ARTICLE V. - OCCUPATION TAXES FOR BUSINESSES, PROFESSIONS AND OCCUPATIONS [48]

[48] **Editor's note**— Res. No. 2003-23, §§ 1—4, 4.1, 5—25, 29, adopted July 1, 2003, did not specifically amend the Code. Hence, its inclusion herein as article V, sections 66-151—66-177, was at the discretion of the editor.

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Sec. 66-151. - Occupation tax required for business dealings in the county.

For the calendar year 2013 and succeeding years thereafter, each individual engaged in any business, trade, profession, or occupation in the county, whether with a location in the county or in the case of an out-of-state business with no location in the state exerting substantial efforts within the state pursuant to O.C.G.A. 48-13-7, shall pay an occupation tax for said business, trade, profession, or occupation; which tax and any applicable registration shall be displayed in a conspicuous place in the place of business, if the taxpayer has a permanent business location in the county. If the taxpayer has no permanent business location in the county, such business tax registration shall be shown to the administrator or authorized representative upon request.

(Ord. No. 2003-23, § 1, 7-1-03)

Sec. 66-152. - Definitions.

Administrative fee means a component of an occupation tax, which approximates the reasonable cost of handling and processing the occupation tax.

Administrator means that entity appointed by the board of commissioners who is responsible for the levy, assessment and collection of the occupational tax.

Employee means:

(1) An individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation an I.R.S. form W-2 but not an I.R.S. form 1099; or

(2) An individual who performs work under the direction and supervision of one business or practitioner in accordance with the terms of a contract or agreement with another business which recruits such individual is an employee of the business or practitioner, which issues an I.R.S form W-2 to such individual for purposes of documenting compensation.

Full-time employee means: An employee who works 40 hours or more weekly. In determining the number of full-time employees, the average weekly hours of employees who work less than 40 hours weekly shall be added and such sums shall be divided by 40 to produce full-time position equivalents, and each full-time position equivalent shall be considered a full-time employee for purposes of this article. Fractional equivalents shall be rounded down to the nearest whole.

Individual includes sole proprietors, corporations, partnerships, nonprofits, or any other form of business organization, either of which may or may not have one or more employees, but specifically excludes charitable nonprofit organizations.

Location or *office* includes any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office. The renter's or lessee's location, which is the site of personal property, which is rented or leased from another, does not constitute a location or office for the personal property's owner, lessor, or the agent of the owner or lessor. The site of real property which is rented or leased to another does not constitute a location or office for the real property's owner, lessor, or the agent of the owner or lessor unless the real property's owner, lessor, or the agent of the owner or lessor, in addition to showing the property to prospective lessees or tenants and performing maintenance or repair of the property, otherwise conducts the business of renting or leasing the real property at such site or otherwise conducts any other business, profession, or occupation at such site.

Number of employees means:

(1) For an occupation, profession, trade business or calling, operating and having a location within the county during the calendar year prior to the calendar year in which the tax is being levied, the number of full-time employees shall be calculated based on the number employed on October 1st during the calendar year prior to the calendar year in which the tax is being levied.

(2) For an occupation profession, trade, business or calling not operating and having a business

location within the county during the calendar year prior to the calendar year in which the tax is being levied, the number of full-time employees will be calculated based on the average number employed during the first three months of operation at a location within the county.

Occupation tax means a tax levied on individuals, partnerships, corporations, or other entities for engaging in an occupation, profession, or business for revenue raising purposes.

(Ord. No. 2003-23, § 2, 7-1-03)

Sec. 66-153. - Administrative fee structure.

A nonprorated, nonrefundable administrative fee of $25.00 shall be required on all business and Occupation tax accounts for the initial start-up.

(Ord. No. 2003-23, § 3, 7-1-03)

Sec. 66-154. - Occupation tax levied; occupational tax structure; restrictions.

(a) An occupation tax shall be levied upon those businesses and practitioners of professions and occupations with one or more locations or offices in the county and/or upon the applicable out-of-state businesses with no location or office in the state pursuant to O.C.G.A. 48-13-7 based upon the number of employees of the business or practitioner.

(b) Occupation tax schedule:

Bracket No.	No. Employees	Annual Tax Amount
1	0—5	$50.00
2	6—10	75.00
3	11—15	100.00
4	16—20	125.00
5	21—25	150.00
6	26+	200.00

(c) Restrictions on imposition of occupational tax:

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

(2) No occupation tax shall be required from those real estate brokers, real estate agencies, or real estate companies whose offices are located outside the jurisdiction and who sell property inside the jurisdiction.

(3) Out-of-state businesses with no location in the state shall be assessed occupation taxes based on the number of employees engaged in substantial efforts in the state.

(Ord. No. 2003-23, § 4, 7-1-03)

Sec. 66-155 - Determination of occupation tax for new business.

If a business is begun for the first time on or after January first of any calendar year, the occupation tax

levied and assessed against the business shall be determined as follows:

(1) In the event that any person commences business on any date after January 1, the occupation tax and administrative fee shall be due and payable on the date of the commencement of the business.

(2) The administrator shall issue an occupation tax certificate for the calendar year in which the application is submitted, and the occupation tax shall be paid in accordance with sections 66-154 and 66-156 except that if a new business begins for the first time after July 1st of the calendar year, then the occupation tax shall be 50 percent of the amount in the schedule set forth above. Administrative fees shall not be reduced for businesses commencing operation on or after July 1.

(Ord. No. 2003-23, § 4.1, 7-1-03)

Sec. 66-156. - Paying occupation tax of business with no location in the state; exemption for tax paid in another state.

(a) Registration and assessment of an occupation tax is hereby imposed on those businesses and practitioners of professions with no location or office in the state if the business's largest dollar volume of business in the state is in the county and the business or practitioner either:

(1) Has one or more employees or agents who exert substantial efforts within the jurisdiction of the county for the purpose of soliciting business or serving customers or clients; or

(2) Owns personal or real property which generates income and which is located within the county.

(b) Any business or practitioner of a profession with no location or office in the state shall be exempt from assessment of an occupation tax under this article if such business or practitioner submits proof of payment of a local business or occupation tax in another state on the business' or practitioner's sales or services in the state.

(Ord. No. 2003-23, § 5, 7-1-03)

Sec. 66-157. - Lines of business to be identified on business registration.

The business registration of each business operated in the county shall identify the dominant line of business that the business conducts. Dominant line means the type of business, within a multiple-line business, which is the major and principal source of income of such business.

(Ord. No. 2003-23, § 6, 7-1-03)

Sec. 66-158. - Number of businesses considered to be operating in the county.

Where an individual conducts business at more than one fixed location, each location or place shall be considered a separate business for the purpose of an occupation tax.

(Ord. No. 2003-23, § 7, 7-1-03)

Sec. 66-159. - Professionals as classified in O.C.G.A. 48-13-9(c)(1)—(18).

(a) Practitioners of professions as described in O.C.G.A. 48-13-9(c)(1)—(18) shall elect as their occupation tax one of the following:

(1) The occupation tax based on number of employees.

(2) A fee of $400.00 per practitioner who is licensed to provide the service, such tax to be paid at the practitioner's office or location. The practitioner tax applies to each individual in the business that qualifies as a practitioner under the state's guidelines.

(b) This election is to be made on an annual basis and must be made by January 1st of each year, if no such election is made, the occupation tax shall be based on number employees.

(Ord. No. 2003-23, § 8, 7-1-03)

Sec. 66-160. - Practitioners exclusively practicing for a government.

Any practitioner whose office is maintained by and who is employed exclusively by the United States, the state, a municipality or county located in the state, shall not be required to pay an occupation tax.

(Ord. No. 2003-23, § 9, 7-1-03)

Sec. 66-161. - Purpose and scope of tax.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes. The occupation tax only applies to those businesses and occupations, which are covered by the provisions of O.C.G.A. 48-13-5—48-13-28. All other applicable businesses and occupations may be taxed by the county pursuant to pertinent state and/or local laws.

(Ord. No. 2003-23, § 10, 7-1-03)

Sec. 66-162. - When registration and tax due and payable; effect of transacting business when tax delinquent.

(a) Each such occupation tax shall be for calendar year 2004 and succeeding calendar years thereafter unless otherwise specifically provided, said registration and occupation tax shall be payable April 1st of each year and shall, if not paid by April 1st of each year, be subject to a one and one-half percent monthly penalty for delinquency. On any new profession, trade, business or calling begun in the county in 2013 or succeeding years thereafter, the registration and tax shall be delinquent if not obtained immediately upon beginning business and a one and one-half percent monthly penalty imposed. The tax registration herein provided for shall be issued by the administrator and if any individual, firm, or corporation whose duty it is to obtain a registration shall, after said occupation tax becomes delinquent, transact or offer to transact, in the county, any of the kind of profession, trade, or calling subject to this article without having first obtained said registration such offender shall, upon conviction in the magistrate court, be subject to a maximum fine of $1,000.00 and/or imprisonment for a maximum of 180 days.

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

(c) By November 15th of 2012 and each succeeding year thereafter, each individual engaged in any business, trade, profession, or occupation in the unincorporated areas of the county, must file a return to the administrator upon the forms provided by the administrator.

(Ord. No. 2012-23, § 11, 7-1-03)

Sec. 66-163. - Exemption on grounds that business is a nonprofit organization.

Any nonprofit organization having been designated as such under section 501(c)3 shall be exempt from the levy of occupation tax under this article.

(Ord. No. 2003-23, § 12, 7-1-03)

Sec. 66-164. - Exemption from payment of occupation tax and administrative fee.

Subject to the limitations provided in this article, the following classes of persons may peddle, conduct business, or practice the professions and semi professions in the county without paying an occupation tax, provided such person receives a certificate of exemption issued by the commissioner of veterans service:

(1) Any disabled veteran of any war or armed conflict in which any branch of the armed forces of the United States engaged, whether under United States command or otherwise;

(2) Any blind person; or

(3) Any veteran of peace-time service in the United States armed forces who has a physical disability incurred during the period of such service.

(Ord. No. 2003-23, § 13, 7-1-03)

Sec. 66-165. - Evidence of qualification required.

Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of a occupation tax certificate, show evidence that such requirements have been met.

(Ord. No. 2003-23, § 14, 7-1-03)

Sec. 66-166. - Liability of officers and agents; registration required; failure to obtain.

All individuals subject to the occupation tax levy pursuant, to this article shall be required to obtain the necessary registration for said business as described in this article, and in default thereof the officer or agent soliciting for or representing such individuals shall be subject to the same penalty as other individuals who fail to obtain a registration. Every individual intending to commence business in the county after January 1st of each year shall likewise obtain the registration herein provided for before commencing the same; and any action, transacting, or offering to transact in the county, any of the kinds of business, trade, profession, or occupation without first having so obtained said registration, shall be subject to penalties provided herein.

(Ord. No. 2003-23, § 15, 7-1-03)

Sec. 66-167. - Issuance of executions against delinquent taxpayers; criminal liability unaffected.

(a) In addition to the other remedies available to the county for the collection of occupation taxes from entities subject to the tax or fee who fail or refuse to pay the tax or fee, the administrator shall issue executions against the delinquent taxpayers for any or all of the following:

(1) The amount of the taxes or fees due when the taxes or fees become due; any penalty imposed by O.C.G.A. 48-13-21(a);

(2) Any interest imposed by this article shall be in accordance with O.C.G.A. 48-13-21(b).

(b) The magistrate court of the county may impose a civil fine for failure to pay the occupation tax. The penalty for violations shall not exceed a fine of $1,000.00 and/or imprisonment for 180 days.

(Ord. No. 2003-23, § 16, 7-1-03)

Sec. 66-168. - Administrator; subpoena and arrest powers.

The administrator, or designee, shall have full subpoena powers in conjunction with any violation pertaining to the Occupational Tax Resolution of 2012 and succeeding years.

(Ord. No. 2003-23, § 17, 7-1-03)

Sec. 66-169. - Business not covered by this article.

The following businesses are not covered by the provisions of this article but may be assessed an occupation tax or other type of tax pursuant to the provisions of other general laws of the state or by local law:

(1) Those businesses regulated by the state public service commission.

(2) Those electrical service businesses organized under O.C.G.A. tit. 46, ch. 3, "Georgia Territorial Electric Service Act."

(3) Any farm operation for the production from or on the land of agricultural products, but not including agribusiness.

(4) Cooperative marketing associations governed by O.C.G.A. 2-10-105.

(5) Insurance companies governed by O.C.G.A. 33-8-1 et seq.

(6) Motor common carriers governed by O.C.G.A. 46-7-15.

(7) Those businesses governed by O.C.G.A. 48-5-355, "exemption from municipal tax or license fee of certain goods purchased in carload lots for distribution among several purchasers."

(8) Agricultural products and livestock raised in the state governed by O.C.G.A. 48-5-356, "exemption from municipal taxation of agricultural products and livestock raised in state."

(9) Depository financial institutions governed by O.C.G.A. 48-6-93.

(10) Facilities operated by a charitable trust governed by O.C.G.A. 48-13-55.

(11) Established churches, religious, charitable, and fraternal organizations chartered or operated for nonprofit purposes and which are not engaged in daily selling of goods or services to the public in competition with persons taxed by virtue of the provisions of this chapter.

(12) Persons located in the county who are subject to an occupation tax levied by the City of Clayton or the City of Mountain City or the City of Sky Valley shall not be required to register and pay an occupation tax so long as the business does not maintain a place of business located outside of those cities.

(Ord. No. 2003-23, § 18, 7-1-03)

Sec. 66-170. - Payment of occupation tax by newly established businesses.

In the case of a business, which was not conducted for any period of time in the jurisdiction of the county in the preceding year, the owner, proprietor, manager, or executive officer of the business liable for occupation tax shall estimate the number of employees from commencing date to the end of the calendar year. Where a taxpayer fails to make such payment on or before the due date for such payment, a one and one-half percent penalty will be imposed for the balance of the month that payment is due and an additional penalty of one and one-half percent penalty will be imposed for each additional month of delinquency thereof.

(Ord. No. 2003-23, § 19, 7-1-03)

Sec. 66-171. - More than one place or line of business.

Where a business is operated at more than one place or where the business includes more than one line, said business shall be required to obtain the necessary registration for each location and line and pay an occupation tax for each location and line.

(Ord. No. 2003-23, § 20, 7-1-03)

Sec. 66-172. - Confidentiality.

Except in the case of judicial proceedings or other proceedings necessary to collect the occupation tax hereby levied, it shall be unlawful for any officer, employee, agent, or clerk of the county, to divulge or make known in any manner the particulars set forth or disclosed in any occupation tax information required under this article. All contents of said information shall be confidential and open only to the officials, employees, agents, or clerks of the county using said information for the purpose of this occupation tax levy and the collection of the tax. Independent auditors or bookkeepers employed by the county shall be classed as employees. Nothing herein shall be construed to prohibit the publication by the county officials of statistics, so classified as to prevent the identification of particular reports.

(Ord. No. 2003-23, § 21, 7-1-03)

Sec. 66-173. - Businesses and practitioners required to provide certain information; inspections of books and records.

(a) All businesses and practitioners doing business within the county shall provide to the administrator by November 15th of 2003 and each succeeding year thereafter:

(1) The address of any location or office maintained by such business or practitioner within the county;

(2) A description of the business or types of business conducted or occupation or profession performed at such location; and

(3) The payment of any business or occupation tax or regulatory fee to any other county.

(b) The administrator shall have the right to inspect the payroll records. Upon demand of the administrator such books or records shall be submitted within 30 days for inspection by a representative of the county. Failure to submit such payroll records within 30 days shall be grounds for

revocation of the tax registration currently existing to do business in the county. If, after examination of the payroll records, it is determined that a deficiency occurred as a result of under reporting, a penalty of 125 percent of the prime interest rate times the amount deficiency will be assessed for the delinquent period. For purposes of this section, the prime interest rate shall be that which is published by The Wall Street Journal on the first business day of the year in which the under reporting is identified.

(Ord. No. 2003-23, § 22, 7-1-03)

Sec. 66-174. - Tax registration to be revoked for failure to pay tax, file returns or permit inspection of books.

Upon the failure of any business to pay said occupation tax or any part thereof before it becomes delinquent, or upon failure to make any of said information available within the time required herein, or upon failure to make a true return, or upon failure to amend to set forth the truth, or upon failure to permit inspection of its books as above provided, any business tax registration granted by the county under this article permitting the owner of said business to do business for the current year shall be, ipso facto, revoked. No new business tax registration shall be granted by the county for the operation of a business for which any part of the occupation tax herein provided for is at that time unpaid, or to an individual, firm, or corporation who has failed to submit adequate records. In the case of those practitioners where the county cannot suspend the right of the practitioner to conduct business, the imposition of civil penalties shall be permitted and pursued by the county.

No business tax registration or certification or renewal thereof shall be granted by the county for the operation of a business for which the owner of the business has remaining any delinquent ad valorem taxes due the county.

(Ord. No. 2003-23, § 23, 7-1-03)

Sec. 66-175. - Effect of failure to comply with ordinance provisions; continuing in business after tax registration revocation.

Any individuals, their managers, agents, or employees, who do business in the county after the registration for said business has been revoked, as above, are hereby required to provide occupation tax information, and who fail to provide said information within the time and in the manner herein provided, who refuse to amend so as to set forth the truth, or who shall make false returns; and any individuals, their managers, agents, or employees who refuse to permit an inspection of payroll records in their charge when the officers, agents, employees, or representatives of the county request such inspection, during business hours, for the purpose of determining the accuracy of the returns herein provided for, shall be subject to penalties provided herein. In the case of those practitioners where the county cannot suspend the right of the practitioner to conduct business, the imposition of civil penalties shall be permitted and pursued by the county in the case of delinquent occupation tax.

(Ord. No. 2003-23, § 24, 7-1-03)

Sec. 66-176. - Lien taken for delinquent occupation tax.

In addition to the other remedies herein provided for the collection of the occupation tax herein levied, the administrator, upon any tax or installment of said tax becoming delinquent and remaining unpaid, shall issue execution for the correct amount of said tax against the individuals, partnership, or corporation liable for said tax, which said execution shall bear interest at the rate of 18 percent per annum from the date when such tax or installment becomes delinquent, and the lien shall cover the

property of the individual, partnership, or corporation liable for said tax, all as provided by the resolutions of the county and the laws of the state. The lien of said occupation tax shall become fixed on and date from the time when such tax or any installment thereof becomes delinquent. The execution shall be levied by the administrator upon the property of defendant located in said jurisdiction, and sufficient property shall be advertised and sold to pay the amount of said execution, with interest and costs. All other proceedings in relation thereto shall be had as is provided by the resolutions of the county and the laws of the state, and the defendant in said execution shall have rights of defense, by affidavit of illegality and otherwise, which are provided by the applicable laws in regard to tax executions. When a nulla bona entry has been entered by proper authority upon an execution issued by the administrator against any individual defaulting on the occupation tax, the individual against whom the entry was made shall not be allowed or entitled to have or collect any fees or charges whatsoever for services rendered after the entry of the nulla bona. If, at any time after the entry of nulla bona has been made, the individual against whom the execution issues pays the tax in full together with all interest and costs accrued on the tax, the individual may collect any fees and charges due him or her as though he or she had never defaulted in the payment of the taxes.

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