

THE LEASE TAX CODE

**Adopted by Ordinance No. 97-187
on December 23, 1997**

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and continuing in effect until amended or repealed**

Amended by Ordinance No. 98-110 adopted 06/30/98

Amended by Ordinance No. 98-175 adopted 11/10/98

Amended by Ordinance No. 99-212 adopted 12/21/99

Amended by Ordinance No. 00-211 adopted 12/12/00

Amended by Ordinance No. 02-178 adopted 12/10/02

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CITY OF BIRMINGHAM, ALABAMA

ORDINANCE NO. 97-187

AN ORDINANCE LEVYING AND IMPOSING ON LESSORS OR RENTERS OF TANGIBLE PERSONAL PROPERTY AN ADDITIONAL LICENSE BASED ON THE GROSS PROCEEDS OF SUCH BUSINESS OF LEASING OR RENTING TANGIBLE PERSONAL PROPERTY.

BE IT ORDAINED by the Council of the City of Birmingham, Alabama, pursuant to Section 11-51-90 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 40-12-220, Section 40-23-1, or Section 40-2A-3 Code of Alabama 1975, in which case the State law definition will govern:

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

(b) “Business” means all activities engaged in, or caused to be engaged in, by any person with the object of gain, profit, benefit, or advantage, either direct or indirect to such person.

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

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

(g) “Gross Proceeds” means the value proceeding or accruing from the leasing or rental of tangible personal property, including any license or privilege taxes passed on to a lessee by a lessor, without any deduction on account of the cost of the property so leased or rented, the cost of materials used, labor or service cost, interest paid, or any other expense whatsoever, and without any deductions on account of loss, and shall also include on the part of any person claiming exemption under subdivision (4) of Section 40-12-223 Code of Alabama 1975 an amount equal to the amount of rental paid on any tangible personal property acquired under such exemption and thereafter diverted to the use of such person.

(h) ***“Leasing or Rental”*** means a transaction whereunder the person who owns or controls the possession of tangible personal property permits another person to have the possession or use thereof for a consideration and for the duration of a definite or indefinite period of time without transfer of the title to such property. The detention by the user thereof of freight cars, oxygen and acetylene tanks and similar property, in respect of which detention a demurrage or per diem charge is made against the user of such property, shall not be deemed to constitute a transaction whereunder property is leased or rented to another within the meaning of this ordinance.

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

(j) ***“Person”*** or ***“Company”*** means any natural person, firm, partnership, association, corporation, receiver, trust, estate, or other entity, or any other group or combination of any thereof acting as a unit.

(k) ***“Petition for Refund”*** shall mean 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 type and amount of tax overpaid, the taxpayer, the period included, the reasons for the refund and sufficient documentation as required by the Director of Finance.

(l) ***“Petition for Review”*** 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.

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

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

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

(p) ***“Tangible Personal Property”*** means personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term *“tangible personal property”* shall not include stocks, bonds, notes, insurance, or other contracts, or securities.

(q) ***“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.

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

(s) ***“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.

(t) ***“Taxpayers’ Bill of Rights Pamphlet”*** means a written pamphlet to be distributed by the department to all taxpayers whose books and records are being examined by the department, at or before the commencement of an examination, explaining in simple and nontechnical terms, the role of the department and the rights of the taxpayer whose books and records are being examined by the department during the examination and which shall be promptly revised from time to time to reflect any changes in the applicable law or rules.

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

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

Section 2. LEVY OF TAX. Effective May 1, 1980, and pursuant to 40-12-222 Code of Alabama 1975, there is hereby levied and shall be collected and remitted as herein provided, in addition to all other taxes now imposed by law, a privilege or license tax on each person engaging or continuing within this city in the business of leasing or renting tangible personal property which shall be in the amounts to be determined by the application of the rates against gross proceeds or gross receipts derived by the lessor from the lease or rental of tangible personal property, as follows:

(a) **General Rate.** On each person engaging or continuing within this City in the business of leasing or renting tangible personal property, there is hereby levied an amount equal to ***three percent (3%)*** of the gross proceeds derived by the lessor from the lease or rental of tangible personal property of every kind and description. Provided, that the privilege or license tax on each person or firm engaging or continuing within this City in the business of the leasing and rental of linens and garments shall also be at the rate of ***three percent (3%)*** of the gross proceeds derived by the lessor from the lease or rental of such linens and garments.

(b) **Automotive Rate.** Provided, further, that the said privilege or license tax on each person engaging or continuing within this City in the business of leasing or renting any automotive vehicle

or truck trailer, semitrailer or house trailer shall be at the rate of *three-fourths (3/4) of one percent (1%)* of the gross proceeds derived by the lessor from the lease or rental of such automotive vehicle or truck trailer, semitrailer or house trailer.

(c) Exclusions. Provided, however, that the tax levied in this ordinance shall not apply to any leasing or rental, as lessor, by the State, or any municipality or county in the State, or any public corporation organized under the laws of the State of Alabama, including without limiting the generality of the foregoing, any corporation organized under the provision of Sections 11-54-80 thru 11-54-101 Code of Alabama 1975.

(d) Pass On Authority. Notwithstanding the above, nothing shall prohibit a lessor subject to the lease tax levied by this ordinance from passing such amounts on to a lessee by adding such taxes to the leasing price or otherwise, provided, however, that all such amounts passed on to the lessee shall be includable in the gross proceeds derived from the lease of tangible personal property which shall be subject to the privilege or license tax owed by the lessor.

Provided, however, the authority to pass on such amounts of the privilege or license tax granted in this subsection shall not apply to the leasing or renting of tangible personal property to the State of Alabama, a municipality or county in the state, unless the flat amount collected by the lessor includes both the tax and the leasing fee.

Section 3. EXEMPTIONS.

3.1 GENERAL. Taxes imposed by this ordinance shall be subject to all exemptions as are provided in Article 4, Chapter 12, Title 40 Code of Alabama 1975, the State leasing or rental 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.

3.2 SPECIAL. Special exemptions from the taxes imposed by this ordinance are allowed in all other instances where the Lease Taxes levied under Article 4, Chapter 12, Title 40, Code of Alabama 1975 are exempted under any other provision of the Code of Alabama 1975.

Section 4. LICENSE REQUIRED TO ENGAGE IN BUSINESS. Pursuant to Section 40-12-221 Code of Alabama 1975, if any person shall engage in or continue in any business for which a privilege tax is imposed by Section 2 of this ordinance as a condition precedent to engaging or continuing in such business, he shall apply for and obtain from the department a license to engage in and to conduct such business for the current tax year upon the condition that he shall pay the taxes accruing to the City under the provisions of this ordinance; provided, that no license shall be issued under the provisions of this ordinance to any person who has not complied with the provisions of this ordinance, and no provision of this ordinance shall be construed as relieving any person from the payment of any license or privilege tax now or hereafter imposed by law.

Section 5. FILING OF RETURNS AND PAYMENT OF TAX. The privilege license tax levied hereunder, except as otherwise provided in subsection (d) hereunder, shall be due and payable in monthly installments on or before the twentieth (20th) day of the month next succeeding the month in which the privilege license tax accrues.

(a) Due Date and Contents of Returns; Payment of the Tax. On or before such twentieth (20th) day of each month, except as otherwise provided in subsection (d) hereunder, every person on whom the amounts levied hereunder are imposed shall report to the department, on a form prescribed by the department, a true and correct statement showing:

- (1)** The gross proceeds or gross receipts, as the case may be, of his business for the next preceding month;
- (2)** The amount of the gross proceeds or gross receipts which are not subject to the privilege license tax, or are not to be used as a measurement of the taxes due by such person, and the nature thereof; together with
- (3)** Such other information as the City may deem necessary for the proper administration of this ordinance.

At the time of making such monthly report such person shall compute the privilege license taxes due and shall pay to the City the amounts shown to be due.

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

(c) Timely Mailing Treated as Timely Filing and Paying. The provisions outlined in this section for the timely filing of any returns, payments, claims, statements, or other documents shall be administered as herein provided.

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

- (a) **Weekends and Holidays.** When the due date falls on a Saturday, Sunday, or City of Birmingham holiday, payment of the tax may be made without penalty on the first working day following the due date.
- (b) **Mailing Requirements.** The return, claim, statement, or other document, or payment was, within the time prescribed in subsection (1) above, deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the Finance Department or to the department's designated depository where such return, claim, statement, or other document is required to be filed, or to where such payment is required to be made.
- (2) **Delivery By Method Other Than United States Mail.** Returns, claims, statements, or other documents, or payments which are required under any provision of this ordinance which are delivered by any method other than by mailing shall be considered timely filed when such items are received in the Finance Department or the department's designated depository on the due date prescribed.
- (3) **Untimely Filing.** Any return, 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.

(d) Tax Return Filing Elections.

- (1) **Election to File Quarterly; Requirements.**
 - a. If the total amount of *taxable* leases/rentals for which any person is liable under this ordinance does not exceed five thousand dollars (\$5,000) *per month* during the preceding calendar year, or, if the total tax liability due to the State of Alabama for such leases/rentals during such period averages less than two hundred dollars (\$200) *per month* during the preceding calendar year, a quarterly return and remittance in lieu of the monthly returns may be made, by election of the taxpayer to the department, on or before the 20th day of the month next succeeding the end of the quarter for which the tax is due, and under such rules and regulations as may be prescribed in Article 4, Chapter 12, Title 40 Code of Alabama 1975.
 - b. In order to file quarterly, the election shall be made in writing no later than *February 20th* of each year and shall be filed with the department. If such election is not timely made and in accordance with the provisions of this subsection, returns shall be due monthly as provided for in this section.
- (2) **Election to File Yearly.** Notwithstanding the above, if the total amount of *taxable*

leases/rentals for which any person is liable under this ordinance does not exceed two hundred fifty dollars (\$250) during the preceding calendar year, or, if the total tax liability due to the State of Alabama for such leases/rentals during such period is less than ten dollars (\$10) during the preceding calendar year, a yearly return and remittance shall be made to the City, 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 subsection, returns shall be due monthly as provided for in this section.

(e) Bulk Submissions. The department may accept, for reporting and payment of taxes due the City, bulk submissions of reports, and under regulations promulgated by the department, payments owed to the City made on behalf of the taxpayer by its properly authorized representative where such submissions are made using the appropriate form prescribed by the department, as provided in Section 11-51-210(d) Code of Alabama 1975. Any such bulk submissions of reports and payments shall include:

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

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

Section 6. EXTENSION OF TIME FOR MAKING RETURN. The Director of Finance, 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. *[Reserved]*

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 intent to defraud shall constitute perjury and upon

conviction thereof the person so convicted shall be punished as provided in Section 1-1-6 of the General Code of the City of Birmingham 1980, as amended and as 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 Section 40-2A-7(a) Code of Alabama 1975.

9.1 RECORDS TO BE KEPT. It shall be the duty of every lessor/renter and every person engaging or continuing in this City in any business for which a privilege tax is imposed by this ordinance, to keep and preserve an accurate and complete set of records suitable for the determination of the correct amount of gross receipts or gross proceeds of any such business and such other books or accounts as may be necessary to determine the amount of tax for which such lessor/renter or person is liable under the provisions of this ordinance. It shall be the duty of every lessor/renter and every person leasing/renting in this City tangible personal property to keep and preserve for a period of not less than five (5) years from the due date of the return on which the underlying tax is required to be reported, or five (5) years of the date the return is filed, whichever is later, all invoices of gross proceeds, or gross receipts, and other pertinent papers, in such form as the City may require, proceeding or accruing from the leasing or rental herein taxed. All such books, invoices, equipment and other records shall be open for examination by the department, upon request, at a reasonable time and location.

- (a) **Reasonable Time and Reasonable Location.** “*Reasonable time*” shall be considered to be during normal business hours of the department. “*Reasonable location*” shall be considered to be the taxpayer’s place of business or the offices of the taxpayer’s authorized representative, provided such business or representative is located within a fifty (50) mile radius of the City of Birmingham. Taxpayers maintaining records outside of this radius must make records available at City Hall or at such other location as agreed upon by the department. The department, when conducting an audit, review, or examination for verification, may, at its election, require any taxpayer conducting business within the City to provide records, accounts, books, papers and other documents at a reasonable time and reasonable place agreed upon by the department, as provided herein.
- (b) **Taxpayer May Be Assessed Reasonable Costs.** As provided in Section 40-2A-6(d) Code of Alabama 1975, the department may assess and collect from the taxpayer, the reasonable costs, based on the then current state government employee per diem rates incurred by, or charged to, the City in connection with performing an examination of the taxpayer’s books and records if the taxpayer received notice by certified U.S. mail, return receipt requested, at least thirty (30) days prior to the date on which the examination was to commence, *and*
 1. The taxpayer either failed or refused to respond or did not propose a reasonable alternative date on which the examination was to commence

within 15 days of receipt of notice of the pending examination, *or* if

2. The taxpayer and the department agreed in writing as to an alternative date on which the examination was to commence but the taxpayer then failed or refused to permit reasonable access to its books and records on the alternative date.

- (c) **Leasing for Re-Leasing.** Any person leasing, who in addition leases for re-leasing, shall keep his books so as to show separately the gross proceeds of leasing and the gross proceeds of leasing for re-leasing.

9.2 INVESTIGATIVE POWERS. Each taxpayer shall give to the Director of Finance the means, facilities and opportunity for the making of such audit, examination and investigation of the records, books, or other relevant information maintained by any taxpayer or other person for the purpose of computing and determining the correct amount of value or the correct amount of tax as provided for in Section 9.1. The Director of Finance is hereby authorized to examine any person under oath concerning any gross receipts or gross proceeds 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 or gross proceeds.

- (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 the refund must be filed in writing by the taxpayer who paid the privilege or license tax to the department. 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 OVERPAYMENT 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 lease/rental 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 subsection to "*erroneously paid*" taxes on which interest shall be due to the taxpayer shall only mean and refer to taxes erroneously paid to the City as a result of any error, omission, or inaccurate written advice by or on behalf of the City, including in connection with a prior examination of its books and records by the City.

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 taxes, penalty, interest, and additions thereto shall be immediately due and payable. A final assessment of such tax may be entered immediately and if the assessment is not paid upon such demand of the Director, the Director may forthwith issue a warrant for levy and distraint of any personal property of the taxpayer which shall be collected in the same manner and with the like effect as provided under Section 24 of this ordinance.

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

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

11.2 PRELIMINARY AND FINAL ASSESSMENTS. All preliminary and final assessments issued by the department shall be executed as provided 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 an appeal/review:

1. Is not timely filed, or
2. Is properly filed, and upon further review the department determines the preliminary assessment is due to be upheld in whole or in part, the department may make the assessment final in the amount of tax due as computed by the department, with applicable interest and penalty computed to the date of entry of the final assessment.

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

11.3 TIME LIMITATION FOR ENTERING ASSESSMENT.

(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 was 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 rentals/leases, 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 Sections 6-3-11, Code of Alabama 1975. A written notice of appeal shall be filed with the department and shall contain information sufficient to: (1) identify the name of the taxpayer or other party filing such notice of appeal, (2) identify the specific matter appealed from, (3) outlined 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 subsection 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 subsection, 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 Circuit Court as provided herein, even though the taxpayer has paid the tax in issue prior to taking the appeal.

(c) The filing of the written notice of appeal with the Director of Finance or, in the case of appeals to the Circuit Court, the filing of such notice of appeal with both the Director of Finance and the Circuit Court, and also the payment of the assessment in full and applicable interest and penalty or the filing of a bond as provided herein, are jurisdictional. If such prerequisites are not satisfied within the time provided for appeal, the appeal shall be dismissed for lack of jurisdiction. On appeal to the Circuit Court or to the Director of Finance, the final assessment shall be prima facie correct, and the burden of proof shall be on the taxpayer to prove such assessment is incorrect.

Section 13. PENALTIES AND INTEREST. 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 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 remit to the Department the amount of tax shown as due on a return required to be filed on or before the date prescribed for payment of the tax, determined with regard to any extension of time for payment granted by the Director of Finance, there shall be added:

- (1) In addition to the tax due or the amount of tax herein required to be remitted; or
- (2) For any tax for which a monthly 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 remitted 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 remitted, a penalty of ten percent (10%) 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 required to be remitted 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 a rate of one percent (1%) per month, or fraction thereof and shall be added as provided herein to any tax or other amount due the department which is not paid by the due date. Interest on any delinquency or underpayment shall be charged from the due date of the tax, 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 subsection 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 subsection (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 40-12-224 Code of Alabama 1975. This section shall not preclude the inspection of returns by federal or foreign state agents pursuant to Section 40-18-53 Code of Alabama 1975.

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

(f) In no event shall any damages, attorney fees, or court costs be assessed against the City or against

its elected officials, officers, or employees under this section.

Section 15. REGULATIONS MAY BE PROMULGATED; PAYMENTS DUE TAXPAYERS MAY BE WITHHELD. Regulations may be promulgated as provided in Section 40-12-224 Code of Alabama 1975.

15.1 REGULATIONS MAY BE PROMULGATED.

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

(b) The Director of Finance may prescribe, adopt, promulgate and enforce reasonable rules and regulations not in conflict with this ordinance relating to any matter or thing pertaining to the administration and enforcement of the provisions of this ordinance, including but not limited to provisions for the re-examination and correction of returns as to which overpayment or underpayment is claimed or found to have been made, and the rules and regulations so promulgated shall be binding upon all 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 FROM PURCHASE MONEY OR BE LIABLE. If any person subject to the provisions hereof shall sell out his business or stock of goods, or shall quit the business, he shall be required to make a final return, as provided for under Section 5 of this ordinance, and shall make payment of the taxes due within thirty (30) days after the date of selling or quitting business. His successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes herein required to be remitted, and any interest or penalties due and unpaid until such time as the former owner shall produce a receipt from the department showing that the taxes have been paid, or a certificate stating that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as provided

herein, and the taxes remain due and unpaid after the thirty (30) day period allowed, he shall be personally liable for the payment of the taxes herein required to be remitted, interest, and penalties accrued and unpaid on account of the operation of the business by the former owner. If in such cases the department deems it necessary in order to collect the taxes due the City, it may make a jeopardy assessment as provided in Title 40 Chapter 29 of the Code of Alabama 1975.

Section 17. DISPOSITION OF FUNDS DERIVED FROM TAXES. All monies derived from the lease tax levied under the provisions of this ordinance shall be paid to City and placed to the credit of the General Fund of the City of Birmingham, and shall be used and expended as authorized by law and ordinance.

Section 18. BOND REQUIREMENTS. For the purpose of securing the payment of any lease tax, penalties, or interest due or which may become due under the provisions of this ordinance, every itinerant vendor engaged in the business of leasing/renting tangible personal property in the City of Birmingham shall be required to file a bond to be approved by the Director of Finance, conditioned upon the payment of any tax, penalty, or interest due or to become due under this ordinance and upon faithful observance of the provisions of this ordinance.

(a) Such bond shall:

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

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

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

Sections 19 through 20. *[Reserved]*

Section 21. CREDIT FOR LEASE/RENTAL TAX ERRONEOUSLY PAID.

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

- (a) Requirement to Request Refund of Erroneous Tax Payment Within 60 Days of Notice to Avoid Interest, Penalties (Taxpayer).** In order to avoid the accrual of interest and any otherwise applicable penalties on the tax due the City of Birmingham, when a lease/rental tax owed to the City of Birmingham is erroneously paid to a different municipality or county in good faith, based on a reasonable interpretation of the enabling ordinance, resolution, or act levying or authorizing the tax, but not under a requirement of law, the taxpayer making the erroneous payment must comply with the applicable refund procedures of such municipality or county within 60 days of receiving notice from the City, a county, or other municipality or its agent of the erroneous payment.
- (b) Compliance With Refund Procedure; Interest, Penalties.** If the taxpayer complies with the refund procedure within the requisite 60-day period, the City shall not assess or attempt to assess the tax, or any related interest or otherwise applicable penalty thereon until the date of receipt of the overpayment from the refunding municipality or county by the taxpayer or the taxpayer's agent, and no interest or penalty thereon shall accrue until such date of receipt. *The taxpayer shall remit the disputed tax to the City within 15 days after receipt.*
- (c) Failure to Comply With Refund Procedure; Interest, Penalties.** If the taxpayer fails to comply with the refund procedures within the requisite 60-day period, interest and any applicable penalties shall accrue on the tax to which the City is entitled from the sixty-first (61st) day and until such time as the tax is paid.

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

- (a) Requirement to Refund Overpayment of Erroneous Tax Payment Within 60 Days of Compliance With Refund Procedures (City of Birmingham).** If a lease/rental 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 lease/rental 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 lease/rental tax imposed by the City exceeds the rate of lease/rental tax imposed by the proper locality under a requirement of law, the City shall not be obligated to refund the difference.

Section 22. *[Reserved]*

Section 23. COLLECTION AFTER ASSESSMENT. The tax herein required to be remitted 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 subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer.

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

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

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

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

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

address.

(b) Term. Unless another date is specifically fixed by law, the lien imposed by subsection (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.

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

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

Section 25. COLLECTION BY CIVIL SUIT. The department may initiate and/or maintain a civil action to recover delinquent taxes herein levied, interest, penalties, and administrative cost 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 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 be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense, and in addition may be imprisoned for a period not to exceed six (6) months. Each occurrence of a failure to make such reports shall constitute a separate offense, and each refusal of a written demand by the department to examine, inspect or audit such records shall constitute a separate offense.

27.3 VIOLATION OF ORDINANCE. Any person who shall fail, 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 may be amended.

Section 28. REQUEST FOR RULING ON DETERMINATION OF TAXATION. Any taxpayer may request a ruling on the determination of whether amounts of gross proceeds from leases or gross receipts of his/her business are subject to the tax, or are not to be used as a measure of the taxes due and payable as levied by this ordinance. Such requests shall be made in writing to the Finance Department, and shall contain all pertinent facts, and shall include a copy of any written determinations or revenue rulings issued by the State of Alabama Department of Revenue relating to the item(s) in question.

Section 29. 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 30. REPEAL OF ORDINANCE NO.80-18, AS AMENDED. The Lease Tax Law adopted by Ordinance No. 80-18, as amended and as it has been amended is hereby repealed as of the date upon which this Lease Tax ordinance becomes effective in the City of Birmingham; provided, however, that neither any cause of action nor fine, forfeiture, judgment, penalty, right, remedy or defense accrued at said date, nor any prosecution or complaint pending at said date shall be in any matter released, affected, abated, or impaired by this ordinance.

Section 31. EFFECTIVE DATE OF ORDINANCE. This ordinance shall become effective and operative as such commencing on and after January 1, 1998, and on and after said date shall be binding in the City of Birmingham.

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

RICHARD ARRINGTON, JR.
Mayor

A true copy.
PAULA R. SMITH, City Clerk

ORDINANCE NO. 97-187

AN ORDINANCE TO ADOPT THE LEASE TAX CODE OF THE CITY OF BIRMINGHAM, ALABAMA FOR THE CALENDAR YEAR 1998 AND CONTINUING IN EFFECT UNTIL AMENDED OR REPEALED AND TO PROVIDE FOR THE PUBLICATION THEREOF.

BE IT ORDAINED by the Council of the City of Birmingham as follows:

Section 1. That the codification of the Lease Tax Code of the City of Birmingham for the calendar year of 1998 and continuing in effect until it is amended or repealed, consisting of 16 pages all inclusive, be and the same is hereby adopted as the "Lease Tax Code of the City of Birmingham, 1998", and shall be effective and operative as such on and after the 1st day of January, 1998 and on and after said date shall be binding within the corporate limits of the City of Birmingham.

Section 2. That immediately after the adoption of this ordinance and in the presence of this Council at this meeting, the City Clerk shall further identify the said "Lease Tax Code of the City of Birmingham, 1998" referred to in Section 1 hereof which is before this Council by appending thereto and signing a certificate in form substantially as follows: "I, Paula R. Smith, City Clerk, hereby certify that the "Lease Tax Code of the City of Birmingham, 1998" numbered pages 1 through 16 all inclusive to which this certificate is appended is the document referred to in Section 1 of Ordinance No. 97-187 adopted by the Council of the City of Birmingham at a regular meeting thereof held on this the 23rd day of December, 1997 and that I have signed this certificate in the presence of said Council at said regular meeting on said date. Paula R. Smith, City Clerk". The City Clerk shall carefully preserve this ordinance and said document adopted by Section 1 hereof as the "Lease Tax Code of the City of Birmingham, 1998", as a part of the permanent records of her

office.

Section 3. That the Lease Tax Code of the City of Birmingham adopted by Ordinance 80-18 of the City of Birmingham on the 12th day of February, 1980 be and the same hereby is repealed as of the date upon which the "Lease Tax Code of the City of Birmingham, 1998", adopted by Section 1 of this ordinance, becomes effective in the City of Birmingham as provided by Section 1; provided however, that neither any cause of action nor fine, forfeiture, judgement, penalty, right, remedy or defense accrued at said date, nor any prosecution or complaint pending at said date shall be in any manner released, affected, abated, or impaired by this ordinance or by the Code adopted by this ordinance.

Section 4. That it be, and hereby is, proclaimed that the Code adopted by Section 1 hereof is on file with the City Clerk of the City of Birmingham, where the same may be inspected by the public, and that this proclamation and said Code shall be made public by publication of this proclamation as part of the publication of this ordinance as ordered by Section 5 hereof.

Section 5. That prior to the date specified in Section 1 hereof at least fifteen (15) copies of this ordinance and of the Code adopted by Section 1 of this ordinance shall be prepared and bound within the appropriate covers and made available to the general public at the office of the Director of Finance of the City of Birmingham, provided that said Director may charge therefore at a rate not exceeding the cost per volume to the City. Each bound volume purporting in print to contain Ordinance No. 97-187 and the "Lease Tax Code of the City of Birmingham, 1998", and to have been published by authority of this Council, shall be received as prime facie evidence as provided by Section 12-21-95, Code of Alabama 1975, and may be used by courts as an aid to judicial knowledge under Act No. 193 of the 1943 Session of the Legislature of Alabama.

Section 6. That the City Clerk shall cause a true copy of this ordinance to be promptly published in a newspaper published and of general circulation in the City of Birmingham and shall carefully preserve in her office a thus published copy of said ordinance as part of the permanent records of her office.

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

Approved by the Mayor
December 29, 1997

RICHARD ARRINGTON, JR.
Mayor

STATE OF ALABAMA)
)
JEFFERSON COUNTY)

CERTIFICATE OF CITY CLERK

I, Paula R. Smith, City Clerk, do hereby certify that the foregoing Ordinance adopting the “Lease Tax Code of the City of Birmingham, 1998” for the calendar year 1998, and continuing in effect until it is amended or repealed was duly and legally adopted by the Council of the City of Birmingham at a regular meeting held in the City of Birmingham, Alabama, on the 23rd day of December, 1997, and I further certify that the foregoing manuscript contains the full, complete and true manuscript of said Code, as adopted by said Council.

GIVEN UNDER MY HAND AND CORPORATE SEAL of the City of Birmingham, this 29th day of December, 1997.

Paula R. Smith
City Clerk

S E A L

CERTIFICATE OF COMPARISON

I, Mac Underwood, Director of Finance, the person charged with the duty of causing to be printed and bound 15 copies of the "Lease Tax Code of the City of Birmingham, 1998" for the calendar year 1998, and continuing in effect until it is amended or repealed, which was adopted by the Council of the City of Birmingham on the 23rd day of December, 1997, do hereby certify that I have caused to be read all the proofs and have caused to be corrected all manifest errors therein, and the Code, as printed, corresponds accurately with the original manuscript.

GIVEN UNDER MY HAND this 29th day of December, 1997.

MAC UNDERWOOD

Director of Finance

PROCLAMATION BY THE MAYOR OF

THE CITY OF BIRMINGHAM, ALABAMA

WHEREAS, by Ordinance No. 97-187 adopted by the Council of the City of Birmingham on the 23rd day of December, 1997 provide for the adoption of the "Lease Tax Code of the City of Birmingham, 1998" for the calendar year 1998 and continuing in effect until it is amended or repealed it was made the duty of the Mayor upon delivery of 15 copies of said Code to issue his proclamation announcing that fact and designating the first day of January, 1998, as the day on which said Code shall go into effect, and whereas, 15 copies of said Code have this day been delivered to me. Now, therefore, in pursuance of the authority conferred upon me by said Ordinance, I, Richard Arrington, Jr., Mayor of the City of Birmingham, hereby proclaim "Lease Tax Code of the City of Birmingham, 1998" for the calendar year 1998 and continuing in effect until it is amended or repealed as reported to the Council of the City of Birmingham by the Director of Finance on the 23rd day of December, 1997 in full force and effect as of January the 1st, 1998.

Dated this the 29th day of December, 1997.

RICHARD ARRINGTON, JR.

Mayor of the City of
Birmingham, Alabama

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