

# **THE SALES TAX CODE**

**Adopted by Ordinance No. 97-185  
on December 23, 1997**

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and continuing in effect until amended or repealed**

*Amended by Ordinance No. 98-108 adopted 06/30/98  
Amended by Ordinance No. 98-181 adopted 11/17/98  
Amended by Ordinance No. 99-210 adopted 12/21/99  
Amended by Ordinance No. 00-209 adopted 12/12/00  
Amended by Ordinance No. 02-175 adopted 12/10/02  
Amended by Ordinance No. 07-234 adopted 12/18/07*

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**CITY OF BIRMINGHAM, ALABAMA**

**ORDINANCE NO. 97-185**

**AN ORDINANCE FOR THE LEVY AND ASSESSMENT OF SALES TAXES.**

**BE IT ORDAINED** by the Council of the City of Birmingham, Alabama pursuant to Section 11-51-200 through 11-51-207 Code of Alabama 1975, as follows:

**Section 1. DEFINITIONS.** The following words, terms and phrases when used in this ordinance 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 Section 40-23-1 or Section 40-2A-3 Code of Alabama 1975, in which case the State law definition will govern:

(a) “**Automotive vehicle**” shall include a power shovel, drag line, crawler, crawler crane, ditcher, or any similar machine which is self-propelled, in addition to self-propelled machines which are used primarily as instruments of conveyance.

(b) “**Business**” as used in this ordinance, shall include all activities engaged in, or caused to be engaged in, with the object of gain, profit, benefit or advantage, either direct or indirect, and not excepting sub-activities producing marketable commodities used or consumed in the main business activity, each of which sub-activities shall be considered business engaged in, taxable in the class in which it falls.

(c) “**City**” means the City of Birmingham, Alabama.

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

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

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

(g) “**Gross Proceeds of Sales**” means the value proceeding or accruing from the sale of tangible personal property (and including the proceeds from the sale of any property handled on consignment by the taxpayer), including merchandise of any kind and character without any deduction on account of the cost of the property sold, the cost of the materials used, labor or

service cost, interest paid, any consumer excise taxes that may be included within the sales price of the property sold, or any other expenses whatsoever, and without any deductions on account of losses; provided that cash discounts allowed and taken on sales shall not be included, and “*gross proceeds of sales*” shall not include the sale price of property returned by customers when the full sales price thereof is refunded either in cash or by credit. Said term “*gross proceeds of sales*” shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock and used or consumed in connection with a business, and shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed by any person so withdrawing the same, except property which has been previously withdrawn from such business or stock and so used and consumed with respect to which property the tax has been paid because of such previous withdrawal, use or consumption, except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale as provided in sub-section (x) and not for the personal and private use or consumption of any person so withdrawing, using, or consuming the same, and except refinery, residue, or fuel gas, whether in a liquid or gaseous state, that has been generated by, or is otherwise a by-product of, a petroleum-refining process, which gas is then utilized in the process to generate heat or is otherwise utilized in the distillation of refining of petroleum products. In the case of the retail sale of equipment, accessories, fixtures, and other similar tangible personal property used in connection with the sale of commercial mobile services as defined herein, or in connection with satellite television services, at a price below cost, “*gross proceeds of sale*” shall only include the stated sales price thereof and shall not include any sales commission or rebate received by the seller as a result of the sale. As used herein, the term “commercial mobile services” shall have the same meaning as that term has in Title 47 U.S.C. Sections 153(n) and 332(d), as in effect from time to time.

**(h) “Gross Receipts”** means the value proceeding or accruing from the sale of tangible personal property, including merchandise and commodities of any kind and character, all receipts actual and accrued, by reason of any business engaged in (not including, however, interest, discounts, rentals of real estate or royalties) and without any deduction on account of the cost of the property sold, cost of the materials used, labor or service cost, interest paid, any consumer excise taxes that may be included in the sales price of the property sold or any other expenses whatsoever and without any deductions on account of losses. The term “*gross receipt*” shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock and used or consumed in connection with said business, and shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed by any person so withdrawing the same, except property which has been previously withdrawn from such business or stock and so used or consumed and with respect to which property the tax has been paid because of such previous withdrawal, use or consumption, except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale as provided in sub-section (x) and not for the personal and private use or consumption of any person so withdrawing, using or consuming the same, and except refinery, residue, or fuel gas, whether in a liquid or gaseous state, that has been generated

by, or is otherwise a by-product of, a petroleum-refining process, which gas is then utilized in the process to generate heat or is otherwise utilized in the distillation of refining of petroleum products.

(i) **“Notice of Appeal of Final Assessment”** 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”** or **“Company”** herein used interchangeably includes any individual, firm, partnership, co-partnership, association, corporation, receiver, trustee or any other group or combination acting as a unit and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(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) **“Prepaid Telephone Calling Card”**. A sale of a prepaid telephone calling card or a prepaid authorization number, or both, shall be deemed the sale of tangible personal property subject to the tax imposed on the sale of tangible personal property pursuant to this ordinance.

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

(p) **“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.

(q) **“Sale”** or **“Sale”** includes installment and credit sales and the exchanges of properties as well as the sale thereof for money, every closed transaction constituting a sale. Provided, however, a transaction shall not be closed or a sale completed until the time and place when and where title is transferred by the seller or seller’s agent to the purchaser or purchaser’s agent, and for the purpose of determining transfer of title, a common carrier or the U.S. Postal Service shall be deemed to be the agent of the seller, regardless of any F.O.B. point and regardless of who selects the method of transportation, and regardless of by whom or the method by which freight, postage, other transportation charge is paid. Provided further that, where billed as a separate

item to and paid by the purchaser, the freight, postage, or other transportation charge paid to a common carrier or the U.S. Postal Service is not part of the selling price.

(r) **“Sale at retail”** or **“retail sale”** shall mean all sales of tangible personal property except those defined below as wholesale sales. The quantities of goods sold, or prices at which sold, are immaterial in determining whether or not a sale is at retail. Sales of building materials to contractors, builders, or landowners for resale or use in the form of real estate are retail sales in whatever quantity sold. Sales of building materials, fixtures, or other equipment to a manufacturer or builder of modular buildings for use in manufacturing, building or equipping a modular building ultimately becoming a part of real estate situated in the City are retail sales, and the use, sale or resale of such building shall not be subject to the tax. Sales of tangible personal property to undertakers and morticians are retail sales and subject to the tax at the time of purchase, but are not subject to the tax on resale to the consumer. Sales of tangible personal property or products to manufacturers, quarry operators, mine operators, or compounders, which are used or consumed by them in manufacturing, mining, quarrying or compounding and do not become an ingredient or component part of the tangible personal property manufactured or compounded as provided in sub-section (x) are retail sales.

The term **“sale at retail”** or **“retail sale”** shall also mean and include the withdrawal, use, or consumption of any tangible personal property by anyone who purchases same at wholesale, except property which has been previously withdrawn from the business or stock and so used or consumed and with respect to which property the tax has been paid because of such previous withdrawal, use or consumption, except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale as provided in sub-section (x) and not for the personal and private use or consumption of any person so withdrawing, using or consuming the same; and such wholesale purchaser shall report and pay the taxes thereon; and except refinery, residue, or fuel gas, whether in a liquid or gaseous state, that has been generated by, or is otherwise a by-product of, a petroleum-refining process, which gas is then utilized in the process to generate heat or is otherwise utilized in the distillation of refining of petroleum products. In the case of the sale of equipment, accessories, fixtures, and other similar tangible personal property used in connection with the sale of commercial mobile services as above defined in Agross proceeds of sales”, or in connection with satellite television services, at a price below cost, the term **“sale at retail”** and **“retail sale”** shall include those sales, and those sales shall not be taxable as a withdrawal, use or consumption of such tangible personal property.

(s) **“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.

(t) **“Tax year”** or **“taxable year”** means the calendar year.

(u) **“Taxpayer”** means any person subject to or liable for taxes herein levied; any person required to file a return with respect to, or to 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.

(v) ***“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.

(w) ***“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 audit, explaining in simple and non-technical 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.

(x) ***“Wholesale sale”*** or ***“sale at wholesale”*** means any one of the following:

1. A sale of tangible personal property by wholesalers to licensed retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers, not for resale.
2. A sale of tangible personal property or products including iron ore, and including the furnished container and label of such property or products, to a manufacturer or compounder which enter into and become an ingredient or component part of the tangible personal property or products which such manufacturer or compounder manufactures or compounds for sale, whether or not such tangible personal property or product used in manufacturing or compounding a finished product is used with the intent that it becomes a component of the finished product; provided, however, that it is the intent of this ordinance that no capital equipment, machinery, tools or product shall be included in the term “wholesale sale”. The term “capital equipment, machinery, tools, or product” shall mean property that is subject to depreciation allowances for Alabama income tax purposes.
3. A sale of containers intended for one-time use only, and the labels thereof, when such containers are sold without contents to persons who sell or furnish such containers along with the contents placed therein for sale by such persons.
4. A sale of pallets intended for one-time use only when such pallets are sold without contents to persons who sell or furnish such pallets along with the contents placed thereon for sale by such persons.
5. A sale to a manufacturer or compounder, of crowns, caps, and tops intended for one-time use employed and used upon the containers in which such manufacturer or compounder markets his products.

6. A sale of containers to persons engaged in selling or otherwise supplying or furnishing baby chicks to growers thereof where such containers are used for the delivery of such chicks or a sale of containers for use in the delivery of eggs by the producer thereof to the distributor or packer of such eggs even though such containers used for delivery of baby chicks or eggs may be recovered for reuse.
7. A sale of bagging and ties used in preparing cotton for market.
8. A sale to meat packers, manufacturers, compounders, or processors of meat products of all casings used in molding or forming wieners and Vienna sausages even though such casings may be recovered for reuse.
9. A sale of commercial fish feed including concentrates, supplements, and other feed ingredients when such substances are used as ingredients in mixing and preparing feed for fish raised to be sold on a commercial basis.
10. A sale of tangible personal property to any person engaging in the business of leasing or renting such tangible personal property to others, if such tangible personal property is purchased for the purpose of leasing or renting it to others under a transaction subject to the privilege or license tax levied in Article 4, Chapter 12, Title 40 of the Code of Alabama, 1975, against any person engaging in the business of leasing or renting tangible personal property to others.
11. A purchase or withdrawal of parts or materials from stock by any person licensed under this ordinance where such parts or materials are used in repairing or reconditioning the tangible personal property of a licensed person, which tangible personal property is a part of the stock of goods of such licensed person, offered for sale by him, and not for use or consumption of such licensed person.

(y) The use within this City of tangible personal property by the manufacturer thereof, as building materials in the performance of a “**construction contract**”, shall, for the purposes of this ordinance be considered as a retail sale thereof by such manufacturer, who shall also be construed as the ultimate consumer of such materials or property, and who shall be required to report such transaction and pay the sales tax thereon, based upon the reasonable and fair market price thereof at the time and place where same are used or consumed by him or it. Where the contractor is the manufacturer or compounder of ready-mix concrete or asphalt plant mix used in the performance of a contract, whether the ready-mix concrete or asphalt plant mix is manufactured or compounded at the job site or at a fixed or permanent plant location, the tax applies only to the cost of the ingredients that become a component part of the ready-mix concrete or the asphalt plant mix. The provisions of this sub-section shall not apply to any tangible personal property which is specifically exempted from the tax levied in this ordinance.

(z) The sale of “**lumber**” by a lumber manufacturer to a trucker for resale is a sale at wholesale as sales are defined herein where the trucker is either a licensed dealer in lumber or, if a resident of Alabama, has registered with the Alabama Department of Revenue, and has received therefrom a certificate of registration or, if a nonresident of this State purchasing lumber for resale

outside the State of Alabama, has furnished to the lumber manufacturer his name, address and vehicle license number of the truck in which the lumber is to be transported, which name, address, and vehicle license number shall be shown on the sales invoices rendered by the lumber manufacturer. Taxpayer must present such current certificate of registration to the Director of Finance upon request. (Section 40-23-1(c), Code of Alabama, 1975)

**(aa)** The dispensing or transferring of “*ophthalmic materials*”, including lenses, frames, eyeglasses, contact lenses, and other therapeutic optic devices to a patient by a licensed ophthalmologist, as a part of his or her professional service, shall not, for purposes of this ordinance be deemed or considered to constitute a sale, subject to the City sales tax. The licensed ophthalmologist shall be considered the ultimate consumer of the ophthalmic materials and shall have no responsibility or duty pursuant to this ordinance for the collection of the City sales tax. The sale of the ophthalmic materials to a licensed ophthalmologist by a supplier thereof shall be considered a retail sale subject to the City sales tax, and the supplier shall be responsible for collecting sales tax from the licensed ophthalmologist. In no event shall the providing of professional services in connection with the dispensing or transferring of ophthalmic materials by a licensed ophthalmologist or optometrist be considered a sale subject to the municipal sales tax. All transfers of ophthalmic materials by opticians or optometrists shall be considered retail sales subject to municipal sales tax. The term “*Asupplier*” shall include but not be limited to optical laboratories, ophthalmic material wholesalers, or anyone selling ophthalmic materials to ophthalmologists. (Section 40-23-1(d) Code of Alabama, 1975)

**(bb)** Notwithstanding the above, the withdrawal, use, or consumption of a manufactured product by the manufacturer thereof in “*quality control testing*” performed by employees or independent contractors of the taxpayer, for purposes of this ordinance, shall not be deemed or considered to constitute a transaction subject to sales tax, nor shall a gift by the manufacturer of a manufactured product, withdrawn from the manufacturer’s inventory, to an entity listed in Title 26 U.S.C. Sections 170(b) or (c), be considered a transaction subject to sales tax. (Section 40-23-1(e), Code of Alabama, 1975)

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

**(dd)** 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 1.**

### **Section 2. PROPERTY TAXED; PERSON LIABLE; APPLICABILITY; TAX IMPOSED-AGRICULTURAL MACHINERY AND EQUIPMENT.**

**2.1 PROPERTY TAXED; PERSON LIABLE; APPLICABILITY.** Pursuant to Section 40-23-2 Code of Alabama 1975, there is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against

the person on account of the business activities and in the amount to be determined by the application of rates against gross sales, or gross receipts, as the case may be, as follows and which shall be collected as herein provided:

**(a) General Rate.** Upon every person, firm or corporation, including the State of Alabama, and its Alcoholic Beverage Control Board in the sale of alcoholic beverages of all kinds, the University of Alabama, Auburn University and all other institutions of higher learning in the state, whether such institutions be denominational, state, county or municipal institutions, any association or other agency or instrumentality of such institutions engaged or continuing within this City in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character, (not including, however, bonds or other evidences of debts or stocks, nor sales of material and supplies to any person for use in fulfilling a contract for the painting, repair, or reconditioning of vessels, barges, ships and other water craft and commercial fishing vessels of over five (5) tons load displacement as registered with the U.S. Coast Guard and licensed by the State of Alabama Department of Conservation and Natural Resources), an amount equal to *four percent (4%)* of the gross proceeds of sales of the business except where a different amount is expressly provided herein. Any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax required on the gross proceeds of retail sales of such business at the rates specified, when his books are kept so as to show separately the gross proceeds of sales of each business, and when his books are not so kept he or she shall pay the tax as a retailer, on the gross sales of the business.

Where any used part, including tires, of an automotive vehicle or truck, trailer, semi trailer or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or rebuilt part or tire, the tax levied herein shall be paid on the net difference, that is, the price of the new or used part or tire sold less the credit for the used part or tire taken in trade; provided, however, this provision shall not be construed to include batteries.

**(b) Amusement/Entertainment Rate.** Upon every person, firm or corporation engaged, or continuing within this City, in the business of conducting, or operating places of amusement or entertainment, billiard and pool rooms, bowling alleys, amusement devices, musical devices, theaters, opera houses, moving picture shows, vaudevilles, amusement parks, athletic contests, including wrestling matches, prize fights, boxing and wrestling exhibitions, football and baseball games, (including athletic contests conducted by or under the auspices of any educational institution within this State, or any athletic association thereof, or other association whether such institution or association be a denominational, a state, or county, or a municipal institution or association or a state, county, or city school, or other institution, association or school), skating rinks, race tracks, golf courses, or any other place at which any exhibition, display, amusement or entertainment is offered to the public or place or places where an admission fee is charged, including public bathing places, public dance halls of every kind and description within the City, an amount equal to *four percent (4%)* of the gross receipts of any such business. Provided, however, notwithstanding any language to the contrary in the prior portion of this ordinance, the tax provisions so specified shall not apply to any athletic event conducted by a public primary or secondary school or any football playoff conducted by or under the auspices of the Alabama High School Athletic Association. The tax amount which would have been collected pursuant to

this sub-section shall continue to be collected by the public primary or secondary school but shall be retained by the school which collected it and shall be used by the school for school purposes.

(c) **Machine Rate.** Upon every person, firm or corporation engaged or continuing within this City in the business of selling at retail machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property, an amount equal to *two percent (2%)* of the gross proceeds of the sale of such machines. The term "*machine*", as herein used, shall include machinery which is used for mining, quarrying, compounding, processing or manufacturing tangible personal property, and the parts of such machines, attachments and replacements therefor, which are made or manufactured for use on or in the operations of such machines and which are necessary to the operation of such machines and are customarily so used.

(d) **Automotive Rate.** Upon every person, firm or corporation engaged or continuing within this City in the business of selling at retail any automotive vehicle or truck trailer, semi trailer or house trailer, or mobile home set-up materials and supplies including but not limited to steps, blocks, anchoring, cable pipes, and any other materials pertaining thereto, an amount equal to *two percent (2%)* of the gross proceeds of sale of said automotive vehicle or truck trailer, semi trailer or house trailer, or mobile home set-up materials and supplies, provided, however, where a person subject to the tax provided for in this sub-section withdraws from his or her stock in trade any automotive vehicle or truck trailer, semi trailer or house trailer for use by him or her or by his or her employee or agent in the operation of such business, there shall be paid, in lieu of the tax levied herein, a fee of five dollars (\$5) per year or part thereof during which such automotive vehicle, truck trailer, semi trailer or house trailer shall remain the property of the person. Each such year or part thereof shall begin with the day or anniversary date, as the case may be of such withdrawal and shall run for the twelve succeeding months or parts thereof during which such automotive vehicle, truck trailer, semi trailer or house trailer shall remain the property of such person.

Where any used automobile vehicle or truck trailer, semi-trailer or house trailer is taken in trade or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference, that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade.

Sales of automobiles, motorcycles, trucks, truck trailers, or semi trailers that will be registered or titled outside Alabama that are exported or removed from Alabama within seventy-two (72) hours by the purchaser or his or her agent for first use outside Alabama are not subject to municipal sales tax. Sales of other vehicles such as mobile homes, motor bikes, all terrain vehicles, and boats do not qualify for the export exemption provision and are taxable unless the dealer can provide factual evidence that the vehicle was delivered outside of Alabama or to a common carrier for transportation outside Alabama. In order for the sale to be exempt from municipal sales tax, the information relative to the exempt sale shall be documented on forms approved by the Director of Finance.

(e) **Vending Machine Rate.** Upon every person, firm or corporation engaged or continuing within this City in the business of selling through coin operated dispensing machines, food and

food products for human consumption, not including beverages other than coffee, milk, milk products and substitutes therefor, there is hereby levied a tax equal to **four percent (4%)** of the cost of such food, food products and beverages sold through such machines, which cost for the purpose of this sub-section shall be the gross proceeds of sales of such business.

**2.2 Agricultural Machinery and Equipment - Tax Imposed; Rate.** There is hereby levied, pursuant to Section 40-23-37 Code of Alabama 1975, a sales tax, upon every person, firm, or corporation engaged or continuing within this City in the business of selling at retail any machine, machinery, or equipment which is used in planting, cultivating, and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, and the parts of such machines, machinery, or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery, or equipment, and which are necessary to and customarily used in the operation of such machine, machinery, or equipment, an amount equal to **two percent (2%)** of the gross proceeds of the sale thereof. Provided, however, the **two percent (2%)** rate herein prescribed with respect to parts, attachments, and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities.

Where any used machine, machinery, or equipment which is used in planting, cultivating, and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock, and poultry on farms is taken in trade or in a series of trades as a credit or part payment on a sale of a new or used machine, machinery, or equipment, the tax levied herein shall be paid on the net difference, that is, the price of the new or used machine, machinery or equipment sold, less the credit for the used machine, machinery, or equipment taken in trade.

### **Section 3. EXEMPTIONS.**

**3.1 GENERAL.** There are exempted from the provisions of this ordinance and from the computation of the amount of the tax levied, assessed or payable under this ordinance the gross proceeds of sales of tangible personal property or the gross receipts of any business which the City is prohibited from taxing under the constitution or laws of the United States or under the constitution or laws of the State of Alabama, as now or hereafter amended, with particular reference to Article 1, Chapter 23, Title 40, Code of Alabama 1975, entitled "*Sales Tax*", as the same is now or hereafter amended and all acts supplemental thereto except where inapplicable or where herein otherwise provided, is adopted and made a part hereof by reference.

**3.2 SPECIAL.** Special exemptions from the taxes imposed by this ordinance are allowed in all other instances where the Sales Taxes levied under Article 1, Chapter 23, Title 40, Code of Alabama 1975 are exempted under any other provision of the Code of Alabama 1975.

**Section 4. LICENSE REQUIRED TO ENGAGE IN BUSINESS.** If any person, on or after October 1, 1974, shall engage in or continue in any business for which a privilege tax is imposed by Section 2 of this ordinance, pursuant to Section 40-23-6 Code of Alabama 1975, 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 of Birmingham, under the provisions of this ordinance, provided, that no license shall be issued 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 AND PAYMENT OF TAX.** The taxes levied under the provisions of this ordinance, except as otherwise provided in sub-section (c) of this section, shall be administered pursuant to Section 40-23-7 Code of Alabama 1975, and shall be due and payable in monthly installments on or before the 20th day of the month next succeeding the month in which the tax accrues.

**(a) Due Date and Contents of Return; Payment of the Tax.** On or before the 20th day of each month, every person on whom the taxes levied by this ordinance are imposed shall report to the department, on a form prescribed by the department, a true and correct statement showing:

- (1) The gross sales, the gross proceeds of sales, or gross receipts of his business, as the case may be, for the next preceding month;
- (2) The amount of gross proceeds of sales or gross receipts which are not subject to the tax, or are not to be used as a measure of the taxes due by such person, and the nature thereof; and,
- (3) Such other information as the department may deem necessary.

At the time of making such monthly report, such persons shall compute the taxes due and shall pay to the City of Birmingham the amount of taxes shown to be due.

**(b) Taxpayer's Responsibility When No Form Received.** The department is authorized to provide prescribed printed forms necessary for compliance with the filing requirements outlined in this section. 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.

**(c) Tax Return Filing Elections.**

**(1) Election to File Quarterly; Requirements.**

- a. If the total amount of *taxable* sales for which any person is liable under this ordinance does not exceed five thousand dollars (\$5,000) *per month* during the preceding calendar year, or, if the total tax liability due to the State of Alabama for such sales during such period averages less than two hundred dollars (\$200) *per month* during the preceding calendar year, a

quarterly return and remittance in lieu of the monthly returns may be made, by election of the taxpayer to the department, on or before the *twentieth (20th)* day of the month next succeeding the end of the quarter for which the tax is due, and under such rules and regulations as may be prescribed in Section 40-23-7, Code of Alabama 1975.

- b. In order to file quarterly, the election shall be made in writing no later than *February 20th* of each year and shall be filed with the department. If such election is not timely made and in accordance with the provisions of this sub-section, returns shall be due monthly as provided for in this section.

- (2) **Election to File Yearly.** Notwithstanding the above, if the total amount of *taxable* sales for which any person is liable under this ordinance does not exceed two hundred fifty dollars (\$250) during the preceding calendar year, or, if the total tax liability due to the State of Alabama for such sales during such period is less than ten dollars (\$10) during the preceding calendar year, a yearly return and remittance shall be made to the department, on or before the 20th day of January of each year. In order to file yearly, the election shall be made in writing and shall be filed with the department. If such election is not timely made and in accordance with the provisions of this sub-section, returns shall be due monthly as provided for in this section.

**(d) 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 herein provided.

- (1) **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:

- (a) **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.

- (b) **Mailing Requirements.** The return, claim, statement, or other document, or payment was, within the time prescribed in sub-section (1) 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.

- (2) **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.
- (3) **Untimely Filing.** Any return, claim, statement, or other document, or payment 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.

(e) **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, as provided in Section 11-51-210(d) Code of Alabama 1975. 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 sales 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.

(f) **Returns To Be Filed Even Though No Tax May Be Due.** Where a return is required to be filed pursuant to a provision of this ordinance, such returns shall be filed in accordance with the provisions outlined herein, provided that, a return should be filed for each reporting period, by the due date required, even when no tax is due.

**Section 6. EXTENSION OF TIME FOR MAKING RETURN.** In accordance with Section 40-23-7 Code of Alabama 1975, 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. CREDIT SALES.** Pursuant to Section 40-23-8 Code of Alabama 1975, any person taxable under this ordinance having cash and credit sales may report such cash sales, and the taxpayer shall thereafter include in each monthly report all credit collections made during the month preceding, and shall pay the taxes due thereon at the time of filing such report, but in no event shall the gross proceeds of credit sales be included in the measure of the tax to be paid until collections of such credit sales shall have been made.

**Section 8. OATHS.** As provided in Section 40-23-10 Code of Alabama 1975, 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 intent to defraud shall constitute perjury, and upon conviction thereof, the person so convicted shall be punished as provided in Section 1-1-6 of the 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 in Sections 40-23-9 and 40-2A-7(a) Code of Alabama 1975.

**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 an accurate and complete set of records of the gross sales, gross proceeds of sales and gross receipts or gross receipts of sales of such business 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 invoices of goods, wares and merchandise purchased, for resale or otherwise, and all such receipts, books, invoices 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.** For the purposes of this section, “*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.** As provided in Section 40-2A-6(d) Code of Alabama 1975, 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.
- (c) **Selling at Wholesale and Retail.** Any person selling both at wholesale and retail shall keep his books so as to show separately the gross proceeds of wholesale sales and the gross proceeds of retail sales. All sales shall be subject to tax in the absence of such separate records.

**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 the correct amount of tax as provided for in Section 9.1. The Director of Finance is hereby authorized to examine any person under oath concerning any gross receipts 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.

- (a) Any taxpayer, or 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 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.** Section 40-2A-7(a), Code of Alabama 1975 outlines further requirements for the maintenance of records, in addition to the record keeping requirements set out in Section 9.1 of this ordinance. The department's authority to audit, to subpoena records, and to enter into contracts with private

examining or collecting firms is granted pursuant to Act No. 98-191, the “*Local Tax Procedures Act of 1998*”, Act No. 98-192, the “*Local Tax Simplification Act of 1998*”, as well as Section 40-2A-7(a), Code of Alabama 1975, except where inapplicable or where herein otherwise provided.

## **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 as provided in Section 40-2A-7(c)(1) Code of Alabama 1975. 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 jointly by the taxpayer who collected and paid over the tax to the department and the purchaser who paid the tax to the taxpayer. However, a direct petition may be filed in writing by the taxpayer if the taxpayer never collected the tax from the consumer/purchaser, or if the tax has been credited or repaid to the consumer/purchaser by the taxpayer.

(c) Unless otherwise provided by law, all petitions for refund shall include sufficient information to identify the type and amount of tax over paid, 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 REFUND OVERPAYMENTS APPLIED TO OTHER TAXES.** Refund overpayments may be applied to other taxes as provided in Section 40-2A-7(c)(4) Code of Alabama 1975. If a petition is granted by the department, or a court determines that a refund is due, the overpayment shall be refunded to the taxpayer by the department. If the department determines that a refund is due, the amount of overpayment may first be credited by the department against any outstanding final tax liabilities due and owing by the taxpayer to the department, and the balance of any overpayment shall be refunded to the taxpayer. If any refund or part thereof is credited to any other tax by the department, the department shall provide a written detailed statement to the taxpayer showing the amount of overpayment, the amount credited for payment to other taxes, and the amount refunded.

### **10.3 TIME LIMITATIONS.**

(a) A petition for refund must be filed in writing with the department within (i) three (3) years from the date the return was filed or (ii) two (2) years from the date of payment of the tax, whichever is later, or (iii) if no return was timely filed, two (2) years from the date of the payment of the tax.

(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 documentation, 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.

**10.4 INTEREST ON REFUNDS.** On any overpayment of any sales tax levied under any provisions of this ordinance, the City, in addition to the amount of the overpayment, shall refund interest thereon at the rate of one percent (1%) per month, or fraction thereof, from the date of such overpayment on any refund of tax erroneously paid. As provided in Section 11-51-208(f) Code of Alabama 1975, references in this sub-section to "*erroneously paid*" taxes on which interest shall be due to the taxpayer shall only mean and refer to taxes erroneously paid to the City as a result of any error, omission, or inaccurate written advice by or on behalf of the City, including in connection with a prior examination of its books and records by the City.

**10.5 ASSIGNMENT OF REFUNDS.** The right of any person to a refund under this section is not assignable. A petition for a refund must be made by the person who withheld and remitted the tax.

**10.6 ACTION FOR RECOVERY OF REFUND.** It is unlawful for any petitioner for a tax refund to make a false statement in connection with such application. If any person obtains a refund unlawfully, the Director of Finance is empowered and directed to bring appropriate action for recovery of such refund. A conviction for the violation of this subsection shall constitute prima facie evidence that all refunds received by such person pursuant to the petition which contained the false statement were obtained unlawfully. Obtaining a refund unlawfully shall be an act of fraud against the City and shall be subject to applicable penalties outlined in Article I, Section 13 of this ordinance.

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

**11.1 JEOPARDY ASSESSMENTS.** 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 a person liable for tax under any provisions of this ordinance designs quickly to depart from the City of Birmingham or to remove his property therein, or to conceal himself or 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 tax, 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 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 costs 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 in Sections 40-2A-7(b)(1)a, 40-2A-7(b)(3), 40-2A-7(b)(4), 40-2A-7(b)(1)b and Section 40-29-91 Code of Alabama 1975. The terms “*preliminary assessment*” and “*final assessment*” shall have the respective meanings ascribed by Section 40-2A-3 Code of Alabama 1975.

**(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) **Appeal - Review of Assessments by City Council.** In the case of any preliminary assessment or jeopardy assessment entered under the provisions of this ordinance, the department shall notify the taxpayer by certified mail with return receipt requested to the taxpayer’s last known address, or written notice delivered by the department’s authorized agent, of the amount of such assessment, and shall notify the taxpayer to appear before the City Council on a day named not less than thirty (30) days from the date of such notice and show cause why such assessment should not be made final. Such appearance may be made by the taxpayer or his duly authorized agent. If no showing is made on or before the date fixed in such notice, or if such showing is not sufficient in the judgment of

the City Council, such assessment shall be made final in the amount originally fixed or in such other amount as is determined by the City Council to be correct. If upon such hearing the City Council finds the amount due to be different from that originally assessed, it shall make the assessment final in the correct amount and in all cases shall notify the taxpayer of the assessment as finally fixed, by certified mail with return receipt requested addressed to the taxpayer's last known address. On appeal to the City Council, the final assessment shall be prima facie correct, and the burden of proof shall be on the taxpayer to prove such assessment is incorrect.

**(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)** Pursuant to Section 40-2A-7(b)(2) Code of Alabama 1975, any preliminary assessment must be entered within three (3) years from the due date of the return, or three (3) years from the date the return is filed with the department, whichever is later, or if no return is required to be filed, within three (3) 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 proceeds from sales, gross receipts, 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.
- 3. A preliminary assessment entered pursuant to Sections 40-29-72 and 40-29-73, Code of Alabama 1975, may be entered within five (5) years from the due date of the return on which the underlying tax is required to be reported or within five (5) years of the date the return is filed, whichever is later.

(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 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 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 Circuit Court within the time provided herein for appeal of final assessments, the appeal shall be dismissed for lack of jurisdiction.

### **12.3 APPEAL FROM PRELIMINARY ASSESSMENT.** *[Refer to Section 11.2(2)(a)]*

### **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) 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 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 notice of appeal to 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 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.** The provisions for penalties are pursuant to Section 40-2A-11 Code of Alabama 1975; provided, however, the rates and amounts of penalties are as provided herein.

**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 collected, 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 as provided in Section 40-2A-11(a) Code of Alabama 1975.

**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 collected; or,
- (2) For any tax 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, 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 as provided in Section 40-2A-11(b) Code of Alabama 1975.

**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 collected and paid 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 collected, a penalty of ten percent (10%) of the amount of tax 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 became due and payable, such penalty and interest to be assessed and collected as part of the tax.

**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, as provided in Section 40-2A-11(c) Code of Alabama 1975.

**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 City Council 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, as provided in Section 40-2A-11(f) Code of Alabama 1975.

**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 taxes, underpayment due to negligence and fraud, or filing a frivolous appeal may be asserted against the same taxpayer for the same tax period, as provided in Section 40-2A-11(g) Code of Alabama 1975.

**13.8 WAIVER OF PENALTIES.** Penalties may be waived, in whole or in part, by the Director of Finance upon a determination of reasonable cause, pursuant to Section 40-2A-11(h) Code of Alabama 1975. 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 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, as provided in Section 40-1-44 Code of Alabama 1975.

**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, truthfully account for, and/or pay over any tax imposed by this ordinance who willfully fails to collect 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 other penalties provided by law, be liable for a penalty up to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

**Section 14. CONFIDENTIALITY OF TAX RETURNS.** The confidentiality provisions imposed by this ordinance shall be executed as provided in Section 40-2A-10(a), (d), (e), (f) and (g) Code of Alabama 1975.

**(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 40-23-25 Code of Alabama 1975. 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.** Regulations may be promulgated as provided in Section 40-23-31 Code of Alabama 1975.

#### **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 collection 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 adopt, prescribe, 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 taxpayers.

(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 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 subject to the provisions of Section 40-23-25 Code of Alabama 1975, 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 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 (30) 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 TAXES.** All money derived from sales tax 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. BOND REQUIREMENTS.** For the purpose of securing the payment of any tax, penalties, or interest due or which may become due under the provisions of this ordinance, every itinerant vendor engaged in the business of selling tangible personal property at retail in the City of Birmingham shall be required to file a bond to be approved by the Director of Finance, conditioned upon the payment of any tax, penalty, or interest due or to become due under this ordinance and upon faithful observance of the provisions of this ordinance, as provided in Section 40-23-24 Code of Alabama 1975.

(a) Such bond shall:

1. Be effective for a period of one year from date of issuance;
2. Be in an amount equal to the tax estimated due or to become due under the provisions of this ordinance, but in no event shall said bond be less than one thousand dollars (\$1,000) nor more than three percent (3%) of anticipated sales, whichever is greater, as fixed by the Director of Finance; and,
3. Have a surety or sureties satisfactory to the Director of Finance; *or*,

(b) Said itinerant vendor may deposit in cash said sum, which shall be estimated by the Director of Finance to be due or to become due under the provisions of this ordinance.

If such itinerant vendor fails to make any return due under this ordinance or to pay any taxes or penalties due hereunder, or to keep books and records as required by this ordinance, or fails to perform any other duty or obligation imposed on him under this ordinance, such bond, or cash deposited in lieu thereof, shall thereupon be forfeited, and the department shall institute an action upon such bond in the name of the City of Birmingham for the entire amount of said bond and costs.

**Section 19. DISCOUNT.** A discount of three-fourths of one percent (.0075) of the taxes levied by this ordinance due and payable to the City shall be allowed to the seller or vendor provided the taxes due by such seller are paid before the same becomes delinquent, as provided in this ordinance. If the returns are not filed within the time herein provided and the taxes not paid on the dates herein provided for, no such person shall be entitled to such a discount, but shall pay to the City the amount of tax due, together with applicable penalty and interest at the rate of one percent (1%) per month from the date the payment of said tax became delinquent.

**Section 20. SELLER TO COLLECT AND REMIT TAXES.** Tax to be added to purchase price pursuant to Section 40-23-26 Code of Alabama 1975.

(a) Every person, firm, corporation, association or co-partnership engaged in or continuing within the City in any business for which a license or privilege tax is required by this ordinance shall add to the sales price and collect from the purchaser on all sales upon the gross receipts or gross proceeds of which there is levied by this ordinance a sales tax at the rate of *four percent*

(4%) of the sales price. Upon all sales the gross receipts or gross proceeds of which are taxed by this ordinance at a rate of less than *four percent (4%)*, there shall be added to the sales price and collected from the purchaser by such person, firm, corporation, association, or co partnership described in this section an amount equal to the prescribed percentage of such sales price.

(b) It shall be unlawful for any person, firm, corporation, association, or co partnership described in this section to fail or refuse to add to the sales price and collect from the purchaser the amount required by this section to be so added to the sales price and collected from the purchaser; and it shall likewise be unlawful to refund or offer to refund all or any part of the amount collected, or to absorb or advertise directly or indirectly the absorption or refund of the amount required to be added to the sales price and collected from the purchaser, or any portion of such amount. Any person, firm, corporation, association, or co partnership violating any of the provisions of this section shall upon conviction be fined in a sum of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00), or may be imprisoned for not more than six (6) months, or may be punished by both such fine and imprisonment, and each act in violation of the provisions of this ordinance shall constitute a separate offense. The requirement herein that there shall be added to the sales price and collected from the purchaser the amounts provided herein shall in no way relieve the person, firm, corporation, association, or co partnership described in this section of the tax levied by this ordinance, nor shall the inability, impracticability, refusal, or failure to add to the sales price and collect from the purchaser the amounts provided herein relieve such person, firm, corporation, association or co partnership from the tax levied by this ordinance.

(c) All taxes paid in pursuance to this ordinance shall conclusively be presumed to be a direct tax on the retail consumer pre-collected for the purpose of convenience and facility only.

(d) In the event that any sum is collected from a consumer that purports to be collected because of this section, whether or not the amount is actually provided for hereunder, then any such sum, except such as is collected solely because of rounding the correct amount of tax upward to the nearest cent, shall be paid to the department.

**Section 21. CREDIT FOR SALES TAX ERRONEOUSLY PAID.** Pursuant to Section 40-23-2.1 Code of Alabama 1975, if a sales tax equal to or greater than the amount of the Birmingham sales tax is paid to another city under a requirement of law, the property which is the subject of such tax, when imported for use or consumption in Birmingham, is not subject to the sales tax, which is required to be paid by Section 2 of this ordinance. The Director of Finance shall require such proof of payment of tax to another city as he deems to be necessary and proper.

### **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 a

sales 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 a sales 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 sales 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 sales tax imposed by the City exceeds the rate of sales 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 joint petitions for refund as required by Section 10.1 of this Ordinance.

**Section 22. SALES TAX IN ADDITION TO OTHER TAXES.** The tax imposed by this ordinance pursuant to Section 40-23-28 Code of Alabama 1975, shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business taxable hereunder, except as in this ordinance otherwise specifically provided.

**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 et seq., and/or 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) Liens Generally.** If any person liable to pay the 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, belonging to such person.

**(b) Notice of Lien.** 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.

**(c) Term.** Unless another date is specifically fixed by law, the lien imposed by sub-section (a) shall arise at the time 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.

**(d) 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.

**(e) Release of Lien.** If the taxpayer shall file with the department a bond in double the amount of the lien filed, with surety or sureties to be either a surety company authorized to do business in Alabama or such individual property owners, not less than three in number, as recommended by the judge of probate of the county in which the notice of lien is recorded, conditioned to pay all such tax, interest penalty, additional amount or addition to such tax, together with any costs which may occur in addition thereto as may be assessed against the taxpayer, principal in said bond, the Director of Finance shall withdraw and release said lien filed under the provisions of this subsection, and upon a determination that the said taxpayer owes any of said taxes to the City, the assessment (judgment) there for shall be entered against said taxpayer and the surety or sureties on said bond; and, if not paid within 30 days from the date of said final assessment (judgment), then execution shall issue there for against said principal and the surety or sureties on said bond. If the bond hereinabove provided for is not given and approved by the Director of Finance, and final assessment (judgment) is entered against said taxpayer and he duly and legally appeals there from within the time and in the manner provided for by this ordinance, and if the court approves the bond required for an appeal or the said taxpayer against whom the assessment was entered by the department shall, within 30 days from the date of the assessment, pay the amount thereof to the city, then, in either of said events, the Director of Finance shall cancel or release from record said lien. ”

**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, as provided in Section 40-23-27 Code of Alabama 1975, 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 40-23-11 and 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, pursuant to Section 40-23-12 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 other City ordinances, 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 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 General Code of the City of Birmingham 1980, as amended and as it may be amended.

**Section 28. REQUEST FOR RULING ON DETERMINATION OF TAXATION.** Any taxpayer may request a ruling on the determination of whether amounts of gross proceeds of sales or gross receipts of his/her business are subject to the tax, or are not to be used 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, and shall include a copy of any written determinations or revenue rulings issued by the State of Alabama Department of Revenue relating to the item(s) in question.

**SECTION 2. CAPTIONS.** The captions given to various provision of this ordinance are for the purposes of convenience only and are to have no impact upon the interpretation of any

such provisions.

**SECTION 3. SEVERABILITY.** The provisions of this ordinance are severable. If any provision, section, paragraph, sentence, or part thereof, or the 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 4. EFFECTIVE DATE OF ORDINANCE.** This ordinance shall become effective and operative immediately upon its publication as provided by law.

**SECTION 5. EXPIRATION OF ADDITIONAL ONE CENT.** This tax will automatically expire on December 31, 2013 unless specifically readopted and continued by the Council by passage of a separate and additional ordinance.

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