

# **THE OCCUPATIONAL TAX CODE**

**Adopted by Ordinance No. 97-184  
on December 23, 1997**

**Effective January 1, 1998  
and continuing in effect until amended or repealed**

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**CITY OF BIRMINGHAM, ALABAMA**

**ORDINANCE NUMBER 97-184**

**AN ORDINANCE TO PROVIDE FOR AN OCCUPATIONAL LICENSE FEE FOR PERSONS ENGAGED IN TRADES, OCCUPATIONS AND PROFESSIONS, AND THE METHOD OF REPORTING AND COLLECTING THE SAME.**

**BE IT ORDAINED** By the Council of the City of Birmingham, Alabama, as follows:

**ARTICLE I**

**Section 1. DEFINITIONS.** The following words, terms and phrases when used in this ordinance shall have the following meanings, except when the context clearly indicates a different meaning:

(a) **“City”** shall mean the City of Birmingham, Alabama.

(b) **“Department”** means the Department of Finance of the City of Birmingham, and includes the Director of Finance.

(c) **“Director of Finance”** or **“Director”** shall mean the Director of Finance of the City of Birmingham, Alabama, or his or her duly authorized agent.

(d) **“Employee”** shall mean and include any person engaging in or following any trade, occupation or profession within the meaning of sub-section (t) of this section.

**Determination of Status as Employee.** Any person who does any kind of work or renders any kind of personal services subject to control by an employer both as to what work or services shall be performed and as to how they shall be performed, where the relationship between the person performing the services and the person for whom such services are rendered is, as to those services, the legal relationship of employer and employee, shall be classified as an employee under this Ordinance. In determining whether a person is an “employee” or “an independent contractor”, the Director of Finance may utilize the definitions of “employee” and “employer” as found in *Sections 3121(d)(1) and (2) and 3401(d) of the Internal Revenue Code of 1986, as amended from time to time and Treasury Regulation Section 31.3401(c)-1* and shall consider the following factors, along with other relevant factors:

- (1) Whether the person receiving the benefit of the service has the right to control the manner and method of performance;

- (2) Whether the person rendering the service has a substantial investment in his own tools or/and equipment;
- (3) Whether the person rendering the service undertook substantial costs to perform the services;
- (4) Whether the person performing the service had an opportunity for profit dependent on his managerial skill;
- (5) Whether the service rendered required special training and skill;
- (6) The duration of the relationship between the parties;
- (7) Whether the service performed is an integral part of the recipient's business rather than an ancillary portion;
- (8) Whether the person rendering the service had a risk of loss;
- (9) The relationship which the parties believed they created;
- (10) Whether or not the person who performed the services offered these services publicly and practiced an independent trade;
- (11) Whether the custom in the trade or industry was for the service to be performed on an independent contractor or employee basis;
- (12) Whether the person who received the benefit of the service had the right to discharge without cause the person who performed the services;
- (13) Whether the person who performed the services had the right to delegate his duty to others.
- (14) Whether the person who performed the services had a current City of Birmingham business license to conduct business in the City.

**Determination of Status as Independent Contractor.** A person who is subject to the control and direction of another as to the result of his work, and not as to means or methods, is an independent contractor.

(e) “**Employer**” shall mean and include any person, business, firm, corporation, partnership, association, or any other kind of organization or profession, who or that employs any person in any trade, occupation or profession in the City of Birmingham within the meaning of sub-section (t) of this section.

(f) **“Final Assessment”** means the final notice of value, underpayment, or nonpayment of any tax administered by the department.

(g) **“Gross Receipts”** and **“Compensation”** shall have the same meaning, and both words shall mean any payment granted or given an employee unless specifically excluded, and shall include, but not be limited to, the total of the following items which a person receives from or is entitled to receive from or be given credit for by his employer for any work done or personal services rendered in any trade, occupation or profession, including any kind of deductions before **“Take Home”** pay is received:

Cash Compensation	Reimbursements for expenses over amount actually incurred
Salary	Value of Personal Use of Company-Owned Vehicle
Wages	Value of Personal Use of Clubs
Bonuses	Cost of more than \$50,000 group life insurance
Incentive Pay	Non-De Minimis Awards in excess of \$100.00
Overtime Pay	
Commissions	
Severance Pay	
Non-Cash Compensation	

**“Gross Receipts”** and **“Compensation”** shall also include the amount which an employee elects to defer pursuant to a salary reduction agreement under a retirement plan or deferral arrangement (including but not limited to Title 26 United States Code Sections 401(k) or 403(b) plans, but not Section 125 Cafeteria Plans).

The words **“Gross Receipts”** and **“Compensation”** shall not include the items as outlined in Section 3.1.

(h) **“Licensee”** shall mean and include any person required to file a return or to pay a license fee under this ordinance.

(i) **“Notice of Appeal”** means any written notice sufficient to identify the name of the taxpayer or other party appealing, the specific matter appealed from, the basis for that appeal, and the relief sought.

(j) **“Person”** shall mean any natural person. Whenever the word **“person”** is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word as applied to a partnership or other form of unincorporated enterprise shall mean the partners or members thereof, and as applied to corporations shall mean the officers and directors thereof.

(k) **“Petition for Refund”** means a written request for a refund of tax previously paid, including in the form of an amended return. Unless otherwise provided by law, such request shall include sufficient information to identify the amount of tax overpaid, the taxpayer, the period included, the reasons for the refund and sufficient documentation as required by the Director of Finance.

(l) ***“Petition for Review”*** means a written document filed with the department in response to a preliminary assessment in which the taxpayer sets forth reasonably specific objections for the preliminary assessment.

(m) ***“Preliminary Assessment”*** shall mean the preliminary notice of value or underpayment of any tax administered by the department.

(n) ***“Private Auditing or Collecting Firm”*** means any person in the business of collecting, through contract or otherwise, local occupational license fees for the City of Birmingham, or auditing any taxpayer, through the examination of books and records, for the City of Birmingham.

(o) ***“Return”*** shall mean any report, document, or other statement required to be filed with the department for the purpose of paying, reporting, or determining the proper amount of value or tax due.

(p) ***“Tax”*** shall mean any amount, including applicable penalty and interest, levied or assessed against a taxpayer and which the department is required or authorized to administer under the provisions of Alabama law.

(q) ***“Taxpayer”*** means any person subject to or liable for taxes herein levied; any person required to file a return with respect to, or to pay, or withhold and remit the tax herein levied or to report any information or value to the department; or its designee; or any person required to obtain or holding any interest in any license issued by the department, or its designee, or any person that may be affected by any act or refusal to act by the department, or its designee, or to keep any records required by this ordinance.

(r) ***“Taxpayer's Authorized Representative”*** means any individual with written authority or power of attorney to represent a taxpayer before the department; provided however, that nothing herein shall be construed as entitling any such individual who is not a licensed attorney to engage in the practice of law.

(s) ***“Taxpayers’ Bill of Rights Pamphlet”*** means a written pamphlet to be distributed by the department to all taxpayers whose books and records are being examined by the department, at or before the commencement of an examination, explaining in simple and nontechnical terms, the role of the department and the rights of the taxpayer whose books and records are being examined by the department during the examination and which shall be promptly revised from time to time to reflect any changes in the applicable law or rules.

(t) ***“Trade, Occupation, and Profession”*** shall mean and include the doing of any kind of work, the rendering of any kind of personal services, or the holding of any kind of position or job within the City of Birmingham, Alabama, by any clerk, laborer, tradesman, manager, official, professional or other employee, including any non-resident of the City of Birmingham who is employed by any employer as defined in this section, where the relationship between the individual performing the services and the person for whom such services are rendered is, as to

those services, the legal relationship of employer and employee, including also a partner of a firm or an officer of a firm or corporation, if such partner or officer receives a salary for his personal services rendered in the business of such firm or corporation, but they shall not mean or include domestic servants employed in private homes or businesses, professions or occupations for which a business license fee is required to be paid under the City of Birmingham General License Code.

**“Trade, Occupation, and Profession”** shall also mean and include the holding of any kind of office or position, either by election or appointment, by any federal, state, county or city officer or employee where the services of such official or employee are rendered within the City of Birmingham.

(u) The singular shall include the plural and vice versa, and the masculine shall include the feminine and the neuter.

(v) References to the *"Code of Alabama 1975"* shall mean such sections as are currently in effect and as it or they may be amended.

(w) Where the phrase *“reasonable cause”* is used in this ordinance, it shall include, but not be limited to, those instances in which the taxpayer has acted in good faith. The burden of proving reasonable cause shall be on the taxpayer.

## **Section 2. PERSONS TAXED; PERSON LIABLE; APPLICABILITY.**

(a) A license fee is imposed upon any person who engages in or follows any trade, occupation or profession within the City of Birmingham when the relationship between the individual performing the services and the person for whom such services are rendered is the legal relationship of employer and employee. This includes both residents and nonresidents, an officer or partner of a corporation or firm if such officer or partner receives a salary for his personal services rendered in the business of such corporation, and governmental employees performing services within the City of Birmingham.

(b) It shall be unlawful for any person to engage in or follow any trade, occupation or profession as defined in Article I, Section 1 of this ordinance within the City on and after the 1st day of December, 1970, without paying occupational license fees for the privilege of engaging in or following such trade, occupation, or profession, which occupational license fees shall be measured by *one percent (1%)* of the gross receipts of each such person.

## **Section 3. EXEMPTIONS.**

**3.1 ITEMS EXEMPT FROM TAX.** The words *"Gross Receipts"* and *“Compensation”* shall not include the following items:

Employer Paid Insurance

Educational Assistance  
Employee Discounts  
Stock Options  
Stock Grants Subject to a Substantial Risk of Forfeiture under  
Title 26 United States Code Section 83  
Distributions from Qualified Pension, Profit Sharing, Thrift,  
Stock Bonus, and Other Deferred Compensation Plans  
Qualified under Title 26 United States Code Section 401(a)  
Distributions from Non-Qualified Deferred Compensation Plans  
Section 125 Cafeteria Plans  
Dependent Child Care Assistance  
Payment of Parking by Employer  
Students Grant/Scholarships  
Death Benefits  
Unemployment Compensation  
Expenses Incurred In Moving  
Employer Contributions to Non-Qualified Deferred Compensation Plans  
Employer Contributions to Qualified Pension, Profit Sharing, Thrift,  
Stock Bonus, and Other Deferred Compensation Plans Qualified  
under Title 26 United States Code Section 401(a)  
Strike Benefits  
Workmen's Compensation  
Actual Expenses Incurred in the Employer's Behalf

### **3.2 PERSONS EXEMPT FROM OCCUPATIONAL LICENSE FEE.**

- (a) **Domestic Servants.** Gross Receipts and Compensation earned by domestic servants.

**3.3 SPECIAL.** Special exemptions from the taxes imposed by this ordinance are allowed in all other instances where the Occupation Taxes levied under this ordinance are exempted under any other provision of the Code of Alabama 1975.

**Section 4. LICENSE REQUIRED TO ENGAGE IN BUSINESS.** If any person shall engage in or continue in any business for which a privilege tax is imposed by Article I, Section 2 of this ordinance as a condition precedent to engaging or continuing in such business, he shall apply for and obtain from the department a license to engage in and to conduct such business for the current tax year upon the condition that he shall pay the taxes accruing to the City under the provisions of this ordinance; provided, that no license shall be issued under the provisions of this ordinance to any person who has not complied with the provisions of this ordinance, and no provision of this ordinance shall be construed as relieving any person from the payment of any license or privilege tax now or hereafter imposed by law.

**Section 5. FILING OF RETURNS: EMPLOYERS; EMPLOYEES; ANNUAL FILING OF RECONCILIATION OF RETURNS; PAYMENT OF THE TAX; BULK SUBMISSIONS.**

**5.1 EMPLOYERS TO WITHHOLD OCCUPATIONAL LICENSE FEES AND FILE RETURNS; DUE DATE OF TAX.** Each employer shall deduct from each payment of gross receipts and compensation due each employee the amount of the occupational license fees measured by *one percent (1%)* of the compensation due each employee beginning on the 1st day of December, 1970. The payments required to be made on account of such deductions by employers shall be made **monthly** to the City on or before the *twentieth (20th)* day of the month next following the end of each such monthly period, and each employer shall at the same time make a return in connection therewith on a form made available to such employer in the department.

Provided that, if the total amount deducted from payments made to or due all employees of an employer averages less than fifty (\$50.00) dollars per month during the preceding calendar year, a **quarterly** return and remittance in lieu of monthly returns may be made, by election of the taxpayer to the department, for the current calendar year, and the remittance of such deductions to the City for the quarterly periods shall be due on or before the *twentieth (20th)* day of the month next following the end of each such quarterly period, and each such employer shall at the same time make a return in connection therewith on a form made available to such employer by the department.

**(a) Contents of Returns.** Each monthly or quarterly return shall show:

- (1) The number of employees, both taxable and nontaxable, of the employer;
- (2) The amount of gross compensation of all employees;
- (3) Nontaxable compensation;
- (4) The amount of occupational license fees deducted and paid by such employer for all or any part of the period being reported;
- (5) The correct reporting period; and
- (6) In addition to the gross compensation earned by the employees, such return shall show such other pertinent information as may be required by the department.

**(b) Remittance to Accompany Return.** At the time of making such monthly or quarterly report, such persons shall compute the occupational license fees due and shall pay to the City of Birmingham the amount of occupational license fees shown to be due.

**(c) Taxpayer's Responsibility When No Form Received.** The department is authorized to provide prescribed forms necessary for compliance with the filing requirement outlined in this section. The failure of the taxpayer to receive forms from the department does not relieve the taxpayer of the responsibility of the timely reporting of the information required on the return, nor the timely payment of the tax.

**(d) Failure or Omission by Employer--Employee's Responsibility.** Provided, however, that the failure or omission by any employer to deduct such occupational license fees shall not relieve an employee from (i) the payment of such occupational license fees, or (ii) compliance with the requirements for making returns as provided in Article I, Section 5.2 of this ordinance, or (iii) compliance with any regulations promulgated under this ordinance.

**5.2 RETURNS TO BE FILED BY EMPLOYEES; DUE DATE OF TAX.** When a monthly or quarterly return, as required by Section 5.1 hereof, is not filed by an employer and the occupational license fees are not paid to the City by such employer monthly as herein provided, the employee for whom no return has been filed and no payment has been made shall file a return with the Director of Finance on or before the *twentieth (20th)* day of the month next following the end of each such monthly or quarterly period, showing in said return his gross receipts subject to occupational license fees for such month or quarter. If for any reason all occupational license fees of a person subject to the provisions of this ordinance were not withheld by his employer from his gross receipts, such person shall file each return required by this Section on a form obtainable from the Director of Finance. In addition to the gross receipts earned by him, such return shall show such other pertinent information as may be required by the Director of Finance. Each person making a return required by this Section shall, at the time of filing thereof, pay to the City the amount of occupational license fees due under this ordinance; provided, however, that any portion of the occupational license fees deducted by the employer shall be deducted on the return and only the balance, if any, shall be due and payable at the time of filing said return.

**5.3 ANNUAL FILING OF RECONCILIATION RETURNS.**

**(a)** Each employer shall file with the department on or before January 31st of each year, a return on a form made available in the department. This return shall show the gross amount of compensation of each employee, the amount of occupational license fees deducted and paid by such employer for all or any part of the period, and including the last known address of each such employee.

**(b)** Each employee for which no return was filed by the employer, shall file a return with the department on or before January 31st of each year thereafter in which his employer has failed to file any monthly or quarterly return required in the preceding calendar year, showing on said return the gross receipts subject to occupational license fees during the preceding calendar year. If for any reason all occupational license fees of a person subject to the provisions of this ordinance were not withheld by his employer from his gross receipts, such person shall file each return required by this Section on a form obtainable in the Department of Finance.

(c) Each employer shall file with the department on or before January 31st of each year, a copy of all 1099's or a report showing the amount of compensation earned by any person not considered an employee, as defined in this ordinance, who has rendered personal services for which the occupational tax was not withheld by the taxpayer receiving the personal services.

**5.4 TIMELY MAILING TREATED AS TIMELY FILING AND PAYING.** The provisions outlined in this section for the timely filing of any returns, payments, claims, statements, or other documents shall be administered as provided herein.

**(a) Date of Delivery.** If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under the authority of any provision of this ordinance is, after such period or such date, delivered by United States mail to the Finance Department or to the department's designated depository where such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery, or the date of payment, as the case may be; provided, however:

- (1) **Weekends and Holidays.** When the due date falls on a Saturday, Sunday, or City of Birmingham holiday, payment of the tax may be made without penalty on the first working day following the due date.
- (2) **Mailing Requirements.** The return, claim, statement, or other document, or payment was, within the time prescribed in sub-section (a) above, deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the Finance Department or to the department's designated depository where such return, claim, statement, or other document is required to be filed, or to where such payment is required to be made.

**(b) Delivery By Method Other Than United States Mail.** Returns, claims, statements, or other documents, or payments which are required under any provision of this ordinance which are delivered by any method other than by United States mail shall be considered timely filed when such items are received in the Finance Department or the department's designated depository on the due date prescribed.

**(c) Untimely Filing.** Any return, payment, claim, statement, or other document not received in accordance with the provisions of this section shall be deemed untimely filed and shall be assessed applicable penalties and interest as prescribed by the relevant sections of this ordinance.

**5.5 BULK SUBMISSIONS.** The department may accept, for reporting and payment of taxes due the City, bulk submissions of reports, and under regulations promulgated by the department, payments owed to the City made on behalf of the taxpayer by its properly authorized representative where such submissions are made using the appropriate form prescribed by the department. Any such bulk submissions of reports and payments shall include:

1. The City's assigned taxpayer identification number for each such taxpayer for each tax paid; and,
2. Sufficiently detailed information by which each taxpayer can be identified such that a determination can be made as to the amount and method of assessment of tax against such taxpayer for the City.

The acceptance by the City of such bulk submissions shall not relieve the taxpayer on whose behalf such submissions were made from liability for any occupational tax arising from an error or omission made by the taxpayer's representative. Such bulk submission shall be signed by the taxpayer or its properly authorized representative.

**Section 6. EXTENSION OF TIME FOR MAKING RETURN.** The Director of Finance, at his discretion, for reasonable cause, may extend the time for making any return required under the provisions of this ordinance, however, the time for filing any such return shall not be extended for a period greater than thirty (30) days from the date such return is due to be made and shall not prevent penalty and interest from accruing during the period of such extension.

**Section 7. WHERE WORK DONE OR SERVICES PERFORMED BOTH WITHIN AND/WITHOUT THE CITY.** In cases where compensation is earned as a result of work done or services performed both within and without the City, the occupational license fees required under this ordinance shall be computed by determining upon the oath of the employer, or if required by the Director of Finance upon the oath of the employee, that percentage of the compensation earned from the proportion of the work which was done or performed within the City.

**Section 8. OATHS.** The monthly reports herein required to be made are not required to be made under oath, but wherever in this ordinance any report is required to be sworn to, the same shall be sworn to by the taxpayer or his agent before some officer authorized to administer oaths, and any false statement to a material fact made with the intent to defraud shall constitute perjury, and upon conviction thereof, the person so convicted shall be punished as provided in Section 1-1-6, General Code of the City of Birmingham 1980, as amended and as it may be amended.

**Section 9. MAINTENANCE OF RECORDS; INVESTIGATIVE POWERS; AUDIT AND SUBPOENA AUTHORITY.** The provisions of this section shall be administered in accordance with the procedures set forth herein.

**9.1 RECORDS TO BE KEPT.** It shall be the duty of every person engaging, or continuing, in this City in any business for which a privilege tax is imposed by this ordinance to keep and preserve suitable records of the gross compensation or gross receipts earned of such employees and such other books or accounts as may be necessary to allow the department to determine the

correct amount of tax for which he is liable, or other records or information as may be necessary for the proper administration of any matters, under the provisions of this ordinance. It shall also be the duty of every person to keep and preserve, for a period of not less than five (5) years from the due date of the return on which the underlying tax is required to be reported, or five (5) years of the date the return is filed, whichever is later, all such payroll journals or registers, canceled checks, expense reports or otherwise, and all such payroll journals or registers, canceled checks, expense reports and other records shall be open for examination by the department, upon request, at a reasonable time and location.

- (a) **Reasonable Time and Reasonable Location.** “*Reasonable time*” shall be considered to be during normal business hours of the department. “*Reasonable location*” shall be considered to be the taxpayer’s place of business or the offices of the taxpayer’s authorized representative, provided such business or representative is located within a fifty (50) mile radius of the City of Birmingham. Taxpayers maintaining records outside of this radius must make records available at City Hall or at such other location as agreed upon by the department. The department, when conducting an audit, review, or examination for verification, may, at its election, require any taxpayer conducting business within the City to provide records, accounts, books, papers and other documents at a reasonable time and reasonable place agreed upon by the department, as provided herein.
  
- (b) **Taxpayer May Be Assessed Reasonable Costs.** The department may assess and collect from the taxpayer the reasonable costs, based on the then current state government employee per diem rates incurred by, or charged to, the City in connection with performing an examination of the taxpayer’s books and records if the taxpayer received notice by certified U.S. mail, return receipt requested, at least thirty (30) days prior to the date on which the examination was to commence, *and*
  - 1. The taxpayer either failed or refused to respond or did not propose a reasonable alternative date on which the examination was to commence within 15 days of receipt of notice of the pending examination, *or* if
  - 2. The taxpayer and the department agreed in writing as to an alternative date on which the examination was to commence but the taxpayer then failed or refused to permit reasonable access to its books and records on the alternative date.

**9.2 INVESTIGATIVE POWERS.** Each taxpayer shall give to the Director of Finance the means, facilities and opportunity for the making of such audit, examination and investigation of the records, books, or other relevant information maintained by any taxpayer or other person for the purpose of computing and determining the correct amount of value or correct amount of tax as provided for in Article I, Section 9.1. The Director of Finance is hereby authorized to examine any person under oath concerning any gross receipts and compensation which were or should have been shown in a return, and to this end, he may compel the production of books, papers,

records and the attendance of all persons before him, whether as parties or as witnesses, whom he believes to have knowledge of such gross receipts and compensation.

- (a) Any taxpayer, or any officer of a corporation or association, or partner of a partnership, or fiduciary of a trust, or responsible individual of any entity under a duty to maintain books and records pursuant to this ordinance, who fails or refuses to maintain, or refuses to provide such records and books, or permit inspection, as required herein, shall be subject to the provisions of Section 11 of this ordinance, and shall be subject to contempt proceedings in the Circuit Court.

**9.3 AUDIT AND SUBPOENA AUTHORITY; ADDITIONAL REQUIREMENTS.** The department is authorized to audit, to subpoena records, and to enter into contracts with private examining or collecting firms as provided herein.

(a) The Director of Finance or any agent or employee authorized by him is hereby authorized to examine and audit the books, papers, records, or other information of any taxpayer or of any licensee, in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of occupational license fees due under the terms of this ordinance by such audit or examination.

(b) The department may summon any witness to appear and give testimony, and summon by subpoena duces tecum any records, books, or other information of any kind relating to any matter which the department has authority to administer. The witness may be summoned by subpoena issued by any circuit judge, any magistrate, or any district judge, in the name of the department, directed to any sheriff of Alabama and returnable to the department. The subpoena may be served in like manner as subpoenas issued out of any circuit court, or the subpoena may be served by an authorized employee of the department or by certified mail, return receipt requested. If any witness has been subpoenaed to appear and testify or appear and produce records, books, or other information, and fails or refuses to appear or testify or to produce the books, records, or other information, that witness shall be subject to contempt proceedings in the circuit court.

(c) The department is authorized to enter into contracts with private examining or collecting firms; provided: (1) said private examining or collecting firm is certified and licensed under the auspices of the Alabama Local Tax Institute of Standards and Training (ALTIST), established under Section 40-2A-15 Code of Alabama 1975; (2) no contract between the City of Birmingham and the private examining or collecting firm entered into for the purpose of examining or collecting City taxes shall have a term in excess of three years, including any renewal or extension options; (3) the limitation on the term of a contract between the City of Birmingham and a private examining or collecting firm does not prohibit the negotiation of a new contract between the parties following expiration of a properly executed contract; and (4) any contract between the City of Birmingham and any private examining or collecting firm shall terminate automatically, whether or not it is stated in the contract, if the private examining or collecting firm loses or forgoes its license under Section 40-2A-13 or 40-2A-14 Code of Alabama 1975.

## **Section 10. REFUNDS.**

### **10.1 PETITIONS FOR REFUND.**

(a) Any taxpayer may file a petition for refund with the department for any overpayment of tax erroneously paid to the department. If a final assessment for the tax has been entered by the department, a petition for refund of all or a portion of the tax may be filed only if the final assessment plus applicable interest has been paid in full prior to or with the filing of the petition for refund.

(b) The petition for refund must be filed in writing by the employer who collected and remitted the tax to the department. However, a direct petition may be filed in writing by an employee of a federal or a state agency.

(c) Unless otherwise provided by law, all petitions for refund shall include sufficient information to identify the type and amount of tax overpaid, the taxpayer, the period included, and the reasons for the refund. Such petition shall be accompanied with sufficient supporting documentation as the department may deem necessary and proper.

**10.2 AUTOMATIC REFUND.** Where the department determines that an employer is entitled to a refund on the annual reconciliation properly submitted, the department shall automatically refund to that taxpayer the amount of any excess tax so paid to the City; provided, however, that the time limitation provisions of this ordinance shall apply.

### **10.3 TIME LIMITATIONS.**

(a) A petition for refund must be filed in writing with the department within (i) two (2) years from the date the return was filed or (ii) two (2) years from the date of payment of the tax, whichever is later.

(b) The department shall either grant or deny a petition for refund within six (6) months from the date the petition is filed, unless the period is extended by written agreement of the taxpayer and the department. The taxpayer shall be notified of the department's decision concerning the petition for refund by first class United States mail, or by certified mail, with return receipt requested, sent to the taxpayer's last known address. If the department is unable to grant a refund within the time provided herein due to the taxpayer's failure to provide adequate information, the petition for refund shall be deemed to be denied.

(c) The department and the taxpayer may, prior to the expiration of the period for the filing of a petition for refund, agree in writing to extend the time provided for filing the petition. The petition for refund may be filed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

## **Section 11. JEOPARDY, PRELIMINARY, FINAL ASSESSMENTS AND TIME LIMITATIONS.**

**11.1 JEOPARDY ASSESSMENT.** All jeopardy assessments issued by the department shall be executed pursuant to Section 40-29-91 (a), (b), and (c) Code of Alabama 1975.

(a) If the Director of Finance finds that a taxpayer designs quickly to depart from the City of Birmingham or to remove his property therein or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect any tax imposed by this ordinance, the Director of Finance may issue notice of such finding to the taxpayer by personal service or mailing to his/her last known address, together with a demand for immediate payment of the tax declared to be in jeopardy, including penalties and additions thereto and such taxes, penalty, interest, and additions thereto shall be immediately due and payable. A final assessment of such tax may be entered immediately and if the assessment is not paid upon such demand of the Director, the Director may forthwith issue a warrant for levy and distraint of any personal property of the taxpayer which shall be collected in the same manner and with the like effect as provided under Section 24 of this ordinance.

(b) In the case of a tax for a current period, the Director may declare the taxable period of the taxpayer immediately terminated and may at his discretion estimate the tax liability based upon the best information obtainable. Notice of such finding and declaration shall be issued to the taxpayer in the same manner as in sub-section (a).

(c) When a jeopardy assessment has been made as provided in sub-section (a), the collection of all or any part of such assessment may be stayed by filing with the Director an approved bond conditioned upon the payment of the assessment together with applicable interest and cost of collection. The Director shall have sole discretion to approve or disapprove the bond, but such approval shall not be unreasonably withheld.

**11.2 PRELIMINARY AND FINAL ASSESSMENTS.** All preliminary and final assessments issued by the department shall be executed as provided herein. The terms “*preliminary assessment*” and “*final assessment*” shall have the respective meanings as ascribed by Article I, Section 1, “Definitions”, of this Occupational Tax Code.

**(1) Entry of Preliminary Assessment.** If the department determines that the amount of any tax as reported on a return is incorrect, or if no return is filed, or if the department is required to determine value, the department may calculate the correct tax or value based on the most accurate and complete information reasonably obtainable by the department. The department may thereafter enter a preliminary assessment for the correct tax or value, including any applicable penalty and interest.

**(2) Service of Preliminary Assessment Upon Taxpayer.** The preliminary assessment entered by the department, or a copy thereof, shall be promptly mailed by the department to the taxpayer’s last known address by either first class U.S. mail or certified mail with return receipt

requested, but at the option of the department, the preliminary assessment may be delivered to the taxpayer by personal delivery.

- (a) **Disputed Preliminary Assessments.** If a taxpayer disagrees with a preliminary assessment as entered by the department, the taxpayer may file a written petition for review with the Director of Finance within thirty (30) calendar days from the date of entry of the preliminary assessment, setting out the specific objections to the preliminary assessment and showing cause why such assessment should not be made final. If a petition for review is timely filed, or if the department otherwise deems it necessary, the department shall schedule a conference with the taxpayer for the purpose of allowing the taxpayer and the department to present their respective positions, discuss any omissions or errors, and to attempt to agree upon any changes or modifications to their respective positions.
  
- (b) **If a written petition for appeal/review:**
  - 1. Is not timely filed, or
  - 2. Is properly filed, and upon further review the department determines the preliminary assessment is due to be upheld in whole or in part, the department may make the assessment final in the amount of tax due as computed by the department, with applicable interest and penalty computed to the date of entry of the final assessment.

**(3) Service of Final Assessment Upon Taxpayer.** The final assessment entered by the department, or a copy thereof, shall be mailed by the department to the taxpayer's last known address (i) by either first class U.S. mail or certified mail with return receipt requested in the case of assessments of tax of five hundred dollars (\$500) or less or (ii) by certified mail with return receipt requested in the case of assessments of tax of more than five hundred dollars (\$500). In either case and at the option of the department, the final assessment, or a copy thereof, may be delivered to the taxpayer by personal delivery.

**(4) Undisputed Preliminary Assessments.** Where the amount of tax or value reported on a return is undisputed by the department, or the taxpayer consents in writing to the department's determination of the amount of any deficiency, determination of value, or preliminary assessment as provided by this ordinance, the department may immediately enter a final assessment for the amount of the tax or value, plus applicable penalty and interest; provided, the department may at any time enter a final jeopardy assessment pursuant to Section 40-29-91 Code of Alabama 1975.

### **11.3 TIME LIMITATION FOR ENTERING ASSESSMENTS.**

**(a)** Any preliminary assessment must be entered within five (5) years from the due date of the return, or five (5) years from the date the return is filed with the department, whichever is later, or if no return is required to be filed, within five (5) years of the due date of the tax, except as follows:

1. A preliminary assessment may be entered at any time if no return is filed as required, or if a false or fraudulent return is filed with the intent to evade tax;
2. A preliminary assessment may be entered within six (6) years from the due date of the return or six (6) years from the date the return is filed with the department, whichever is later, if the taxpayer omits from the taxable base an amount properly includable therein which is in excess of twenty five percent (25%) of the amount of the taxable base stated in the return.

For purposes of this paragraph:

- (a) The term “*taxable base*” means the gross receipts and compensation or other amounts on which the tax paid with the return is computed; and
- (b) In determining the amount omitted from the taxable base, there shall not be taken into account any amount which is omitted from the taxable base stated in the return if the amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the department of the nature and amount of the item.

(b) The department and the taxpayer may, prior to the expiration of the period for entering a preliminary assessment, agree in writing to extend the time provided for entering the assessment. The tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) Additional tax may be assessed by the department within any applicable period allowed above, even though a preliminary or final assessment has been previously entered by the department against the same taxpayer for the same or a portion of the same tax period.

**Section 12. APPEALS.** Appeals from denial of refunds, jeopardy assessments, and final assessments shall be executed as provided in Section 6-3-11, Code of Alabama 1975. A written notice of appeal shall be filed with the department and shall contain information sufficient to: (1) identify the name of the taxpayer or other party filing such notice of appeal, (2) identify the specific matter appealed from, (3) outline the basis for such appeal, and (4) specify the relief sought.

#### **12.1 APPEAL FROM REFUND DENIAL.**

(a) A taxpayer may appeal from the denial in whole or in part of a petition for refund by filing a written notice of appeal with the Circuit Court, within two (2) years from the date the petition is denied. The Circuit Court shall hear the appeal according to its own rules and procedures and shall determine the correct amount of refund due, if any.

(b) If an appeal is not filed with the Circuit Court within two (2) years of the date the petition is denied, then the appeal shall be dismissed for lack of jurisdiction.

### **12.2 APPEAL FROM JEOPARDY ASSESSMENT.**

(a) In any court proceeding to contest the jeopardy assessment or to enforce payment of the taxes made due and payable by virtue of the provisions of Section 11 of this ordinance, the finding of the Director of Finance made as herein provided, shall be for all purposes presumptive evidence of jeopardy.

(b) A final jeopardy assessment entered hereunder may be appealed to either the Director of Finance or in the Circuit Court in the same manner as provided in sub-section 12.4 of this section for the appeal of final assessments. On appeal to the Director of Finance or to the Circuit Court, the final jeopardy assessment shall be prima facie correct, and the burden of proof shall be on the taxpayer to prove such assessment is incorrect.

(c) If an appeal is not filed with the Director of Finance or in the Circuit Court within the time provided herein for appeals of final assessments, the appeal shall be dismissed for lack of jurisdiction.

### **12.3 APPEAL FROM PRELIMINARY ASSESSMENT.** *(Refer to sub-section 11.2 (2) (a) and (b).)*

### **12.4 APPEAL FROM FINAL ASSESSMENT.**

(a) A taxpayer may appeal from any final assessment entered by the department by filing a written notice of appeal with the Director of Finance within thirty (30) days from the date of entry of the final assessment, and the appeal, if timely filed, shall proceed as herein provided.

(b) In lieu of the appeal under paragraph (a) of this sub-section, at the option of the taxpayer, the taxpayer may appeal from any final assessment to the Circuit Court by filing written notice of appeal within thirty (30) days from the date of entry of the final assessment with both the Director of Finance and the Circuit Court. If the appeal is to the Circuit Court, the taxpayer shall, also within the thirty (30) day period allowed for appeal, either (i) pay the tax, interest, and any penalty shown on the final assessment, or (ii) file a supersedeas bond with the court in double the amount of the tax, interest, and any penalty shown on the final assessment. The supersedeas bond shall be executed by a surety company licensed and authorized to do business in the State of Alabama and shall be conditioned to pay the assessment plus applicable interest, penalty, and any court costs relating to the appeal. A taxpayer may appeal a final assessment to Circuit Court as provided herein, even though the taxpayer has paid the tax in issue prior to taking the appeal.

(c) The filing of the written notice of appeal with the Director of Finance or in the case of appeals to the Circuit Court, the filing of such notice of appeal with both the Director of Finance and the Circuit Court, and also the payment of the assessment in full and applicable interest and penalty or the filing of a bond as provided herein, are jurisdictional. If such prerequisites are not

satisfied within the time provided for appeal, the appeal shall be dismissed for lack of jurisdiction. On appeal to the Circuit Court or to the Director of Finance, the final assessment shall be prima facie correct, and the burden of proof shall be on the taxpayer to prove such assessment is incorrect.

**Section 13. PENALTIES AND INTEREST.**

**13.1 FAILURE TO TIMELY FILE RETURN.** If a taxpayer fails, neglects, or refuses to file any return required to be filed with the department on or before the date prescribed therefor, determined with regard to any extension of time for filing granted by the Director of Finance, there shall be assessed, in addition to the tax due or the amount of tax herein required to be withheld/remitted, a penalty of ten percent (10%) of the amount due, or fifty dollars (\$50.00), whichever is greater, together with interest thereon at the rate of one percent (1%) per month or fraction thereof, from the date at which the tax herein levied became due and payable, such penalty and interest to be assessed and collected as part of the tax.

**13.2 FAILURE TO TIMELY PAY TAX.** If a taxpayer fails, neglects, or refuses to pay to the department the amount of tax shown as due on a return required to be filed on or before the date prescribed for payment of the tax, determined with regard to any extension of time for payment granted by the Director of Finance, there shall be added:

- (1) In addition to the tax due or the amount of tax herein required to be remitted; or
- (2) For any tax for which a monthly or quarterly return is required or,
- (3) For which no return is required,

a penalty of ten percent (10%) of the unpaid amount shown as tax due on the return or the amount stated in the notice and demand, provided, however, that the minimum penalty imposed against such person or employer shall be Three Dollars (\$3.00), together with interest thereon at the rate of one percent (1%) per month or fraction thereof, from the date at which the tax herein levied became due and payable.

**13.3 UNDERPAYMENT OF TAX.** Any taxpayer failing to pay the tax herein levied to the City or any amount of tax herein required to be withheld and remitted to the City, within the time required by this ordinance shall pay, in addition to the tax or the amount of tax herein required to be withheld and remitted, a penalty of ten percent (10%) of the amount due plus interest at the rate of one percent (1%) per month, or fraction thereof, from the date at which the tax or the amount of tax herein levied or required to be withheld and remitted became delinquent, that is, due and payable to the City. Provided, however, that the minimum penalty imposed against such taxpayer shall be three dollars (\$3.00).

**13.4 UNDERPAYMENT DUE TO NEGLIGENCE.** If any part of any underpayment of tax is due to negligence or disregard of rules or regulations, there shall be added to the tax an amount equal to ten percent (10%) of that part of the tax attributable to negligence or disregard of rules or regulations. For the purpose of this section, the term “*negligence*” includes any failure to

make a reasonable attempt to comply with this ordinance, and the term “*disregard*” includes any careless, reckless or intentional disregard. Provided, however, that the minimum penalty imposed against such person or employer shall be three dollars (\$3.00).

**13.5 UNDERPAYMENT DUE TO FRAUD.** If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to fifty percent (50%) of that portion of the underpayment which is attributable to fraud. For purposes of this section, the term “*fraud*” shall have the same meaning as ascribed to the term under Section 40-2A-11(d) Code of Alabama 1975.

**13.6 FRIVOLOUS APPEAL PENALTY.** If any appeal to the Director of Finance or Circuit Court is determined to be frivolous or primarily for the purpose of delay or to impede collection of the tax imposed by this ordinance, a penalty of two hundred fifty dollars (\$250.00) or twenty-five percent (25%) of the tax in question, whichever is greater, shall be assessed in addition to any tax due.

**13.7 PENALTIES NOT EXCLUSIVE.** The penalties provided in this section for failure to timely file a return, failure to timely pay tax, underpayment of tax, underpayment due to negligence and fraud, or filing a frivolous appeal, may be asserted against the same taxpayer for the same tax period.

**13.8 WAIVER OF PENALTIES.** Penalties may be waived, in whole or in part, by the Director of Finance upon a determination of reasonable. Reasonable cause shall include, but not be limited to, those instances in which the taxpayer has acted in good faith. The burden of proving reasonable cause shall be on the taxpayer.

**13.9 PENALTY AND INTEREST ASSESSED AS TAX.** All penalties and interest levied or assessed against a taxpayer and which are administered by the department shall be assessed and collected in the same manner as taxes.

**13.10 INTEREST.** Interest shall be computed at a rate of one percent (1%) per month or fraction thereof, and shall be added as provided herein to any tax or other amount due the department which is not paid by the due date. Interest on any delinquency or underpayment shall be charged from the due date of the tax.

**13.11 ABATEMENT OF PENALTY.** The department shall abate any penalty attributable to erroneous written advice furnished to a taxpayer by an employee of the department. However, this sub-section shall apply only if the department employee provided the written advice in good faith while acting in his official capacity, the written advice was reasonably relied on by the taxpayer and was in response to a specific written request of the taxpayer, and the penalty did not result from the taxpayer’s failure to provide adequate or accurate information.

**13.12 PENALTY FOR FAILURE TO PERFORM DUTIES.** Any person required to collect, withhold, truthfully account for, and/or pay over any tax imposed by this ordinance who willfully fails to collect or withhold such tax, or truthfully account for, and/or pay over such tax, or

willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall in addition to the tax due and other penalties provided by law, be liable for a penalty up to the total amount of the tax evaded, or not collected, or not account for and paid over.

**Section 14. CONFIDENTIALITY OF TAX RETURNS.** The confidentiality provisions imposed by this Code shall be executed as provided herein.

(a) It shall be unlawful for any person to print, publish, or divulge, without the written permission or approval of the taxpayer, the tax return of any taxpayer or any part thereof or any information secured in arriving at the amount of tax or value reported for any purpose other than the proper administration of any matter administered by the department, or upon order of any court, or as otherwise allowed in this section. Statistical information pertaining to taxes may be disclosed at the discretion of the Director of Finance. The Director of Finance may make written or verbal disclosure upon request as to the status of compliance of the taxpayer relative to this ordinance.

(b) A good standing certificate shall be issued to a requesting person with respect to a taxpayer if the taxpayer has filed all tax returns due and paid the taxes shown as payable in accordance with those returns.

(c) The Director of Finance shall promulgate reasonable regulations permitting and governing the exchange of tax returns, information, records, and other documents secured by the department, with tax officers of other agencies of the state, municipal, and county government agencies within the State of Alabama, federal government agencies, any association of state government tax agencies of Alabama or other states, and any foreign government tax agencies. However, (i) any tax returns, information, records, or other documents remain subject to the confidentiality provisions set forth in sub-section (a); (ii) the department may charge a reasonable fee for providing information or documents for the benefit of the requesting agencies, and (iii) any exchange shall be for one or more of the following purposes:

- (1) Collecting taxes due.
- (2) Ascertaining the amount of taxes due from any person.
- (3) Determining whether a person is liable for, or whether there is probable cause for believing a person might be liable for the payment of any tax.

(d) Nothing herein shall prohibit the use of tax returns or tax information by the department in the enforcement, collection, and assessment of any tax levied or imposed by this ordinance, or any other matters administered by the department. The department may also divulge to a purchaser or successor of a business or stock of goods the outstanding tax liability of the seller for which the purchaser or successor may be liable pursuant to Section 16 of this ordinance. This section shall not preclude the inspection of returns by federal or foreign state agents pursuant to Section 40-18-53 Code of Alabama 1975.

(e) Nothing herein shall prohibit the exchange of information between and among county or municipal governments subject to the restrictions of this section.

(f) In no event shall any damages, attorney fees, or court costs be assessed against the City or against its elected officials, officers, or employees under this section.

**Section 15. REGULATIONS MAY BE PROMULGATED; PAYMENTS DUE TAXPAYERS MAY BE WITHHELD.**

**15.1 REGULATIONS MAY BE PROMULGATED.**

(a) The Director of Finance shall from time to time promulgate rules and regulations for making returns and for ascertainment, assessment and remittance of the tax imposed hereunder as he/she may deem necessary to enforce its provisions; and upon request shall furnish any taxpayer with a copy of such rules and regulations.

(b) The Director of Finance may prescribe, adopt, promulgate and enforce reasonable rules and regulations not in conflict with this ordinance relating to any matter or thing pertaining to the administration and enforcement of the provisions of this ordinance, including but not limited to provisions for the re-examination and correction of returns as to which overpayment or underpayment is claimed or found to have been made, and the rules and regulations so promulgated shall be binding upon all licensees and employers.

(c) The Director of Finance shall prescribe printed forms for use by persons subject to the provisions of this ordinance and shall make such forms available at his/her office for use by such persons.

**15.2 PAYMENTS DUE TAXPAYERS MAY BE WITHHELD.** Pursuant to the Mayor-Council Act, Article VI, Section 6.04(o), Act No. 452-55, Acts of Alabama, the Director of Finance, in order to protect the interests of the City, is authorized to withhold the payment of any claim or demand for payment of monies due from the City to any vendor, contractor, consultant or other person having unpaid or delinquent tax or license liabilities until such unpaid tax, including applicable interest and penalties, shall first have been settled and adjusted. The Director of Finance shall notify the taxpayer by certified mail with return receipt requested, sent to the taxpayer's last known address, of his/her intention to make such levy, the effect of which shall be continuous from the date such levy is first made until the liability out of which such levy arose is satisfied.

**Section 16. PURCHASER TO WITHHOLD TAXES DUE FROM PURCHASE MONEY OR BE LIABLE.** Any person liable for an amount of tax herein required to be remitted who shall sell out his business or stock of goods, or shall quit business, shall be required to make out a final return,

as provided for under Article I, Section 5 of this ordinance, and shall make payment of the taxes due within thirty (30) days after the date he sold out his business, or stock of goods, or quit

business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the department showing that the taxes have been paid, or a certificate stating that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as provided herein, and the taxes remain due and unpaid after said thirty-day period, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner. If in such cases the department deems it necessary in order to collect the taxes due the City, it may make a jeopardy assessment as provided in Title 40 Chapter 29 of the Code of Alabama 1975.

**Section 17. DISPOSITION OF FUNDS DERIVED FROM OCCUPATIONAL LICENSE FEES.** All monies derived from the occupational license fees levied under the provisions of this ordinance shall be paid to the City and placed to the credit of the General Fund of the City of Birmingham, and shall be used and expended as authorized by law and ordinance.

**Section 18 thru Section 20.** *[Reserved].*

**Section 21. CREDIT FOR OCCUPATIONAL TAX ERRONEOUSLY PAID.**

**21.1 TAXES DUE THE CITY WHICH WERE ERRONEOUSLY PAID TO ANOTHER MUNICIPALITY.**

- (a) **Requirement to Request Refund of Erroneous Tax Payment Within 60 Days of Notice to Avoid Interest, Penalties (Taxpayer).** In order to avoid the accrual of interest and any otherwise applicable penalties on the tax due the City of Birmingham, when an occupational tax owed to the City of Birmingham is erroneously paid to a different municipality or county in good faith, based on a reasonable interpretation of the enabling ordinance, resolution, or act levying or authorizing the tax, but not under a requirement of law, the taxpayer making the erroneous payment must comply with the applicable refund procedures of such municipality or county within 60 days of receiving notice from the City, a county, or other municipality or its agent of the erroneous payment.
- (b) **Compliance With Refund Procedure; Interest, Penalties.** If the taxpayer complies with the refund procedure within the requisite 60-day period, the City shall not assess or attempt to assess the tax, or any related interest or otherwise applicable penalty thereon until the date of receipt of the overpayment from the refunding municipality or county by the taxpayer or the taxpayer's agent, and no interest or penalty thereon shall accrue until such date of receipt. *The taxpayer shall remit the disputed tax to the City within 15 days after receipt.*
- (c) **Failure to Comply With Refund Procedure; Interest, Penalties.** If the taxpayer fails to comply with the refund procedures within the requisite 60-day period, interest and any

applicable penalties shall accrue on the tax to which the City is entitled from the sixty-first (61st) day and until such time as the tax is paid.

**21.2 TAXES DUE TO ANOTHER MUNICIPALITY WHICH WERE ERRONEOUSLY PAID TO THE CITY OF BIRMINGHAM.**

- (a) **Requirement to Refund Overpayment of Erroneous Tax Payment Within 60 Days of Compliance With Refund Procedures (City of Birmingham).** If an occupational tax owed to another municipality or county is erroneously paid to the City of Birmingham in good faith, based on a reasonable interpretation of the enabling ordinance, resolution, or act levying or authorizing the occupational tax, but not under a requirement of law, the City shall refund the overpaid tax, without interest, to the taxpayer within 60 days of the taxpayer's compliance with applicable refund procedures provided in Section 10 of this Ordinance.
- (b) **Refund of Excess Tax; Requirements.** Provided, however, that if the applicable rate of occupational tax imposed by the City exceeds the rate of occupational tax imposed by the proper locality under a requirement of law, the City shall not be obligated to refund the difference unless the taxpayer properly files the applicable petition for refund, as in the case of direct petitions for refund as required by Section 10.1 of this Ordinance.

**Section 22.** *[Reserved]*

**Section 23. COLLECTION AFTER ASSESSMENT.** The tax herein levied may be collected by levy as provided in Section 40-29-51 Code of Alabama 1975, as follows:

(a) **Length of Period.** Where the assessment of any tax imposed by this ordinance has been begun or made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun:

- (1) Within the period allowed by law after the final assessment of the tax; or
- (2) Prior to the expiration of any period for collection agreed upon in writing by the Director of Finance and the taxpayer before the expiration of such period allowed by law (or, if there is a release of levy under Section 40-29-34 Code of Alabama 1975, after such period allowed by law, then before such release).

The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The period allowed by law as provided in this sub-section during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer.

**(b) Date when levy is considered made.** The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in Section 40-29-26 Code of Alabama 1975, is given.

**Section 24. LIEN FOR TAXES.** Pursuant to Sections 40-29-20, 40-29-21, and 11-51-96 Code of Alabama 1975, the provisions of this section shall apply to the taxes and/or any penalty or interest payable thereon, levied under this ordinance.

**(a) Notice of Lien.** If any person liable to pay the privilege or license tax herein levied, neglects or refuses to pay the same within thirty (30) days of the final assessment, the amount (including any interest, additional amount, addition to tax, or assessable penalty together with filing fees and any other costs that may accrue in addition thereto) shall be a lien in favor of the City of Birmingham upon all property and rights to property, whether real or personal, tangible or intangible, used in any exhibition, trade, business, vocation, occupation or profession for which a privilege or license tax is or may be required.

The department shall give a thirty (30) day “*Notice of Intent to File Lien*” to the taxpayer by any one of the following methods:

- (1) Given in person;
- (2) Left at the dwelling or usual place of business of such person; or
- (3) Sent by certified mail with return receipt requested to the taxpayer’s last known address.

**(b) Term.** Unless another date is specifically fixed by law, the lien imposed by sub-section (a) shall arise at the time of the final assessment, return therefor or the payment thereof, whichever is prior, was due to have been filed with or made to the department, and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time.

**(c) Right to Enforce Lien by Attachment.** The department may enforce such lien in any court of competent jurisdiction, by attachment issued by any officer authorized to issue such writs, upon executing bond as in other cases of attachment, and upon making affidavit that the attachment is not sued out for the purpose of vexing or harassing the defendant, and describing the property on which the lien is claimed and setting forth all the facts necessary to the creation of the lien and the amount due and unpaid (including any interest, additional amount, addition to tax, or assessable penalty together with filing fees and any other costs that may accrue in addition thereto).

**(d) Release of Lien.** With respect to a lien described in this section, the Director of Finance shall within ten (10) days release the lien when the liability out of which such lien arose is satisfied, and shall promptly notify the person upon whom such lien was made that such lien has been released.

**Section 25. COLLECTION BY CIVIL SUIT.** The department may initiate and/or maintain a civil action to recover delinquent taxes herein levied, interest, penalties, and administrative costs incurred in connection therewith, in any court of competent jurisdiction, which remedy shall be in addition to any and all other remedies which may be provided.

**Section 26. VIOLATOR MAY BE RESTRAINED FROM CONTINUING IN BUSINESS.** Any taxpayer who shall violate any of the provisions of this ordinance may be restrained from continuing in business, and proper prosecution shall be instituted in the name of the City of Birmingham until such person shall have complied with the provisions of this ordinance.

**Section 27. VIOLATIONS.**

**27.1 FAILURE TO PAY THE TAX, MAKE REPORTS, KEEP OR PROVIDE RECORDS.** Any person subject to the provisions of this ordinance, who shall fail to pay the tax, make the reports or any of them as herein required, or who shall fail to keep or provide records, or supply any information, as herein required, shall, as provided in Section 40-29-112 Code of Alabama 1975, be guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty dollars (\$50.00), nor more than five hundred dollars (\$500.00) for each offense and, in addition, may be imprisoned for a period not to exceed six (6) months. Each occurrence of such failure shall constitute a separate offense.

**27.2 WILLFUL REFUSAL TO MAKE REPORTS, OR PERMIT EXAMINATION OF RECORDS.** Any person subject to the provisions of this ordinance willfully failing or refusing to make the reports, furnish any supplemental returns or other data herein required, or who shall refuse to permit the examination of his records by the department, as provided in 40-29-112 Code of Alabama 1975, shall be guilty of a misdemeanor and, upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense, and in addition, may be imprisoned for a period not to exceed six (6) months. Each occurrence of a failure to make such reports shall constitute a separate offense, and each refusal of a written demand by the department to examine, inspect, or audit such records shall constitute a separate offense.

**27.3 VIOLATION OF ORDINANCE.** Any person who shall fail or neglect or refuse to perform any duty imposed by this ordinance or any rule, regulation, or law thereof or who shall fail or neglect to do or perform any act or series of acts as required by this ordinance or other City ordinances shall, upon conviction, be punished by a fine not exceeding five hundred dollars (\$500.00) for each offense, and in addition may be imprisoned for a period not to exceed six (6) months, or by both such fine and imprisonment, pursuant to Section 1-1-6 of the General Code of the City of Birmingham 1980, as amended and as it may be amended.

**27.4 FRAUDULENT STATEMENT OR FAILURE TO FURNISH STATEMENT TO THE DEPARTMENT.** In addition to the criminal penalty provided by Section 40-29-113 and Section 40-29-114 Code of Alabama 1975, any person required under this ordinance to furnish a statement to the department who willfully furnishes a false statement or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required shall for each such failure be subject to a penalty under this ordinance of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense, and in addition may be imprisoned for a period not to exceed six (6) months, or by both such fine and imprisonment.

**Section 28. REQUEST FOR RULING ON ITEMS OF COMPENSATION.** Any taxpayer may request a ruling on the determination of whether items of compensation are included in gross receipts and compensation or are not to be included in gross receipts and compensation as a measure of the taxes due and payable as levied by this ordinance. Such requests shall be made in writing to the Finance Department, and shall contain all pertinent facts relating to the item(s) in question.

**SECTION 2.** The provisions of this ordinance are severable. If any provision, section, paragraph, sentence, or thereof, or the part application thereof to any person, shall be declared unconstitutional or invalid by a court of competent jurisdiction, such declaration shall not affect or impair the remainder of the ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence, and part thereof, separately and independently of each other.

**SECTION 3.** This ordinance shall become effective and operative as such commencing on and after January 1, 2009 and on and after said date shall be binding in the City of Birmingham.

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**OCCUPATIONAL TAX CODE**

**RULES AND REGULATIONS**



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**RULES AND REGULATIONS  
FOR THE CITY OF BIRMINGHAM  
OCCUPATIONAL TAX CODE**

**ARTICLE II**

**Section 1. PROMULGATION OF RULES AND REGULATIONS.** The following Rules and Regulations are hereby promulgated by the Director of Finance of the City of Birmingham under the authority granted to him in Section 15 of the Occupational Tax Ordinance.

The Rules and Regulations are effective **JANUARY 1, 1993** and are to be applied prospectively.

**Section 2. DEFINITIONS.** The following words, terms and phrases when used in this Article shall have the following meanings except 1) when the context clearly indicates a different meaning or 2) when the definition of such word or phrase conflicts with the same definition as contained in Article I, Section 1 (“Definitions”) of the Occupational Tax Ordinance, in which case the Occupational Tax Ordinance definition will govern:

**2.1 “Person”** shall mean any natural person. Whenever the word “Person” is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word as applied to a partnership or other form of unincorporated enterprise shall mean the partners or members thereof, and as applied to corporations shall mean the officers and directors thereof.

**2.2 “Trade, Occupation, and Profession”** shall mean and include the doing of any kind of work, the rendering of any kind of personal services, or the holding of any kind of position or job within the City of Birmingham, Alabama by any clerk, laborer, tradesman, manager, official, or other employee, including any nonresident of the City of Birmingham who is employed by any employer as defined in this section, where the relationship between the individual performing the services and the person for whom such services are rendered is, as to those services, the legal relationship of employer and employee, including also a partner of a firm or an officer of a firm or corporation, if such partner or officer receives a salary for his personal services rendered in the business of such firm or corporation, but they shall not mean or include domestic servants employed in private homes or businesses, professions or occupations for which occupational license fees are required to be paid under any General License Code of the City.

The words *“Trade, Occupations and Professions”* shall also mean and include the holding of any kind of office or position, either by election or appointment, by any federal, state, county or city officer or employee where the services of such official or employee are rendered within the City of Birmingham.

**2.3 “Employee”** shall mean and include any person engaging in or following any trade, occupation or profession within the meaning of sub-section 2.2 of this section. (See Article I, Section 1(d) of the Occupational Tax Ordinance.)

**2.4 “Employer”** shall mean and include any person, business, firm, corporation, partnership, association or any other kind of organization or profession in the City of Birmingham within the meaning of sub-section 2.2 of this section. (See Article I, Section 1(e) of the Occupational Tax Ordinance.)

**2.5 “Licensee”** shall mean and include any person required to file a return or to pay a license fee under the Occupational Tax Ordinance.

**2.6 “City”** shall mean the City of Birmingham, Alabama.

**2.7 “Director of Finance”.** The words “Director of Finance” shall mean the Director of Finance of the City of Birmingham or his duly authorized agent.

**2.8 “Gross Receipts and Compensation”.** See Article II, Section 6 (“Items of Gross Receipts and Compensation”) hereunder for the definition of, and items included in gross receipts and compensation; and see Article II, Section 7 (“Items Not Constituting Gross Receipts and Compensation”) hereunder for items excluded from gross receipts and compensation.

### **Section 3. IMPOSITION OF OCCUPATIONAL LICENSE FEE; RATE OF TAX.**

**3.1 License Fee Required.** It shall be unlawful for any person to engage in or follow any trade, occupation or profession as defined in Section 1 of the Occupational Tax Ordinance within the City on and after the 1st of December, 1970, without paying occupational license fees for the privilege of engaging in any Trade, Occupation, or Profession, which occupational license fees shall be measured by *one percent (1%)* of the gross receipts and compensation of each such person.

**3.2 When Gross Receipts and Compensation Deemed to Have Been Earned in the City.** Gross receipts and compensation are deemed to have been received from, entitled to be received from or given credit for by the employer when the work done or personal services are rendered by the employee inside the City and results in actual receipt by the employee or entitlement to a receipt by or credit to the Employee, regardless of where or when the payment is to be made or received.

### **Section 4. APPORTIONMENT OF GROSS RECEIPTS AND COMPENSATION WHEN TRADE, OCCUPATION OR PROFESSION ENGAGED IN BOTH INSIDE AND OUTSIDE THE CITY; COMPUTATION OF LICENSE FEE.**

**4.1 Apportionment of Gross Receipts and Compensation.** When Gross Receipts and Compensation are earned by an Employee and work is done or personal services rendered by such Employee both within and without the City, the license fee shall be measured by the Gross Receipts and Compensation earned as a result of work done or personal services rendered within the City. Employers shall multiply the total Gross Receipts and Compensation of each said Employee’s earnings both within and without the City by a fraction whose numerator is the days spent working or rendering personal services in the City and whose denominator is the total days working or rendering personal services by the employee within and without the City and shall treat the result as the gross receipts and compensation subject to the license fee imposed by the Occupational Tax Ordinance.

**4.2 Requirement to Keep Records.** Each employer with one or more employees working both within or without the City shall keep accurate records of days working or rendering personal services within and without the City, and with respect to each such employee, the employer shall remit the occupational license fees withheld, as required in Article I, Section 5 of the Occupational Tax Ordinance. For purposes of the required withholding of occupational license fees and of the required monthly remittances of occupational license fees withheld, employers are permitted to estimate, using a fair and reasonable method consistently applied, the portion of the employee's days spent within the City on the basis of the employee's prior year's experience; provided, however, that the employer shall annually reconcile and pay over the license fee due on each said employee's gross receipts and compensation based upon such employee's days spent working or rendering personal services within and without the City. Such records shall be kept and maintained by each such employer for not less than five (5) years subsequent to the date such compensation was earned.

**Section 5. RESPONSIBILITY OF EMPLOYERS TO WITHHOLD, ACCOUNT FOR, REPORT, AND REMIT OCCUPATIONAL LICENSE FEES.**

**5.1 Employer Obligated to Withhold License Fee From Payments of Gross Receipts and Compensation.** Each employer shall withhold at the time of payment of gross receipts and compensation (as hereinafter defined) to any employee from such payment of gross receipts and compensation the license fee then due from each such employee. Each employer who is notified of or discovers an underpayment by the employer of the license fee shall (i) correct the previously submitted returns which had shown the amount which was under withheld, and (ii) remit payment of the license fee not previously paid over, together with any applicable penalty and interest as outlined in Article I, Section 13 of the Occupational Tax Ordinance.

**5.2 Payment/Remittance of Withheld Occupational License Fees.** Every employer is obligated to withhold occupational license fees for gross receipts and compensation from payments of wages, salaries, commissions or fees, make the return required by Section 5 of the Occupational Tax Ordinance and at the time of the filing thereof, pay to the City the amount of the occupational license fees shown as due thereon.

**Section 6. ITEMS OF GROSS RECEIPTS AND COMPENSATION.** Article I, Section 1(f) of the Occupational Tax Ordinance defines the terms “*Gross Receipts*” and “*Compensation*”, as having the same meaning, which terms include, but are not limited to, the total of the following items which a person receives from or is entitled to receive from or be given credit for by his Employer for any work done or personal services rendered in any trade, occupation, or profession...” The determination of whether an item constitutes gross receipts and compensation is to be made without consideration of where or when the payment, entitlement or credit is to be made or received and without consideration of who is the payor or obligor. Pursuant to Article I, Section 1 (f) of the Occupational Tax Ordinance, the following items of gross receipts and compensation earned by an employee are subject to the license fee:

**6.1 Salaries.** Salaries, bonuses, overtime pay or incentive payments earned by a Person, whether received directly or through an agent:

- (a) as an official or employee, or both, of a corporation;
- (b) as an official or employee (as distinguished from a partner or member) of a partnership or other association;
- (c) as an employee (as distinguished from the proprietor) of a business conducted by an individual owner;
- (d) as an official or employee (whether elected or appointed, enlisted or commissioned) of a governmental agency; or
- (e) an official or employee of any other entity.

**6.2 Wages.** Wages, bonuses, overtime pay or incentive payments earned by a Person, whether received directly or through an agent:

- (a) whether based upon hourly, daily, weekly, semimonthly, monthly, annual, unit of production or piecemeal rates; and
- (b) whether paid by an individual, nonprofit association, corporation, partnership, fiduciary, governmental agency or any business or other entity.

**6.3 Commissions.** Commissions earned by an Employee from his Employer whether received directly or through an agent, for personal services rendered regardless of how such commissions are computed, including any amounts paid by the Employer and received by the Employee as a drawing account exceeding the commissions earned.

**6.4 Fees.** Fees earned by an Employee, whether received directly or through an agent, for personal services rendered regardless of how computed.

**6.5 Vacation Pay, Sick Pay, Holiday Payments, Etc.** Vacation pay, sick pay, and holiday payments received by an Employee during periods of absence from work; payments for accrued, unused vacation, sick or holiday days received by an Employee regardless whether such payments are received during periods of absence from work or not.

**6.6 Employee Elective Contributions to Qualified and Non-Qualified Deferred Compensation Plans.** Amounts earned by an Employee and which said Employee has elected to defer receipt of from his Employer pursuant to a cash or deferred arrangement election by the Employee or a salary reduction agreement between the Employer and the Employee. This would include elective deferrals under plans such as Section 401(k) plans, Section 403(b) plans and similar plans which allow for a salary reduction.

**6.7 Non-Cash Fringe Benefits.** Non-cash fringe benefits received by an Employee from his Employer not excluded under Section 7 (Items Not Constituting Gross Receipts and Compensation) and having a value of \$100.00 or more including the fair market value of property or services received as Compensation by an Employee and paid by the Employer where such compensation is not in the ordinary course of business. Non-cash fringe benefits may be valued for purposes of the imposition of the license fee using any reasonable method or any reasonable basis consistently applied by the Employer including the use of valuation methods for federal income tax reporting purposes.

**6.8 Severance and Separation Payments.** Payments made by an Employer to an Employee, whether at the time of separation or following separation from service with the Employer, to the extent that said payments represent vacation pay, sick pay, severance pay, early retirement buy-outs and other benefits accrued pursuant to any Employer and Employee relationship if such benefits would be subject to the occupational license fee if they were paid to the active Employee. Included are payments which are made in lieu of any payment which the Employer is obligated to make to or on behalf of the Employee arising from the employment of the Employee, to the extent that such payments would be subject to the occupational license fee if they were made to an active Employee.

**6.9 Expense Accounts.** Allowances and reimbursements paid by an Employer to an Employee for expenses incurred by the Employee in the trade or business of the Employer, which sums are not accounted for by the Employee to the Employer as ordinary and necessary trade or business expenses of the Employer.

**6.10 Non-De Minimis Awards in Excess of \$100.00.** Non-De Minimis awards in excess of one hundred dollars (\$100.00) received by an Employee from his Employer whether received directly or through an agent of the Employer.

**6.11 Insurance Premiums Paid by the Employer for Group Term Life Insurance Coverage In Excess of \$50,000.** The value of group term life insurance the Employer provides to an Employee for coverage over \$50,000. The Employer may use a valuation method used for federal income tax reporting purposes.

**6.12 Imputed Income on Personal Use of Automobile.** The value of the personal use by an Employee of an Employer-provided automobile. The value of personal use of automobiles may be determined by using any reasonable method consistently applied by the Employer including the use of valuation methods used for federal income tax reporting purposes.

**6.13 Country Club Dues/Memberships.** The value of the personal use by an Employee of Country club dues/memberships paid for by the Employer or reimbursed by the Employer. The personal use of country club and similar memberships may be valued for purposes of the imposition of the license fee using any reasonable method or any reasonable base consistently applied by the Employer including the use of valuation methods for federal income tax reporting purposes.

**6.14 Other Items of Gross Receipts and Compensation.** All other forms of consideration having monetary value, earned by an employee, due from an employer for the performance of any activity subject to the license fee and not expressly exempt under Article I, Section 3.1 of the Occupational Tax Ordinance or herein (See Article II, Section 7 and Section 10.)

**Section 7. ITEMS NOT CONSTITUTING GROSS RECEIPTS AND COMPENSATION.**

The following items of payment and benefits from or on behalf of an employer to or for the credit of an employee are not considered gross receipts and compensation under the Occupational Tax Ordinance:

**7.1 Unemployment Compensation.** Unemployment compensation payments made by any governmental agency.

**7.2 Death Benefits.** Death benefits payable to the beneficiary of an Employee or to his estate, whether payable in a single sum or otherwise.

**7.3 Workmen's Compensation.** Amounts received under the Workmen's Compensation Act as compensation for a disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability.

**7.4 Allowances and Reimbursements for Expenses.** Allowances and reimbursements paid by an Employer to an Employee for expenses actually incurred by the Employee in the trade or business of the Employer, which sums are accounted for by the Employee to the Employer as ordinary and necessary trade or business expenses of the Employer.

**7.5 Strike Benefits.** Strike pay benefits paid from a fund which is established and/or replenished, in whole or in part, from the Employee's wages.

**7.6 Employer Contributions To Employee Welfare Benefit Plans.** Employer's Contributions for life, health and accident, disability and similar welfare benefit plans whether the plans are insured, self-insured or otherwise.

**7.7 Amounts Paid Under Qualified and Non-Qualified Deferred Compensation Plans.** Amounts paid under qualified and non-qualified deferred compensation plans at withdrawal.

**7.8 Student Grants.** Stipends, honorariums, grants and other payments made to students to the extent such payments are conditioned only upon the recipient's pursuit of studies and/or participation in athletic or other intercollegiate competition, and scholarships and other non-cash fringe benefits received by duly registered students from the school, college or university in which they are enrolled. To the extent that such payments are made for services rendered by the student and an Employer-Employee relationship exists between the payor and the student, the payments are included in Gross Receipts and Compensation.

**7.9 Exemptions Afforded by Treaty.** Any wages, salaries or other compensation paid to a foreign national to the extent that such payments are exempt from state and local taxation by a treaty of the United States.

**7.10 Employer Contributions to Qualified and Non-qualified Deferred Compensation Plans Not Arising from Employee Election.** Contributions to qualified and non-qualified deferred compensation plans by employers, *other than* contributions as provided in Section 6.6 herein.

**7.11 Flexible Benefit Plan Payments.** Payments by Employers to cafeteria plans, flexible benefit plans, flex plans or plans of similar import, which provide the opportunity for Employees to elect to reduce their wages for federal income tax purposes and contribute such amount to such plans to pay for welfare benefits such as medical insurance or expenses, dependent care expenses, group disability insurance, etc., not otherwise paid for by the Employer.

**7.12 Stock Options, Stock Grants and Bargain Stock Purchases from Employer.** Employer granted stock options, stock grants and bargain stock purchases shall not be included in the Gross Receipts of said Employee at the time of grant nor at the time of exercise or at any other time including stock grants subject to a substantial risk of forfeiture under Title 26 United States Code Section 83.

**7.13 Moving Expenses.** Allowances and reimbursements paid by an Employer to an Employee for expenses incurred in moving to the location of the Employer.

**7.14 Payment of Parking by Employer.** Parking (i) paid or provided by the employer for the benefit of the employee or (ii) reimbursement by the employer for the benefit of the employee or (iii) reimbursement by the employer of parking expenses actually incurred by the employee.

**7.15 Dependent Child Care Assistance.** Dependent child care expenses paid by the Employer for the benefit of the Employee, reimbursed by the Employer or Employer-provided dependent child care services.

**7.16 Employee Discounts.** Discounts provided by an Employer to employees on the selling price of property or services offered for sale to customers in the normal business of the Employer.

**7.17 Educational Assistance Payments.** Educational assistance provided by the Employer to an Employee under an Employer-provided educational assistance program.

**7.18 Distributions from Qualified Pension and Unqualified Compensation Plans.** Amounts paid from retirement plans or similar arrangements including amounts from pension plans, profit sharing plans, stock bonus plans, or employee stock ownership plans whether or not such plans are qualified deferred compensation plans pursuant to Title 26 United States Code, Section 401(a) or non-qualified deferred compensation plans or arrangements.

**7.19 Employee Achievement Awards in Excess of \$100.00.** Employee achievement awards in excess of one hundred dollars (\$100.00) received by an employee from his employer whether received directly or through an agent of the employer that are not taxable under Title 26 United States Code Section 74 shall not be taxable.

**Section 8. PERSONS EXEMPT FROM OCCUPATIONAL LICENSE FEE.**

**8.1 Domestic Servants.** Gross Receipts and Compensation earned by domestic servants.

**Section 9. RETURNS REQUIRED OF LICENSEES.** The failure of or omission by an Employer to withhold or pay over occupational license fees due under the Occupational Tax Ordinance shall not relieve an employee, with respect to which such failure or omission occurred, from the payment of such occupational license fees due and compliance with the requirements for making returns as provided in the Occupational Tax Ordinance. See Section 5 of the Occupational Tax Ordinance.

**Section 10. REQUEST FOR RULING ON ITEMS OF COMPENSATION.** Any taxpayer may request a ruling on the determination of whether items of compensation are included in gross receipts and compensation or are not to be included in gross receipts and compensation as a measure of the taxes due and payable as levied by this ordinance. Such requests shall be made in writing to the Finance Department, and shall contain all pertinent facts relating to the item(s) in question.

Adopted by the Council of the  
City of Birmingham  
December 23, 1997

A true copy.  
PAULA R. SMITH, City Clerk



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