

THE USE TAX CODE

**Adopted by Ordinance No. 97-186
on December 23, 1997**

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and continuing in effect until amended or repealed**

*Amended by Ordinance No. 98-109 adopted 06/30/98
Amended by Ordinance No. 98-174 adopted 11/10/98
Amended by Ordinance No. 99-211 adopted 12/21/99
Amended by Ordinance No. 00-210 adopted 12/12/00
Amended by Ordinance No. 01-166 adopted 12/18/01
Amended by Ordinance No. 02-176 adopted 12/10/02
Amended by Ordinance No. 07-232 adopted 12/18/07*

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CITY OF BIRMINGHAM, ALABAMA

ORDINANCE NO. 97-186

AN ORDINANCE FOR THE LEVY AND ASSESSMENT OF A USE TAX.

BE IT ORDAINED by the Council of the City of Birmingham, Alabama, pursuant to Sections 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 40-23-60 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, dragline, 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 subactivities producing marketable commodities used or consumed in the main business activity, each of which subactivities 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) "*In this City*" or "*in the City*" means within the exterior limits of the City of Birmingham.

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

(i) "*Person*" or "*company*" means any individual, firm, company, partnership, association, corporation, receiver, or 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.

(j) ***“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.

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

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

(m) ***“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 pursuant to this ordinance.

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

(o) ***“Purchase”*** means acquired for a consideration, whether such acquisition was effected by a transfer of title, or of possession or of both, or a license to use or consume; whether such transfer shall have been absolute or conditional, and by whatsoever means the same shall have been effected; and whether such consideration be a price or rental in money, or by way of exchange or barter.

(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 at retail”*** or ***“retail sale”*** shall mean all sales of tangible personal property except those herein defined 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 of Birmingham 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 are retail sales.

“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; 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.

“Retail sale” or **“sale at retail”** shall also mean and include the sale of tangible personal property previously purchased at wholesale for the purpose of leasing or renting under a transaction subject to the privilege or license tax levied under Ordinance No. 97-187, The Lease Tax Code of the City of Birmingham, 1998, as amended and as it may be amended, regardless of whether such sale is to the person who theretofore leased or rented the said tangible personal property or to some other person.

(r) **“Sales price”** means the total amount for which tangible personal property is sold, including any services, including transportation, that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction there from on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest charged, losses or any other expenses whatsoever; provided, that cash discounts allowed and taken on sales shall not be included and sales price shall not include the amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or by credit.

(s) **“Storage”** means and includes any keeping or retention in this City for any purpose except sale in the regular course of business or subsequent use solely outside this City of tangible personal property purchased at retail.

(t) **“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.

(u) **“Taxpayer”** means any person subject to or liable for the tax herein levied; any person required to file a return with respect to, or to pay 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 examination, 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) **“Use”** means and includes the exercise of any right or power over tangible personal property incident to the ownership of that property, or by any transaction where possession is given, except that it shall not include the sale of that property in the regular course of business.

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

1. A sale of tangible personal property by wholesaler 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 the 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 become a component of the finished product; provided, however, that it is the intent of this section that no sale of 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 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.
9. 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, Code of Alabama 1975, against any person engaging in the business of leasing or renting tangible personal property to others.
10. 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 such 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.
11. A sale to meat packers, manufacturers, compounders of processors of meat products of all casings used in moulding or forming wieners and Vienna sausages, even though such casings may be recovered for reuse.

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

(aa) 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; PERSONS LIABLE; APPLICABILITY; TAX IMPOSED ON AGRICULTURAL MACHINERY OR EQUIPMENT; RATE; WHO LIABLE.

2.1 PROPERTY TAXED; PERSONS LIABLE; APPLICABILITY. Pursuant to Section 40-23-61 Code of Alabama 1975, there is hereby levied, in addition to all other taxes of every kind now imposed by law, an excise tax upon the storage, use or other consumption in this City of

tangible personal property, in amounts to be determined by the application of rates against gross sales or gross purchases as follows, and which shall be collected as herein provided:

(a) General Tax Rate. An excise tax is hereby imposed on the storage, use or other consumption in this City of tangible personal property not including, however, materials and supplies bought for use in fulfilling a contract for the painting, repairing or reconditioning of vessels, barges, ships and other watercraft and commercial fishing vessels of over five tons load displacement as registered with the U.S. Coast Guard and licensed by the State of Alabama Department of Conservation and Natural Resources, purchased at retail on or after the first day of October, 1974, for storage, use or other consumption in this City at the rate of *four percent (4%)* of the sales price of such property or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his records prove that his following said brackets resulted in a net under collection of tax for the month, he may report the tax due or tax collected, whichever is less, except as provided in sub-sections (b) and (c) of this section.

(b) Machine Tax Rate. An excise tax is hereby imposed on the storage, use or other consumption in this City of any machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property, purchased at retail on or after October 1, 1974, at the rate of *two percent (2%)* of the sales price of any such machine or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his records prove that his following said brackets resulted in a net under collection of tax for the month, he may report the tax due or tax collected, whichever is less; provided, that 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 operation of such machines and which are necessary to the operation of such machines and are customarily so used.

(c) Automotive Tax Rate. An excise tax is hereby imposed on the storage, use or other consumption in this City of any automotive vehicle or truck trailer, semitrailer or house trailer and mobile home set-up materials and supplies including, but not limited to, steps, blocks, anchoring, cable pipes and any other materials pertaining thereto, purchased at retail on or after October 1, 1974, for storage, use or other consumption in this City at the rate of *two percent (2%)* of the sales price of such automotive vehicle, truck trailer, semitrailer or house trailer, and mobile home set-up materials and supplies as specified above, or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his records prove that his following said brackets resulted in a net under collection of tax for the month, he may report the tax due or tax collected, whichever is less. Where any used automotive vehicle or truck trailer, semitrailer 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.

(d) Liability for Tax Not Extinguished. Every person storing, using or otherwise consuming in this City tangible personal property purchased at retail shall be liable for the tax imposed by this ordinance, and the liability shall not be extinguished until the tax has been paid to this City; provided, however, that a receipt from a retailer maintaining a place of business in this City or a retailer authorized by the department, under such rules and regulations as it may prescribe, to collect the tax imposed hereby and who shall for the purpose of this ordinance be regarded as the retailer maintaining a place of business in this City, given to the purchaser in accordance with the provisions of Section 20 of this ordinance, shall be sufficient to relieve the purchaser from further liability for tax to which such receipt may refer.

(e) Tax Measured by Sales Price of Fair and Reasonable Market Value. An excise tax is hereby imposed on the classes of tangible personal property, and at the rates imposed on such classes, specified in sub-sections (a), (b), and (c) of this section, on the storage, use or other consumption in the performance of a contract in this City of any such tangible personal property, new or used, the tax to be measured by the sales price of the fair and reasonable market value of such tangible personal property when put into use in this City, whichever is less; provided, that the tax imposed by this sub-section shall not apply where the taxes imposed by sub-sections (a), (b), or (c) of this section apply.

2.2 TAX IMPOSED ON AGRICULTURAL MACHINERY OR EQUIPMENT; RATE; WHO LIABLE. Pursuant to Section 40-23-63 Code of Alabama 1975, there is hereby levied and imposed an excise tax on the storage, use or other consumption in this City of 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, or 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, which is purchased at retail on or after October 1, 1974, for storage, use or other consumption in this City, at the rate of *two percent (2%)* of the sales price of such property or the amount of tax collected by the seller, whichever is greater, provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his records prove that his following said brackets resulted in a net under collection of tax for the month, he may report the tax due or tax collected, whichever is less, regardless of whether the retailer is or is not engaged in business in the City. 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.

Every person storing, using or otherwise consuming in this City such tangible personal property purchased at retail shall be liable for the tax imposed by this ordinance, and the liability shall not be extinguished until the tax has been paid to this City; provided, however, that a receipt from a retailer maintaining a place of business in this City or a retailer authorized by the department under such rules and regulations as the City may prescribe, to collect the tax imposed hereby and who shall for the purpose of this ordinance be regarded as a retailer maintaining a place of business in this City, given to the purchaser in accordance with the provisions of Section

40-23-67 Code of Alabama 1975, shall be sufficient to relieve the purchaser from further liability for a tax to which such receipt may refer.

Section 3. EXEMPTIONS.

3.1 GENERAL. Taxes imposed by this ordinance shall be subject to all exemptions as are provided in Article 2, Chapter 23, Title 40, Code of Alabama 1975, the State Use Tax Law, as now or hereafter amended, all acts supplementary thereto except where inapplicable or where herein otherwise provided, all of which are adopted and made a part hereof by reference. (*Section 40-23-62*)

3.2 SPECIAL. Special exemptions from the taxes imposed by this ordinance are allowed in all other instances where the Use Taxes levied under Article 2, Chapter 23, Title 40, Code of Alabama 1975 are exempted under any other provision of the Code of Alabama 1975.

Section 4. RETAIL SELLERS TO REGISTER AND GIVE INFORMATION; EXCEPTIONS. Pursuant to Section 40-23-66 Code of Alabama 1975, every seller engaged in making retail sales of tangible personal property for storage, use or other consumption in this City, who:

- (a) Maintains a place of business;
- (b) Qualifies to do business;
- (c) Solicits and receives purchases or orders by agent or salesman; or
- (d) Distributes catalogs or other advertising matter and by reason thereof receives and accepts orders from residents, within the City of Birmingham,

shall register with the department and give the name and address of each agent operating in this City, the location of any and all distribution or sales houses or offices or other places of business in this City, the number of persons in the City of Birmingham to whom catalogs are delivered, by mail or otherwise, the number of persons in the City from whom orders are received, by mail or otherwise, together with the amount of the purchase price charged and received, and such other information as the department may require with respect to matters pertinent to the enforcement of this ordinance; provided, however, that this section shall not apply to a seller holding a license obtained pursuant to the provisions of Ordinance No. 97-185, known as the Sales Tax Code of the City of Birmingham, 1998.

Section 5. FILING OF RETURNS AND PAYMENT OF TAX. The provisions of this section, except where inapplicable or where herein otherwise provided, shall be administered pursuant to Section 40-23-68 Code of Alabama 1975, as amended, and as it may be amended, and for such purposes are hereby incorporated into this ordinance by reference.

5.1 SELLER TO FILE RETURNS AND PAY TAX.

(a) Due Date of Tax-Seller. The tax imposed by this ordinance shall, except as otherwise provided in sub-section 5.5, be due and payable to the City quarterly on or before the twentieth (20th) day of the month next succeeding each quarterly period during which the storage, use, or other consumption of tangible personal property becomes taxable hereunder, the first of such periods being the period commencing with the first day of October, 1974, and ending the 31st day of December, 1974. Thereafter said returns shall be due for each calendar quarter.

(b) Qualifications-Seller; Due Date of Returns; Contents of Returns. Every seller engaged in making retail sales of tangible personal property for storage, use or other consumption in this City, who alternatively:

- (1) Maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business;
- (2) Qualifies to do business or registers with the City to collect the tax levied by this ordinance;
- (3) Employs or retains under contract any representative, agent, salesman, canvasser, solicitor or installer operating in this City under the authority of the person or its subsidiary for the purpose of selling, delivering, or the taking of orders for the sale of tangible personal property or any services taxable under this ordinance or otherwise solicits and receives purchases or orders by any agent or salesman;
- (4) Solicits, pursuant to a contract with a broadcaster or publisher located in this City, orders for tangible personal property by means of advertising which is disseminated primarily to consumers located in this City and only secondarily to bordering jurisdiction;
- (5) Solicits orders for tangible personal property by mail in this City if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in the State of Alabama or benefits from the location in the State of Alabama of authorized installation, servicing, or repair facilities;
- (6) Has, under a franchise or licensing arrangement or contract, a franchisee or licensee operating under its trade name;
- (7) Solicits, pursuant to a contract with a cable television operator located in the State of Alabama, orders for tangible personal property by means of advertising which is transmitted or distributed over a cable television system in this City;

- (8) Solicits orders for tangible personal property by means of a telecommunication or television shopping system which is intended by the person to be broadcast by cable television or other means of broadcasting, to consumers located in this City;
- (9) Maintains any other contact with this City that would allow this City to require the seller to collect and remit the tax due under the provisions of the constitution and laws of the United States; or
- (10) Distributes catalogs or other advertising matter and by reason thereof receives and accepts orders from residents within the City of Birmingham,

shall be subject to all the provisions of this ordinance and shall, except as otherwise provided in sub-section 5.5, on or before the *twentieth (20th)* day of the month following the close of the first quarterly period of three months, as above defined, and on or before the twentieth (20th) day of the month following each subsequent quarterly period of three (3) months, file with the department a return for the preceding quarterly period in such form as may be prescribed by the department, showing:

- (1) The total sales price of the tangible personal property sold by such seller, the storage, use or consumption of which became subject to the tax imposed by this ordinance, during the preceding quarterly period;
- (2) The amount of gross proceeds of sales or gross receipts of tangible personal property for storage, use, or other consumption, 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 for the proper administration of this ordinance.

(c) Remittance to Accompany Return-Seller. The return shall be accompanied by a remittance of the amount of tax herein required to be collected by the seller during the period covered by the return. The Director of Finance for the City, if he deems it necessary in order to insure payment to the City of the amount of tax herein required to be collected by sellers, may require returns and payment of such amount of tax for other than quarterly periods. Returns shall be signed by the seller or his duly authorized agent but need not be verified by oath.

(d) Presumption of Tax Liability-Seller; Certificate of Resale. For the purpose of the proper administration of this ordinance, and to prevent evasion of the tax and the duty to collect the same herein imposed, it shall be presumed that tangible personal property sold by any person for delivery in this City is sold for storage, use or other consumption in this City unless the person selling such property shall have taken from the purchaser a certificate signed by and bearing the name and address of the purchaser to the effect that the property was purchased for resale and it shall be further presumed that tangible personal property shipped to this City by the purchaser thereof was purchased from a retailer on and after October 1, 1974, for storage, use or other consumption in this City.

(e) 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.

5.2 PURCHASER TO FILE RETURNS AND PAY TAX.

(a) Due Date of Tax-Purchaser. The tax imposed by this ordinance shall, except as otherwise provided in sub-section 5.5, be due and payable to the City quarterly on or before the twentieth (20th) day of the month next succeeding each quarterly period during which the storage, use or other consumption of tangible personal property becomes taxable hereunder, the first of such periods being the period commencing with the first day of October, 1974, and ending the 31st day of December, 1974. Thereafter said returns shall be due for each calendar quarter.

(b) Qualifications-Purchaser; Due Date of Returns; Contents of Returns. Every person purchasing tangible personal property, the storage, use or other consumption of which is subject to the tax imposed by this ordinance, and who has not paid the tax due with respect thereto to a seller required or authorized hereunder to collect the tax, shall, except as otherwise provided in sub-section 5.5, on or before the twentieth (20th) day of the month following the close of the each quarterly period of three (3) months, file with the department a return for the preceding quarterly period in such form as may be prescribed by the Director of Finance showing:

- (1) The total sales price of the tangible personal property purchased by such person, the storage, use or other consumption of which became subject to the tax imposed by this ordinance during the preceding quarterly period, and with respect to which the tax was not paid to a seller required or authorized hereunder to collect the tax;
- (2) The amount of gross purchases of tangible personal property for storage, use, or other consumption, 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 for the proper administration of this ordinance.

(c) Remittance to Accompany Return-Purchaser. The return shall be accompanied by a remittance of the amount of tax herein imposed and not paid to a seller required or authorized hereunder to collect the tax during the period covered by the return. The Director of Finance, if he deems it necessary in order to insure payment to the City of the amount of such tax may require returns and payment for other than quarterly periods. Returns shall be signed by the person liable for the tax or his duly authorized agent, but need not be verified by oath.

(d) Presumption of Tax Liability-Purchaser; Temporary Storage. For the purpose of the proper administration of this ordinance, and to prevent evasion of the tax and the duty to collect and/or remit the same herein imposed, it shall be presumed that tangible personal property purchased by any person and delivered in this City is purchased for storage, use or other

consumption in this City, unless the person purchasing such property shall have measures to document the temporary storage of such tangible personal property in this City by the purchaser thereof, and it shall be further presumed that said tangible personal property was purchased from a retailer on and after October 1, 1974, for storage, use or other consumption in this City.

(e) 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.

5.3 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.

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

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

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

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

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

5.5 ELECTION TO FILE YEARLY. Notwithstanding the above, if the total amount of *taxable* sales/purchases of tangible personal property 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 use tax liability due to the State of Alabama for the sale/purchase of such tangible personal property 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 quarterly as provided for in this section.

5.6 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 use tax arising from an error or omission made by the taxpayer's representative. Such bulk submission shall be signed by the taxpayer or its properly authorized representative.

Section 6. EXTENSION OF TIME FOR MAKING RETURN. In accordance with the provisions of Section 40-23-74 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 40-23-68(e) Code of Alabama 1975, and except as otherwise provided in Sub-section 5.5 of this ordinance, any seller making cash and credit sales for storage, use or other consumption in the City of Birmingham may report such cash sales and shall thereafter include in each quarterly report all credit collections made during

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

Section 9. MAINTENANCE OF RECORDS; INVESTIGATIVE POWERS; AUDIT AND SUBPOENA AUTHORITY. The provisions of this section shall be administered in accordance with the procedures set forth in Sections 40-23-83 and 40-2A-7(a) Code of Alabama 1975, except where inapplicable or where herein otherwise provided.

9.1 RECORDS TO BE KEPT. Every seller and every person storing, using or otherwise consuming in this City tangible personal property purchased from a retailer shall keep and preserve, an accurate and complete set of records, receipts, invoices and other pertinent papers suitable for the determination of the correct amount of use tax due, or other records or information as may be necessary for the proper administration of any matter under the provisions of this ordinance in such form as the department may require. The department, or any person authorized in writing by it, is hereby authorized to examine the books, papers, records and equipment of any person selling tangible personal property and any person liable for the tax imposed by this ordinance, and to investigate the character of the business of any such person in order to verify the accuracy of any return made, or if no return was made by such person, to ascertain and determine the amount required to be paid hereunder. Such books, papers, records, and equipment shall be open for examination by the department upon request at a reasonable time and location. It shall also be the duty of every person to keep and preserve such records, receipts, invoices, and other pertinent records or other information 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.

- (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 the 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.

9.2 INVESTIGATIVE POWERS. Each taxpayer shall give to the Director of Finance the means, facilities and opportunity for the making of such audit, examination, and investigation of the records, books, or other relevant information maintained by any taxpayer or other person for the purpose of computing and determining the correct amount of value or correct amount of tax as provided for in 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. 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.

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 consumer/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.

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

10.2 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 use 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 *Aerroneously 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 that a taxpayer designs quickly to depart from the City of Birmingham or to remove his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect any tax imposed by this ordinance, the Director of Finance may issue notice of such finding to the taxpayer by personal service or mailing to his/her last known address, together with a demand for immediate payment of the tax declared to be in jeopardy, including penalties and additions thereto and such 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 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) Disputed Preliminary Assessments. If a taxpayer disagrees with a preliminary assessment as entered by the department, the taxpayer may file a written petition for review with the Director of Finance within thirty (30) calendar days from the date of entry of the preliminary assessment, setting out the specific objections to the preliminary assessment, and showing cause why such assessment should not be made final. If a petition for review is timely filed, or if the department otherwise deems it necessary, the department shall schedule a conference with the taxpayer for the purpose of allowing the taxpayer and the department to present their respective positions, discuss any omissions or errors, and to attempt to agree upon any changes or modifications to their respective positions.

(b) If a written petition for appeal/review:

1. Is not timely filed, or

2. Is properly filed, and upon further review the department determines the preliminary assessment is due to be upheld in whole or in part, the department may make the assessment final in the amount of tax due as computed by the department, with applicable interest and penalty computed to the date of entry of the final assessment.

(3) Service of Final Assessment Upon Taxpayer. The final assessment entered by the department, or a copy thereof, shall be mailed by the department to the taxpayer's last known address (i) by either first class U.S. mail or certified mail with return receipt requested in the case of assessments of tax or 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.

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 purchases, 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 department and shall contain information sufficient to: (1) identify the name of the taxpayer or other party filing such notice of appeal, (2) identify the specific matter appealed from, (3) outline the basis for such appeal, and (4) specify the relief sought.

12.1 APPEAL FROM REFUND DENIAL.

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

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

12.2 APPEAL FROM JEOPARDY ASSESSMENT.

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

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

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

12.3 APPEAL FROM PRELIMINARY ASSESSMENT. *(Refer to Section 11.2 (2)(a)and(b).)*

12.4 APPEAL FROM FINAL ASSESSMENT.

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

(b) In lieu of the appeal under paragraph (a) of this sub-section, at the option of the taxpayer, the taxpayer may appeal from any final assessment to the Circuit Court by filing written notice of appeal within thirty (30) days from the date of entry of the final assessment with both the Director of Finance and the Circuit Court. If the appeal is to 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 either the Director of Finance or to Circuit Court as provided herein, even though the taxpayer has paid the tax in issue prior to taking the appeal.

(c) The filing of the written notice of appeal with the Director of Finance or, in the case of appeals to the Circuit Court, the filing of such notice of appeal with both the Director of Finance and the Circuit Court, and also the payment of the assessment in full and applicable interest and penalty or the filing of a bond as provided herein, are jurisdictional. If such prerequisites are not satisfied within the time provided for appeal, the appeal shall be dismissed for lack of jurisdiction. On appeal to the Director of Finance, or 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 and/or remitted, a penalty of ten percent (10%) of the amount due, or fifty dollars (\$50.00), whichever is greater, together with interest thereon at the rate of one percent (1%) per month, or fraction thereof, from the date at which the tax herein levied became due and payable, such penalty and interest to be assessed and collected as part of the tax, 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 and/or remitted; or,
- (2) For any tax for which a monthly or quarterly return is required, or,
- (3) For which no return is required,

a penalty of ten percent (10%) of the unpaid amount shown as tax due on the return or the amount stated in the notice and demand, 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 and/or remitted, 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 or required to be collected became delinquent, that is, due and payable to the City.

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 Director of Finance or to 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 tax, 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 the 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 40-23-82 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.

15.1 REGULATIONS MAY BE PROMULGATED. Regulations may be promulgated as provided in Section 40-23-83 Code of Alabama 1975, except where inapplicable or where herein otherwise provided.

(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 prescribe, adopt, promulgate and enforce reasonable rules and regulations not in conflict with this ordinance relating to any matter or thing pertaining to the administration and enforcement of the provisions of this ordinance, including but not limited to provisions for the re-examination and correction of returns as to which overpayment or

underpayment is claimed or found to have been made, and the rules and regulations so promulgated shall be binding upon all 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 receipt requested, sent to the taxpayer's last known address, of his/her intention to make such levy, the effect of which shall be continuous from the date such levy is first made until the liability out of which such levy arose is satisfied.

Section 16. PURCHASER TO WITHHOLD TAXES DUE FROM PURCHASE MONEY OR BE LIABLE. Pursuant to Section 40-23-82 Code of Alabama 1975, if any retailer liable for an amount of tax herein required to be collected shall sell out his business or stock of goods or shall quit the business, he shall make a final return, as provided under Section 5 of this ordinance, and shall make payment of the taxes due within thirty (30) days after the date of selling or quitting business. His successor, successors or assigns, if any, shall be required to withhold sufficient of the purchase money to cover the amount of such taxes herein required to be collected and interest or penalties due and unpaid until such time as the former owner shall produce a receipt from the department showing that they have been paid, or a certificate stating that no amount is due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as provided herein, and the taxes remain due and unpaid after said thirty-day period, he shall be personally liable for the payment of the amount of taxes herein required to be collected by the former owner, interest and penalties accrued and unpaid by any former owner, owners or assignors. 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 monies derived from the use 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. [Reserved]

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 use tax became delinquent.

Section 20. SELLER TO COLLECT TAX; SELLER NOT TO ASSUME OR ABSORB TAX.

(a) Pursuant to Section 40-23-67 Code of Alabama 1975, every such seller making sales of tangible personal property for storage, use or other consumption in this City, not exempted under the provisions of Section 3 of this ordinance, shall at the time of making such sales, or, if the storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time such storage, use or other consumption becomes taxable hereunder, collect the tax imposed by this ordinance from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the department. The tax required to be collected by the seller from the purchaser shall be displayed separately from the list, advertised in the premises, marked or other price on the sales check or other proof of sales.

(b) It shall be unlawful for any such seller to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof imposed by this ordinance will be assumed or absorbed by the seller or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded.

(c) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall upon conviction be punished pursuant to Section 1-1-6 of the General Code of the City of Birmingham 1980. The tax herein required to be collected by the seller shall constitute a debt owed by the seller to this City.

Section 21. CREDIT FOR SALES OR USE TAX ERRONEOUSLY PAID. Pursuant to Section 40-23-65 Code of Alabama 1975, if a sales or use tax equal to or greater than the amount of the Birmingham 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 use tax, which is required to be paid by Section 2 of this ordinance. If the amount of tax paid to the other city is less than the Birmingham tax, then the difference between the out-of-city tax and the Birmingham tax must be paid. No credit will be allowed for taxes paid on tangible personal property in any city which does not give credit for taxes paid on similar property in Birmingham. 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 use 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 Within 60 Days of Compliance With Refund Procedures (City of Birmingham).** If a use 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 use 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 use tax imposed by the City exceeds the rate of use 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. [Reserved]

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

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

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

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

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

Section 24. LIEN FOR TAXES. Pursuant to Sections 40-29-20 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) 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).

(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 may be restrained from continuing in business, and proper prosecution shall be instituted in the name of the City of Birmingham until such person shall have complied with the provisions of this ordinance.

Section 27. VIOLATIONS.

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

27.2 WILLFUL REFUSAL TO MAKE REPORTS, OR PERMIT EXAMINATION OF RECORDS. Any person subject to the provisions of this ordinance willfully failing or refusing to make the reports, furnish any supplemental returns or other data herein required, or who shall refuse to permit the examination of his records by the department, shall, as provided in Section 40-23-88 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 to 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, 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 or other City ordinances shall, upon conviction, be punished by a fine not exceeding five hundred dollars (\$500.00) for each offense, and in addition may be imprisoned for a period not to exceed six (6) months, or by both such fine and imprisonment, pursuant to Section 1-1-6 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 sales or gross purchases at retail of tangible personal property for storage, use or other consumption in the City by a taxpayer 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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