-6-93. The term "depository financial institutions" shall mean a bank or a savings and loan association.

(b) The minimum annual amount of business license tax due from any depository financial institution pursuant to this section shall be \$1,000.00.

(c) Pursuant to O.C.G.A. § 48-6-93(c), each depository financial institute subject to this tax shall file a return of its gross receipts with the City Clerk by March 1 of the year following the year in which such gross receipts are measured. Such return shall be in the manner and in the form prescribed by the State Revenue Commissioner based on the allocation method set for in O.C.G.A. § 48-6-93(d). The Mayor and City Council shall assess and collect the tax levied pursuant hereto based upon the information provided in such return.

(d) Taxes levied pursuant to this section shall be due no later than 30 days after filing of the return prescribed unless extended by the Mayor and City Council.

(e) The City Clerk is hereby directed to forward a copy of the resolution from which this section is derived to each depository financial institution in the City and to the home office of each such depository financial institution if located outside the City.
(Code 1978, § 16-78; Ord. No. 1995-14, 12-7-1995)

Sec. 15-85. Payment of occupation tax by newly established businesses.

(a) In the case of a business subject to occupation tax for a calendar year, which was not conducted for any period of time in the City in the preceding year, the owner, proprietor, manager, or executive officer of the business liable for an occupation tax shall estimate the number of employees from the commencement date to the end of the calendar year and such tax shall be due and payable on the date of the commencement of the business.

(b) When any person commences business on or after July 1, in any year, the occupation tax payable hereunder for the remaining portion of the year shall be 50 percent of the tax imposed for the entire year.

(Code 1978, § 16-79; Ord. No. 1995-14, 12-7-1995)

Sec. 15-86. More than one place or line of business.

Where a business is operated at more than one place or where the business includes more than one line, such business will pay an occupation tax in accordance with the prevailing taxing method and tax rate for the dominant line at each location.

(Code 1978, § 16-80; Ord. No. 1995-14, 12-7-1995)

Sec. 15-87. Returns confidential.

Except in the case of judicial proceedings or other proceedings necessary to collect the occupation tax hereby levied, it shall be unlawful for any officer, employee, agent, or clerk of the City, or any other person to divulge or make known in any manner the amount of gross receipts or any particulars set forth or disclosed in any occupation tax return required under this article. All contents of such return shall be confidential and open only to the officials, employees, agents, or clerks of the City using such returns for the purpose of this occupation tax levy and the collection of the tax. Independent auditors or bookkeepers employed by the City shall be classed as "employees." Nothing herein shall be construed to prohibit the publication by City officials of statistics, so classified as to prevent the identification of particular reports or returns and items thereof or the inspection of the records by duly qualified employees of the tax departments of the State, the United States, and other local governments.

(Code 1978, § 16-81; Ord. No. 1995-14, 12-7-1995)

State law reference—Confidentiality of returns, O.C.G.A. § 48-13-15.

Sec. 15-88. Inspections of books and records.

In any case the City Clerk, through its officers, agents, employees, or representatives, may inspect the books of the business or person for which the returns are made. The City Clerk shall have the right to inspect the books or records for

the business of which the return was made in the City, and upon demand of the City Clerk such books or records shall be submitted for inspection by a representative of the City within 30 days. Failure of submission of such books or records within 30 days shall be grounds for revocation of the tax registration currently existing to do business in the City. Adequate records shall be kept in the City, for examination by the City Clerk at that Clerk's discretion. If, after examination of the books or records, it is determined that a deficiency occurs as a result of under reporting, a penalty of 125 percent of the prime interest rate times the amount deficient will be assessed for the period delinquent. For purposes of this section, the prime interest rate shall be that which is published by *The Wall Street Journal* on the first business day of the year in which the under reporting is identified.

(Code 1978, § 16-82; Ord. No. 1995-14, 12-7-1995)

Sec. 15-89. Tax registration to be revoked for failure to pay tax, file returns, permit inspection of books.

Upon the failure of any business to pay such occupation tax or any part thereof before it becomes delinquent, or upon failure to make any of such returns within the time required herein, or upon failure to make a true return, or upon failure to amend a return to set forth the truth, or upon failure to permit inspection of its books as above provided, any business tax registration granted by the City under this article permitting the owner of such business to do business for the current year shall be, ipso facto, revoked. No new business tax registration shall be granted by the City for the operation of a business for which any part of the occupation tax herein provided for is at that time unpaid, or to an individual, firm, or corporation who has failed to submit adequate records as requested by the City Clerk. In the case of those practitioners where the local government cannot suspend the right of the practitioner to conduct business, the imposition of civil penalties shall be permitted and pursued by the local government in the case of delinquent occupation tax.

(Code 1978, § 16-83; Ord. No. 1995-14, 12-7-1995)

Sec. 15-90. Effect of failure to comply with article provisions; continuing in business after tax registration revocation.

Any persons, their managers, agents, or employees, who do business in the City after the registration for such business has been revoked, who are hereby required to make occupation tax returns, and who fail to make such returns within the time and in the manner herein provided, who refuse to amend such returns so as to set forth the truth, or who shall make false returns; and any persons, their managers, agents, or employees who refuse to permit an inspection of books in their charge when the officers, agents, employees, or representatives of the City request such inspection, during business hours, for the purpose of determining the accuracy of the returns herein provided for, shall be subject to the penalties, both civil and criminal, provided for in this article.

(Code 1978, § 16-84; Ord. No. 1995-14, 12-7-1995)

Sec. 15-91. Lien taken for delinquent occupation tax.

(a) *Execution for the correct amount of tax.* In addition to the other remedies herein provided for the collection of the occupation tax herein levied, the City Clerk, upon any tax or installment of such tax becoming delinquent and remaining unpaid, shall issue execution for the correct amount of such tax against the persons, partnership, or corporation liable for such tax, which such execution shall bear interest at the rate of ten percent per annum from the date when such tax or installment becomes delinquent, and the lien shall cover the property (in the City) of the person, partnership, or corporation liable for such tax, all as provided by the ordinances and Charter of the City and the laws of the State. The lien of such occupation tax shall become fixed on and date from the time when such tax or any installment thereof becomes delinquent.

(b) *Execution to be levied by an appropriate officer.* The execution shall be levied by the appropriate officer of the City upon the property of the defendant located in such jurisdiction, and sufficient property shall be advertised and sold to pay the amount of such execution, with interest and costs.

(c) *Other proceedings.* All other proceedings in relation thereto shall be had as is provided by the ordinances and Charter of the City and the laws of the State, and the defendant in such execution shall have rights of defense, by affidavit of illegality and otherwise, which are provided by the applicable laws in regard to tax executions.

(d) *Nulla bona entry.* When a nulla bona entry has been entered by proper authority upon an execution issued by the City Clerk against any person defaulting on the occupation tax, the person against whom the entry was made shall not be allowed or entitled to have or collect any fees or charges whatsoever for services rendered after the entry of the nulla bona. If, at any time after the entry of nulla bona 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 him as though he had never defaulted in the payment of the taxes.

(Code 1978, § 16-85; Ord. No. 1995-14, 12-7-1995)

Sec. 15-92. Amendment, repeal of provision.

This article shall be subject to amendment or repeal, in whole or in part, at any time, and no such amendment or repeal shall be construed to deny the right of the City Council to assess and collect any of the taxes or other charges prescribed. Such amendment may increase or lower the amounts and tax rates of any occupation and may change the classification thereof. The payment of any occupation tax provided for shall not be construed as prohibiting the levy or collection by the jurisdiction of additional occupation taxes upon the same person, property, or business.

(Code 1978, § 16-86; Ord. No. 1995-14, 12-7-1995)

Sec. 15-93. Applications of provisions to prior ordinance.

This article does not repeal or affect the force of any part of any ordinance heretofore passed where taxes levied under such prior ordinance have not been paid in full. So much and such parts of ordinances heretofore and hereinafter passed as provided for the issuing and enforcing of execution for any tax or assessment required by such ordinances, or that imposed fines or penalties for

the nonpayment of such tax, or for failure to pay regulatory fees provided for in such ordinance, or failure to comply with any other provisions hereof, shall continue and remain in force until such tax, regulatory fee, or assessment shall be fully paid. In all other respects, such prior ordinance shall be repealed upon adoption of this article.

(Code 1978, § 16-87; Ord. No. 1995-14, 12-7-1995)

Sec. 15-94. Enforcement of provisions.

It is hereby made the duty of the Police Department to see that the provisions of this article relating to occupation taxes are observed; and to summon all violators of the same to appear before the court. It is hereby made the further duty of the Chief of Police, members of the Police Department, and their assistants to inspect all registrations issued by City, as often as in their judgment it may seem necessary to determine whether the registration held is the proper one for the business sought to be transacted thereunder.

(Code 1978, § 16-88; Ord. No. 1995-14, 12-7-1995)

Sec. 15-95. Provisions to remain in full force and effect until changed by the City Council.

This article shall remain in full force and effect until changed by amendment adopted by the City Council. All provisions hereto relating to any form of tax herein levied shall remain in full force and effect until such taxes have been paid in full.

(Code 1978, § 16-89; Ord. No. 1995-14, 12-7-1995)

Sec. 15-96. Requirement of public hearing before adopting any ordinance or resolution regarding tax.

The City Council shall conduct at least one public hearing before adopting any ordinance or resolution regarding the occupation tax as set forth in this article.

(Code 1978, § 16-90; Ord. No. 1995-14, 12-7-1995)

State law reference—Public hearing required, O.C.G.A. § 48-13-6(c).

Sec. 15-97. Option to establish exemption or reduction in occupation tax.

The City Council may by subsequent ordinance or resolution provide for an exemption or reduc-

tion in occupation tax to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting or encouraging selected types of businesses or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious, and the reasons shall be set forth in the minutes of the Mayor and City Council.

(Code 1978, § 16-91; Ord. No. 1995-14, 12-7-1995)

Sec. 15-98. Requirement of public hearing regarding disposition of increase in occupational tax revenue.

In any year when revenue from occupation taxes is greater than revenue from occupation taxes for the preceding year, the City Council shall hold a public hearing as a part of the process of determining how to use the additional revenue.

(Code 1978, § 16-92; Ord. No. 1995-14, 12-7-1995)