

ARTICLE II. OCCUPATION TAX

DIVISION 1. GENERALLY

Sec. 22-21. 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.

Location or *office* shall not include a temporary work site that serves a single customer or project.

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 shall be held to include sole proprietors, corporations, partnerships, nonprofits, or any other form of business organization.

Practitioner of profession or *practitioner of occupation* means a person who by state law requires state licensure for the practice of the profession or occupation. The term "practitioner of profession" or "practitioner of occupation" 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 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 city. A regulatory fee may not include an administrative fee. Development impact fees as defined in O.C.G.A. § 36-71-2 or other costs or conditions of zoning or land development are not regulatory fees.

(Code 1979, § 36-2.0)

Sec. 22-22. 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 covered by the provisions of O.C.G.A. §§ 48-13-5--48-13-26. All other applicable businesses and occupations are taxed by the local government pursuant to the pertinent general or local law and ordinance.

(Code 1979, § 36-10.0)

Sec. 22-23. Option to establish exemption or reduction.

The city council may by subsequent ordinance or resolution provide for an exemption or reduction 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 governing authority.

(Code 1979, § 36-34.0)

Secs. 22-24--22-49. Reserved.

DIVISION 2. REGISTRATION

Sec. 22-50. Required.

(a) All persons subject to the occupation tax levy pursuant to this article shall be required to obtain the necessary registration for said 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.

(b) The business registration of each business operated in the local government's jurisdiction shall identify the line of business that the business conducts. No business shall conduct any line of business without first having that line of business registered with the city and that line of business being noted by the city upon the business registration form that is to be displayed by the business owner.

(c) Every person commencing business in the city after January 1 of each year shall obtain the registration herein provided for before commencing the business.

(d) The registration herein provided for shall be issued by the city clerk and if any person whose duty it is to obtain a registration shall, after said occupation tax becomes delinquent, transact or offer to transact in the city any kind of business, trade, profession, or occupation without having first obtained said registration, such offender shall be subject to the penalties provided thereof.

(Code 1979, § 36-16.0)

Sec. 22-51. Display.

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, business tax registration shall be shown to the city manager or his designee or to any police officer of the city upon request.

(Code 1979, § 36-1.00)

Sec. 22-52. Revocation--Generally.

(a) Upon the failure of any business to pay said occupation tax or any part thereof before it becomes delinquent, or upon failure to file any return 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 to do business for the current year shall be, ipso facto, revoked.

(b) 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 manager in accordance with provisions found herein. 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 1979, § 36-26.0)

Sec. 22-53. Same--Continuing in business.

(a) Any persons, their managers, agents, or employees, who do business in the city after the registration for said business has been revoked as in section 22-52, hereby

required to make occupation tax returns, who fail to make said 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 shall be subject to penalties provided herein.

(b) Any persons, their managers, agents, or employees who refuse to permit an inspection of books in their charge when the officer, 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 penalties provided herein.

(c) 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. These penalties may consist of either a percentage of the amount due or a flat fee fine.

(Code 1979, § 36-27.0)

Secs. 22-54--22-79. Reserved.

DIVISION 3. TAX LEVY AND COLLECTION

Sec. 22-80. Tax levied.

Each person engaged in any business, trade, profession, or occupation in the city or 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 said business, trade, profession, or occupation tax, unless exempted pursuant to the terms of this chapter or unless the levy of occupational tax by the city is prohibited or exempted by state or federal law.

(Code 1979, §§ 36-1.00, 36-20.0)

Sec. 22-81. Businesses with no location in the state.

(a) 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' 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 in 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 that is located within the jurisdiction of the city.

(b) The business registration of each business operated in the city shall identify the dominant line of business that the business conducts.

(Code 1979, §§ 36-5.0, 36-6.0)

Sec. 22-82. Multiple businesses considered separate businesses.

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 occupation tax.

(Code 1979, § 36-7.0)

Sec. 22-83. 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 1979, § 36-9.0)

Sec. 22-84. Exemption for charities.

No business on which a business registration or occupation tax is levied by this article shall be exempt from said registration or tax on the ground that such business is operated for a charitable purpose, unless 50 percent or more of the entire proceeds from said business are devoted to such purpose.

(Code 1979, § 36-12.0)

Sec. 22-85. Newly established businesses.

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 corporate limits of the city in the preceding year, the owner, proprietor, manager, or executive officer of the business liable for occupation tax shall estimate the number of employees from the commencing date to the end of the calendar year and such tax shall be paid on the basis of that estimate prior to commencing business. Where a taxpayer fails to make such payment prior to commencing business, a penalty will be imposed in the amount of \$100.00.

(Code 1979, § 36-22.0)

Sec. 22-86. 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, said business shall be required to obtain the necessary registration for each location and line and pay an occupation tax in accordance with the prevailing taxing method and tax rate for each location and line.

(Code 1979, § 36-23.0)

Sec. 22-87. Limitations on tax.

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

(b) 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.

(Code 1979, § 36-4.0(C))

Sec. 22-88. Due date; delinquency.

(a) Each registration and occupation tax shall be payable January 1 of each year and shall, if not paid by February 1 of each year, be subject to penalties for delinquency as provided in this article.

(b) Registration and tax shall be delinquent if not obtained immediately upon beginning business and a 25 percent penalty imposed.

(c) In addition to the above remedies, the city may proceed to collect in the same manner as provided by law for tax executions.

(Code 1979, § 36-11.0)

Sec. 22-89. Returns confidential.

(a) 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 any particulars set forth or disclosed in any occupation tax return required under this article.

(b) All contents of returns for the purpose of this occupation tax levy and the collection of the tax is confidential and exempt from inspection and disclosure under O.C.G.A. § 50-18-70 et seq. Independent auditors or bookkeepers employed by the city shall be classified as employees.

(c) Nothing herein shall be construed to prohibit the publication by the 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 1979, § 36-24.0)

State law references: Confidentiality of information provided to local governments for purposes of determining occupation tax, O.C.G.A. § 48-13-5. Secs. 22-90--22-107. Reserved.

DIVISION 4. ENFORCEMENT

Sec. 22-108. Violations.

(a) Any person transacting or offering to transact in the city any business, trade, profession, or occupation, without first having obtained said registration shall be subject to the penalties provided in section 1-9. Such penalties shall be in addition to all other penalties, civil and criminal herein provided for collection of the occupation tax, and shall have the same lien and priority as the occupation tax to which the penalty is applied.

(b) Each business that fails to apply for and obtain an appropriate business registration and pay all tax and fees as provided herein before February 1 of each year shall be subject to the penalties provided herein. Such penalties shall be in addition to all other penalties, civil and criminal herein provided for collection of the occupation tax, and shall have the same lien and priority as the occupation tax to which the penalty is applied.

(Code 1979, § 36-16.0(A))

Sec. 22-109. Subpoena and arrest powers.

The city and its duly designated officers and inspectors or its successors shall be classified as deputy marshal/business inspectors with full subpoena and arrest powers in conjunction with any violation pertaining to this law.

(Code 1979, § 36-18.0)

Sec. 22-110. Duty of city manager to enforce.

(a) It is hereby made the duty of the city manager, or other appropriate officer, 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.

(b) It is the further duty of the city manager, and their assistants to inspect all registrations issued by the 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 1979, § 36-31.0)

Sec. 22-111. Transacting business when tax delinquent.

The tax registration herein provided for shall be issued by the city manager and if any person whose duty it is to obtain a registration shall, after said registration or occupation tax becomes delinquent, transact, in the city, any kind of profession, trade, or calling

subject to this article without having first obtained said registration, such offender shall, upon conviction be subject to penalties as provided in section 1-9.(Code 1979, § 36-11.0)

Sec. 22-112. Inspections of books and records.

(a) In any case the city manager of the city through its officers, agents, employees, or representatives, may inspect the books of the business for which the returns are made. The city manager 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 manager 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.

(b) Adequate records shall be kept in the city for examination by the city manager at that officer's discretion. If, after examination of the books or records, it is determined that a deficiency occurred as a result of underreporting, 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 underreporting is identified.

(Code 1979, § 36-25.0)

Sec. 22-113. Lien for delinquent occupation tax.

(a) In addition to the other remedies herein provided for the collection of the occupation tax herein levied, the city manager of the city upon any tax or installment of said tax becoming delinquent and remaining unpaid, shall issue execution for the correct amount of said tax against the persons, partnership, or corporation liable for said tax.

(b) Execution shall bear interest at the rate of 12 percent per annum from the date when such tax or installment becomes delinquent, and the lien shall convert the property in the city of the person liable for tax, all as provided by the ordinances and charter of said city and the laws of the state.

(c) The lien for occupation tax shall become fixed on and date from the time when such tax or any installment thereof becomes delinquent.

(d) The execution shall be levied by the city marshal or other appropriate officer of the city upon the property of defendant located in said jurisdiction, and sufficient property shall be advertised and sold to pay the amount of said execution, with interest and costs. All other proceedings in relation thereto shall be had as is provided by the ordinances and charter of said city and the laws of the state, and the defendant in said execution shall have rights of defense, by affidavit of illegality and otherwise, which are provided by the applicable laws in regard to tax executions.

(e) When a nulla bona entry has been entered by proper authority upon an execution issued by the city manager 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 1979, § 36-28.0)

Secs. 22-114--22-139. Reserved.