

## **MEMORANDUM**

To: Revenue Review Commission

From: Mayor Teresa Tomlinson

Date: March 22, 2011

First, let me thank you all for agreeing to serve on this important Commission. Your service will allow city leaders to fully and thoughtfully consider the current structure of our revenue streams and any recommended changes.

This Commission review is not a revenue generating exercise. It is an effort to determine: 1) whether our current revenue structure is appropriate and sustainable, meaning is it currently serving our needs and is it expected to meet our needs in the future; 2) whether our current structure optimizes or inhibits our growth potential; 3) whether it is fair and equitable; and 4) whether it has negative unintended consequences, such as anti-competitive effects.

Revenue Streams I hope you will analyze and report on include:

- 1) Occupational Tax
- 2) Inventory Tax
- 3) Fees & Fines
- 4) Urban Service Districts
- 5) Ad Valorem Tax
- 6) Sales Tax (re: Point of Sales Needs), Excise Tax (Beer v. Liquor), Sunday Liquor Sales
- 7) Military Retirement Exemption and any Other Issues you deem necessary to assess.

In the end, the Commission should issue a report to the Mayor. Though that report can take whatever form you like and deem most effective, here is one possible form:

- I. Statement of Commission Objective
- II. Listing of Members
- III. Summary of fact finding or education process
- IV. Summary of public input and outreach
- V. Identify and describe current revenue streams
- VI. As to each stream review –
  - A. its amount in total dollars and proportion to total revenue
  - B. its projected increase or decrease over the next 20 years
  - C. evaluate its purpose, and effectiveness in meeting that purpose
  - D. evaluate its sustainability
  - E. evaluate its fairness/justice
  - F. evaluate its unintended consequences

- VII. Recommend changes, if any
- VIII. Concluding Observations

This is meant to be merely an articulation of my general expectations for the Commission and a recommended form to conclude your good work. I, and the administrative staff, welcome any informational referrals or requests for guidance you deem necessary. Again, thank you for serving this community.

O.C.G.A. § 48-13-10 (Copy w/ Cite)

Pages: 4

O.C.G.A. § 48-13-10

GEORGIA CODE

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\*\*\* Current Through the 2011 Regular Session \*\*\*  
\*\*\* Annotations Current Through July 8, 2011 \*\*\*

TITLE 48. REVENUE AND TAXATION  
CHAPTER 13. SPECIFIC, BUSINESS, AND OCCUPATION TAXES  
ARTICLE 1. GENERAL PROVISIONS

O.C.G.A. § 48-13-10 (2011)

§ 48-13-10. Determining amount of occupation tax; criteria for classification of businesses and practitioners; administrative fee; exemptions or reduction in fees for economic development; election of tax by practitioner

(a) In determining the amount of occupation tax to be levied on an individual business or practitioner, local governments shall classify all businesses or practitioners by the same criterion or combination of criteria. To assure uniformity, each and every business and practitioner shall be classified by the same criterion or combination of criteria. The criteria used for classification shall be one or more than one of the following criteria:

- + (1) The number of employees of the business or practitioner as computed on a full-time position basis or full-time position equivalent basis, provided that for the purposes of this computation an employee who works 40 hours or more weekly shall be considered a full-time employee and that the average weekly hours of employees who work less than 40 hours weekly shall be added and such sum shall be divided by 40 to produce full-time position equivalents;
- + (2) Profitability ratio for the type of business, profession, or occupation as measured by nation-wide averages derived from statistics, classifications, or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service, or successor agencies of the United States;
- + (3) Gross receipts of the business or practitioner in combination with the profitability ratio for the type of business, profession, or occupation as measured by nation-wide averages derived from statistics, classifications, or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service, or successor agencies of the United States; or
- + (4) A flat fee classification which is applied uniformly to all businesses and practitioners of professions and occupations, so that each business or practitioner pays the same amount of tax for each office or location.

(b) Local governments which classify businesses and practitioners by the criterion described in paragraph (3) of subsection (a) of this Code section are authorized but not required to limit the geographic area in which gross receipts shall be taxed to that local government's jurisdiction.

(c) Local governments which classify by the criteria described in paragraph (2) or (3) of subsection (a) of this Code section shall rank the businesses and practitioners according to the profitability ratio described in paragraph (2) of subsection (a) of this Code section. After such ranking, the local government shall establish profitability classifications which do not overlap before setting one or more rates of taxation for each classification. Such local governments are not authorized to apply to any classification a

rate of taxation greater than the rate applied to another classification which includes a business or practitioner with a higher profitability ratio, except that local governments are authorized but not required to apply different rates of taxation within the same profitability classification by dollar range of gross receipts. Local governments using such different rates of taxation within the same profitability classification shall use the same dollar ranges of gross receipts for each profitability classification and shall not apply to any business or practitioner a rate of taxation greater than the rate applied to the same dollar range of gross receipts in another classification which includes a business or practitioner with a higher profitability ratio.

(d) Local governments which classify by the criterion described in paragraph (1) of subsection (a) of this Code section are authorized but not required to adopt more than one rate of taxation per employee.

(e) The occupation tax may include an administrative fee.

(f) (1) Notwithstanding any other provision of this article, local governments may by ordinance or resolution provide for an exemption or reduction in occupation tax or a credit against occupation tax owed to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting, encouraging, or maintaining selected types of businesses or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious.

(2) Exemptions or reductions in occupation tax pursuant to paragraph (1) of this subsection may include but shall not be limited to the following:

(A) Absolute dollar amount limitations on the total amount of tax, either by criterion or combination of criteria used for classification or for businesses and practitioners, provided that a jurisdiction which provides an absolute dollar amount limitation on the total amount of tax shall levy and collect such maximum tax only once on each business entity or practitioner even if a business or practitioner has more than one office or location within the jurisdiction;

(B) Tax credits for the retention or creation of jobs, or for jobs of a specific description, including but not limited to entry level jobs or jobs with compensation of a specified range;

(C) Tax credits for other taxes paid to the local government, including but not limited to ad valorem taxes;

(D) A tax exemption or a lower rate of taxation for sales to customers outside the jurisdiction of the local government;

(E) A credit or rebate to businesses or practitioners who paid occupation taxes in the previous year;

(F) A limitation on the dollar or percentage amount of increase in tax from a base year to a subsequent year, provided that the limitation is made applicable to new businesses or practitioners by imputing the gross receipts, profitability ratio, or number of employees of the subsequent year to the base year in calculating tax for the base year, tax for the subsequent year, and the increase in tax; and

(G) A credit or reduction as an adjustment for seasonal fluctuations in the number of employees, other fluctuations in the number of employees, increases or decreases in the number of employees, or temporary employees.

(g) Practitioners of professions and occupations who are listed in paragraphs (1) through (18) of subsection (c) of Code Section 48-13-9 shall elect as their entire occupation tax one of the following:



(1) The occupation tax resulting from application of the other provisions of this article; or

(2) A fee to be set by the local government, not to exceed \$400.00 per practitioner who is licensed to provide the service, such tax to be paid at that practitioner's office or location; provided, however, that a practitioner paying according to this paragraph shall not be required to provide information to the local government relating to the gross receipts of the business or practitioner.

(h) Notwithstanding any other provision in this article, any local government levying an occupation tax is authorized to request payment of such occupation tax from and accept payment from a partnership, corporation, or other business entity composed of practitioners subject to the election set out in subsection (g) of this Code section for each such practitioner.

HISTORY: Code 1981, § 48-13-10, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 4.

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**O.C.G.A. § 48-13-10** (Copy w/ Cite)

Pages: 4

C.A. 10-03-95(5)  
C.A. 10-10-95(2)  
As Amended  
95-97

AN ORDINANCE

No. 95-97

An Ordinance amending Article IV of Chapter 19 the Columbus Code pertaining to business licensing and taxation, and for other purposes.

THE COUNCIL OF COLUMBUS, GEORGIA HEREBY ORDAINS:

I.

Chapter 19 of the Columbus Code is hereby amended by striking in its entirety Article IV and inserting a new Article to read as follows:

ARTICLE IV. BUSINESS LICENSE AND OCCUPATION TAX ORDINANCE

*Sec. 19-36. Business license required; business license required for business dealings with the city.*

(a) For the year 1996 and succeeding years thereafter, each person engaged in any business, trade, profession or occupation in Columbus, Georgia (whether with a location in Columbus, Georgia, or in the case of an out-of-state business with no location in Georgia exerting substantial efforts within the state pursuant to O.C.G.A. § 48-13-7), shall register and take out a license for said business, trade, profession, or occupation, which license shall be displayed in a conspicuous place in the place of business.

(b) Business dealings with the city. Any person, club, organization, or their agents, employees, or representatives who wish to sell, barter, trade, build, pave, grade, haul, make studies, do planning, enter contracts, and any and all other kinds of businesses with the Consolidated Government of Columbus, Georgia, or any of its governmental agencies, shall, prior to doing said business obtain, secure, and maintain a current city business license from the Columbus Consolidated Government. This shall be required whether business is on a contract or verbal agreement and whether or not labor and materials or both is supplied. Failure on the part of any one to fully comply with this section shall place that person in full violation of the Columbus Consolidated Government business license ordinance, and shall cause an automatic forfeiture of any agreements or contracts, or business dealings between the Columbus Consolidated Government and the violators. The Revenue Collection Officer is hereby directed to initiate legal action against the violators. If any of the persons, businesses or organizations who wish to do business with the city can prove that they have paid an occupational tax to another municipality where they have a location in Georgia and the persons, businesses or organizations do not have a location in Columbus, they will not owe the tax to the city of Columbus.

*Sec. 19-37. Construction of terms; definitions.*

(a) Wherever the term "City of Columbus" is used herein, such term shall be construed to mean "Columbus, Georgia"; wherever the term "city" is used herein, it shall be construed to mean "Columbus, Georgia".

(b) As used in this article, the term:

(1) "Administrative fee" means a component of an occupational tax which approximates the reasonable cost of handling and processing the occupation tax.

(2) "Computed tax" means the product of the occupation tax rate applying to a business in any given year multiplied by the gross receipts of the business for that year.

(3) "Dominant line" means the type of business within a multiple line business from which the greatest amount of income is derived.

(4) "Employee" means 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 a form I.R.S. W-2 but not a form I.R.S. 1099.

(5) (A) "Gross receipts" means the total revenue of the business or practitioner for the period, including without limitation to the following:

- (i) total income without deduction for the cost of goods or expenses incurred;
- (ii) gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
- (iii) proceeds from commissions on the sale of property, goods, or services;
- (iv) proceeds from fees for services rendered;
- (v) proceeds from rent, interest, royalty, or dividend income; and
- (vi) reimbursements of expenses that would be considered as normal expenses in the operation of a business.

(B) Gross receipts shall not include the following:

- (i) sales, use, or excise tax;
- (ii) sales returns, allowances, and discounts;
- (iii) interorganizational sales or transfers between or among the units of a parent-subsidary controlled group of corporations, as defined by 26 U.S.C. Section 1563(a)(1), example being the various departments within a certain business; or between or among the units of a brother-sister controlled group of corporations as defined by 26 U. S. C. § 1563(a) (2), or between or among wholly owned partnerships or other wholly owned entities;
- (iv) payments made to a subcontractor or an independent agent;
- (v) governmental and foundation grants, receipt of charitable contributions, or the interest income derived from such funds, received by a non-profit organization which employs salaried practitioners otherwise covered by this chapter, if such funds constitute 80 percent or more of the organization's receipts; and
- (vi) proceeds from sales to customers outside the state.

(6) "Location" or "office" shall include 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 delivery vehicles of a business or practitioner of a profession or occupation which has a location or office.

(7) "Occupation tax" means a tax levied for revenue raising purposes on persons, partnerships, corporations, or other entities for engaging in an occupation, profession, or business.

(8) "Person" wherever used in this article shall be held to include sole proprietors, corporations, partnerships, nonprofits, or any other form of business organization.

(9) "Practitioner of profession or occupation" is one who by state law requires state licensure regulating such profession or occupation. "Practitioners of professions and occupations" shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

(10) "Regulatory fees" means payments, whether designated as license fees, permit fees, or by another name, which are required by a local government as an exercise of its police power and as a part of or as an aid to regulation of an occupation, profession, or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the city. A regulatory fee may not include an administrative fee. Development impact fees as defined by paragraph 8 of O.C.G.A. § 36-71-2 or other costs or conditions of zoning or land development are not regulatory fees.

#### *Sec. 19-38. Fee structure.*

(A) A non-prorated, non-refundable administrative fee of \$50.00 shall be required on all business license and occupation tax accounts for the initial start up, renewal, or re-opening of those accounts.

(B) The City of Columbus may by ordinance impose a regulatory fee on those businesses and practitioners of professions or occupations which O.C.G.A. § 48-13-9 authorizes the city to regulate. The city may impose an annual regulatory fee if the business must apply yearly or if the city customarily performs investigation or

inspection of the business as protection of the public health, safety, or welfare or in the course of enforcing a state or local building, health or safety code. A regulatory fee may not include an administrative fee.

(C) An occupation tax shall be levied as the revenue producing component of the license fee structure.

*Sec. 19-39. Occupation tax levied; restrictions.*

(A) An occupation tax shall be levied based upon the gross receipts of the business or practitioner in combination with the profitability ratio for the type of business, profession, or occupation as measured by nation-wide averages derived from the "Statistics of Income Bulletin" as published by the United States Internal Revenue Service or successor agencies of the United States. For the purposes of this Article, profitability ratios shall be derived from data for the most recent 10 year period for which data is available. Profitability ratios shall be revised by the Finance Department not later than November 1 of each year for use in the following calendar year. Each type of business shall be assigned to a profit class based on the profitability ratio for that business type. The occupational tax rate levied will be based on the profit class of the dominant line of the business as defined by the standard industrial classification system and published by the Office of Management and Budget which are incorporated herein by reference and are on file in the Office of the Director of Finance. Gross receipts shall be defined as set forth in Section 19-37(b)(5).

(B) Occupation tax schedule

Profit class 1	Tax class 1	Rate per \$1,000.00: \$1.00	Tax rate: 0.100%
Profit class 2	Tax class 2	Rate per \$1,000.00: \$1.82	Tax rate: 0.182%
Profit class 3	Tax class 3	Rate per \$1,000.00: \$2.52	Tax rate: 0.252%
Profit class 4	Tax class 4	Rate per \$1,000.00: \$3.21	Tax rate: 0.321%
Profit class 5	Tax class 5	Rate per \$1,000.00: \$3.91	Tax rate: 0.391%
Profit class 6	Tax class 6	Rate per \$1,000.00: \$4.61	Tax rate: 0.461%
Profit class 7	Tax class 7	Rate per \$1,000.00: \$5.31	Tax rate: 0.531%
Profit class 8	Tax class 8	Rate per \$1,000.00: \$6.00	Tax rate: 0.600%

- (C)
1. The city shall not require the payment of more than one occupational tax for each location that a business or practitioner shall have nor shall the city require that a business pay occupational tax for more than 100 percent of the gross receipts.
  2. The city shall not require an occupation tax on those receipts that were taxed by occupation tax in other localities or states.
  3. The city shall not require a business license from those real estate brokers, agents, or companies whose offices are located outside the city and sell property inside the limits of the city.
  4. Occupation tax shall not be levied in any manner except as described in Section 19-39. The computed tax may be modified in accordance with Section 19-40.

*Sec. 19-40. Transition provisions.*

For the 1996, 1997, 1998, and 1999 tax years, no business shall be required to pay occupation tax in an amount greater than 200% of the actual or imputed occupation tax for that business for the full prior year.

*Sec. 19-41. Each line of business to be identified on business license.*

The business license of each business licensed by the city shall identify the line or lines of business that the business conducts. No business shall conduct any line of business without first having that line of business registered with the Revenue Collection Division and that line of business being imprinted by the Revenue Collection Division upon the business license.

*Sec. 19-42. Businesses with no locations or offices in Georgia*

Registration and assessment of an occupation tax is hereby imposed on those businesses and practitioners of professions with no locations or offices in the state of Georgia if the business' largest dollar volume of business in Georgia is in Columbus and the business or practitioner:



- (1) Has one or more employees or agents who exert substantial efforts within the jurisdiction of Columbus 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 jurisdiction of Columbus

*Sec. 19-43. The number of businesses considered operating in city.*

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

*Sec. 19-44. Professionals as classified in O.C.G.A. § 48-13-9(c) paragraphs 1 through 18.*

Persons engaged in professions as described in O.C.G.A. § 48-13-9(c) paragraphs 1 through 18 shall elect as their entire occupation tax one of the following:

- (1) the occupation tax based on gross receipts in combination with the profitability ratio as provided in Section 19-39; or
- (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; provided, however, that a person electing to pay \$400.00 per practitioner shall not be required to provide information to the city relating to the gross receipts of the practitioner. The per practitioner fee applies to each person in the business who qualifies as a practitioner under the state's regulatory guidelines and framework.
- (3) this irrevocable election is to be made on an annual basis and must be done by April 1 of each year.

*Sec. 19-45. Practitioners exclusively practicing for the government.*

Any practitioner whose office is maintained by and who is employed in practice exclusively by the United States, the State, a municipality or county of the State, instrumentalities of the United States, the State, or a municipality or county of the state, shall not be required to obtain a license for that practice.

*Sec. 19-46. Purpose of occupation tax.*

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes.

*Sec. 19-47. When tax due and payable; effect of transacting business when tax delinquent.*

(a) Each such license shall be for the calendar year 1996 and succeeding calendar years thereafter unless otherwise specifically provided. Said license and occupation tax shall be payable January 1 of each year and shall be delinquent if not paid by April 1 of each year, and if delinquent shall be subject to penalties for delinquency as prescribed in Article IV of this Chapter. On any new profession, trade, or calling begun in Columbus in 1996 or succeeding years thereafter, the license shall be delinquent if not obtained immediately upon beginning business and a ten percent penalty imposed. The license certificate herein provided for shall be issued by the Revenue Collection Officer and if any person, firm, corporation whose duty it is to obtain a license shall, after said license or occupation tax becomes delinquent transact, or offer to transact, in Columbus, any of the kind of profession, trade, or calling in this article specified without having first obtained said license, such offender shall, upon the conviction of the recorder, be punished by a fine not to exceed \$600.00, or imprisonment not to exceed ninety 90 days, either or both in the discretion of the recorder.

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

*Sec. 19-48. Allocation of gross receipts of business with multiple intrastate or interstate locations.*

For those businesses who have multiple locations inside and outside of the city, the gross receipts used to determine the occupational tax assessed will be those gross receipts attributed to each Columbus location. In the case where the dollar amount of gross receipts attributed locally cannot be determined in those businesses with multiple locations, the total gross receipts will be divided by the total number of locations in Columbus and elsewhere and allotted to those locations. Upon request, the business or practitioner with locations or offices situated in more than one jurisdiction shall provide to the city the following:

- (1) financial information necessary to allocate the gross receipts of the business or practitioner; and

- (2) information relating to the allocation of the business's or practitioner's gross receipts by other local governments.

Where the business has locations outside of the city and taxation is levied for a criteria other than gross receipts in the other local governments, the city shall not assess more than the allotted share of gross receipts for the local operation.

*Sec. 19-49. Exemption on grounds that business is a state or local authority or nonprofit organization.*

No business shall be required to pay any occupation tax, regulatory fee, or administrative fee if the business is a state or local authority or nonprofit organization.

*Sec. 19-50. Evidence of state licensure required if applicable; state license to be displayed.*

(a) Each person who is licensed by the Secretary of State pursuant to Title 43 of the Official Code of Georgia Annotated shall provide evidence of proper and current state licensure before the city license is issued.

(b) Each person who is subject to a city license and also is licensed by the state shall post the state license in a conspicuous place in the licensee's place of business and shall keep the license there at all times while the license remains valid.

*Sec. 19-51. Evidence of qualification required if applicable.*

(a) Any business who is required to obtain health permits, bonds, certificates of qualification, certificates of competency, or any other regulatory matter shall first, before the issuance of a city business license, shall show evidence of qualification.

(b) Any business who is required to submit an annual application for continuance of that business shall do so before the license is issued.

*Sec. 19-52. Liability of officers and agents; license required; failure to obtain.*

All persons 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 any owner, officer, manager, or other individual operating the business shall be subject to the same penalty as other persons who fail to obtain a license. Every person commencing business in Columbus after the first day of April of each year shall likewise obtain the license herein provided for before commencing the same; and any person transacting, or offering to transact in Columbus, any of the kinds of business, trade, profession or occupation without first having so obtained said license, shall be subject to penalties provided thereof.

*Sec. 19-53. When license and tax due and payable; effect of transacting business when tax delinquent.*

(a) Each such license shall be for the calendar year 1996 and each succeeding calendar year thereafter unless otherwise specifically provided. There is hereby imposed a penalty upon each business which fails to apply for and obtain a appropriate business license and pay all tax and fees as provided herein before April 1 of each year on the second day of April of each year hereafter. Every person commencing business in Columbus after January 1, of each year shall obtain the license required before commencing such business. Any person transacting or offering to transact in Columbus any business, trade, profession or occupation without first having obtained said license shall be assessed a penalty in the amount of 10% of the administrative fee and occupational tax determined to be due and owing under the provision of this article. Said penalties shall be in addition to all other interest, civil and criminal penalties herein provided, and may be collected by the remedies herein provided for collection of the occupation tax, and shall have the same lien and priority as the occupation tax to which the penalty is applied.

(b) The license certificate herein provided for shall be issued by the Revenue Collection Officer; and if any person, firm or corporation whose duty it is to obtain a license shall, after said occupation tax becomes delinquent, transact or offer to transact, in Columbus, any of the kind of business, trade, profession, or occupation without having first obtained said license, such offender shall be subject to the penalties provided herein.

*Sec. 19-54. Penalty of article violation.*

Any person violating any provisions of this article shall, upon conviction before the recorder, be fined in an amount not exceeding \$600.00 or imprisoned not exceeding 90 days, either or both, in the discretion of the recorder.

*Sec. 19-55. Revenue collection division and officer and inspectors classified as deputy marshal-license inspector; subpoena and arresting powers.*

The Revenue Collection Division and its duly designated officer and inspectors or its successors shall be classified as Deputy Marshal-License Inspector with full subpoena and arresting powers in conjunction with any violation pertaining to the Business License and Occupation Tax Ordinance for 1996 (this article) and succeeding years thereafter.

*Sec. 19-56. Occupation tax inapplicable where prohibited by law.*

This occupation tax is not levied upon the gross receipts of any part of a business where such levy is prohibited by the laws of Georgia or of the United States.

*Sec. 19-57. Business activities not covered by this Article.*

The following business activities 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 of Georgia or by local law.

- (1) Those businesses regulated by the Georgia Public Service Commission.
- (2) Those electrical service businesses organized under Chapter 3 of Title 46 of the Official Code of Georgia Annotated.
- (3) Any farm operation for the production from or on the land of agricultural products, but not including agribusinesses.
- (4) Cooperative marketing associations governed by O. C. G. A. § 2-10-105.
- (5) Insurance companies governed by O. C. G. A. § 33-8-8, 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.
- (8) Agricultural products and livestock raised in the State of Georgia governed by O. C. G. A. § 48-5-356.
- (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) Sale of alcoholic beverages.
- (12) Residential property rental businesses.

*Sec. 19-58. Occupation taxes levied on business to be transacted during calendar year; filing of returns showing gross receipts during preceding calendar year.*

(a) All occupation taxes levied by this article are levied on amount of business to be transacted during the calendar year. However, for convenience of both city and the taxpayer, those businesses subject to the occupation tax levied in section 19-39 hereof shall, on or before the times hereinafter set forth, file with the Revenue Collection Officer the returns hereinafter specifically provided for, showing the gross receipts of that business during the preceding calendar year. This return shall be used as an estimate for making payments on the occupation tax for current calendar year, the actual and final amount of tax levied for business transacted in a current calendar year to be paid in accordance with a final return to be made after the termination of the year, in accordance with the procedure hereinafter set forth.

(b) The owner, proprietor, manager, secretary or other officer of the business subject to said occupation tax of the current calendar year shall, at the end of the preceding year, and on or before April 1 of the current calendar year, file with the Revenue Collection Officer of Columbus, on a form furnished by said Revenue Collection Officer, a signed return, setting forth the amount of gross receipts of such business for the entire preceding calendar year, to be used as an estimate of the gross receipts for the current year.

(c) Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be set forth in said return. Said return shall also show a figure putting the receipts for such part of a year on an annual basis, which figure shall bear the same ratio to the amount of gross receipts for such part year as the full year bears to such part. Said figure shall be used as the estimate of the gross receipts of the business for the current calendar year.

*Sec. 19-59. When occupation tax due and payable; payment options.*

The amount of occupation tax, based on the estimates as set forth in section 19-58(b), shall be payable to the said city, at the office of the treasurer, on January 1 each year and delinquent if not paid on or before March 1 each year; provided, however that the taxpayer may have the following options as to payment of said tax:

- (a) If the entire amount of the occupation tax, based on said estimate, is paid on or before April 1, the taxpayer shall be entitled to a discount of two per cent of the amount of tax so paid, allowable at the time of such payment. No discount shall be allowed for any payment made after April 1.
- (b) If instead of electing to pay, on or before April 1, the entire amount of the occupation tax based on said estimate, the taxpayer elects to pay said tax in deferred payments, said tax shall be paid in equal installments as follows: April 1, July 31, October 31, and April 1 of the succeeding year. Where a taxpayer fails to make any such quarterly payment on or before the date due for such payment the entire remaining balance shall be considered delinquent. In such event a penalty equal to ten per cent of the unpaid amount will be imposed in addition to all other interest, civil and criminal penalties herein provided. Any delinquency arising from failure to make a quarterly payment on or before the due date for such payment may be eliminated upon payment by the taxpayer of the past due installment and all penalties and interest.
- (c) Interest at the rate of 1.5 per cent per month or any fraction thereof will be charged on any amount of delinquent occupation tax, administrative fee or regulatory fee. Any such interest will be charged from the date of delinquency until the date of actual payment.

*Sec. 19-60. Payment of occupation tax by newly established businesses.*

In the case of a business subject to occupation tax for a calendar year, which was not conducted for any period of time in the corporate limits of Columbus in the preceding year, the owner, proprietor, manager or executive officer of the business liable for occupation tax shall estimate the gross volume of revenue from commencing date to the end of the calendar year and such tax shall be paid in equal installments as follows: April 1, July 31, October 31, and April 1 of the succeeding year. Where a taxpayer fails to make any such quarterly payment on or before the due date for such payment, the taxpayer shall be subject to the penalties and interest provided in section 19-54 and section 19-59 herein.

*Sec. 19-61. 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, the gross receipts of each location will be entered on a separate occupation tax return and each different line of business will have the gross receipts of that line of business identified on a form to be furnished by the Revenue Collection Officer.

*Sec. 19-62. Filing of return showing actual gross receipts during calendar year; procedure where taxes overpaid or underpaid.*

- (a) After the end of each year and on or before April 1 of the succeeding year, the owner, proprietor, manager or executive officer of the business liable for said occupation tax levied for the year shall file with the Revenue Collection Officer, on a form furnished by said Revenue Collection Officer, a signed return setting forth the actual amount of the gross receipts of such business during the calendar year.
- (b) If the amount of the occupation tax for the preceding year based on the return provided for in this section and on the rate of said tax provided for in this article, exceeds the amount of occupational tax theretofore paid by said business based on the estimate filed pursuant to section 19-58(b), hereof, the difference in said amount shall be due and payable by the taxpayer to the city on April 1 of the current year and delinquent if not paid on or before said date.
- (c) If the amount of the occupation tax for the preceding year, based on the return provided for in this section and on the rate of tax provided for in this article, is less than the amount of occupation tax theretofore paid by said business based on the estimate filed pursuant to section 19-58(b) hereof, the difference in said amount shall be refundable by the city to the taxpayer; or, if said business continues to be conducted in said city during the current year, such difference in amount may be credited by the city on the amount of occupation tax to be paid to the city by said business for the current year. This election is to be taken by Columbus.
- (d) In computing the amount of tax due the city or the amount of the refund due the taxpayer, a taxpayer who has paid the amount of his estimate and been allowed the discount of two per cent provided for in section 19-59, shall retain credit for the amount of such discount theretofore allowed.

*Sec. 19-63. Returns confidential.*

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 city or any other person to divulge

or make known in any manner the amount of gross receipts or any particulars set forth or disclosed in any occupation tax return required under this article. All contents of said return shall be confidential, and open only to the officials, employees, agents or clerks of the city using said returns for the purpose of this occupation tax levy and the collection of the tax. Independent auditors or bookkeepers employed by the city shall be considered as "employees" for the purposes of this Section. Nothing herein shall be construed to prohibit the publication by the city officials of statistics, so classified as to prevent the identification of particular reports or returns and items thereof, or the inspection of the records by duly qualified employees of the tax departments of the State of Georgia, the United States, and other local governments.

*Sec. 19-64. Inspections of books and records.*

In any case the Revenue Collection Officer of the city, through its officers, agents, employees, or representatives, may inspect the books of the business for which the returns are made. The Revenue Collection Officer shall have the right to inspect the books or records for the business of which the return was made in Columbus, Georgia, and upon demand of the Revenue Collection Officer such books or records shall be submitted for inspection by a representative of the City of Columbus within 30 days. Failure of submission of such books or records within 30 days shall be grounds for revocation of license currently existing to do business in the City of Columbus. Adequate records shall be kept in the City of Columbus, Georgia, for examination by the Revenue Collection Officer at his discretion. If, after examination of the books or records, it is determined that a deficiency occurs as a result of underreporting, the taxpayer shall be subject to the penalties and interest provided in section 19-54 and section 19-59 herein. For the purposes of this section, the interest rate specified in section 19-59 shall be assessed from the date the deficiency is determined to have occurred to the date payment of the deficiency is made.

*Sec. 19-65. Licenses to be revoked for failure to pay tax, file returns, 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 returns within the time required herein, or upon failure to make a true return, or upon failure to amend a return to set forth the truth, or upon failure to permit inspection of its books as above provided, any business license granted by the city under this article permitting the owner of said business to do business in the city for the current year shall be, ipso facto, revoked. No new business license shall be granted by the city 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 as requested by the Revenue Collection Officer in accordance with provisions found in Section 19-64. In the case of those practitioners where the local government cannot suspend the right of the practitioner to conduct its business, the imposition of civil penalties shall be permitted and pursued by the local government in the case of delinquent occupation tax.

*Sec. 19-66. Effect of failure to comply with article provisions; continuing in business after license revocation.*

Any person, their managers, agents, or employees, who do business in Columbus after the license for said business has been revoked as above; any persons, their managers, agents or employees, hereby required to make returns, showing the amount of gross receipts and who fail to make said returns within the time and in the manner herein provided, or refuse to amend such returns so as to set forth the truth, or who shall make false returns; and any persons, their managers, agents or employees, who refuse to permit an inspection of books in their charge when the officers, agents, employees or representatives of the city request such inspection, during the 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 local government cannot suspend the right of the practitioner to conduct its business, the imposition of civil penalties shall be permitted and pursued by the local government in the case of delinquent occupation tax.

*Sec. 19-67. Execution for delinquent occupation tax.*

In addition to the other remedies herein provided for the collection of the occupation tax herein levied, the Revenue Collection Officer, 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 persons, partnership, or corporation liable for said tax, which said execution shall bear interest at the rate of twelve per cent per annum from the date when such tax or installment becomes delinquent, and the lien shall cover the property of the person, partnership, or corporation liable for said tax, all as provided by the ordinances and charter of Columbus and the laws of Georgia. The lien of said occupation tax shall become fixed on and date from the time when such tax or any installment thereof become delinquent. The execution shall be levied by the Revenue Collection Officer upon the property of defendant located in Columbus, 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 ordinances and charter of Columbus and the laws of Georgia, and the defendant in said execution shall have rights of defense, by affidavit of illegality and otherwise, which are provided by the charter of Columbus and the laws of Georgia in regard to tax executions. When a nulla bona entry has been entered by proper authority upon an execution issued by the Revenue Collection Officer against any person defaulting on the license tax, the person 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 person against whom the execution issues pays the tax in full together with all interest and costs accrued on the tax, the person may collect any fees and charges due him or her as though he or she had never defaulted in the payment of the taxes.

*Sec. 19-68. Amendment or repeal of provisions.*

This article shall be subject to amendment or repeal, in whole or part, at any time, and no such amendment or repeal shall be construed to deny the right of the council to assess and collect any of the taxes or other charges prescribed. Said amendment may increase or lower the amounts and tax rates of any occupation and may change the classification thereof. The payment of any occupation tax provided for shall not be construed as prohibiting the levy or collection by the city of additional occupation or other taxes upon the same person, property, or business.

*Sec. 19-69. Applications of provisions to prior ordinances.*

This article does not repeal or affect the force of any part of any ordinance heretofore passed where taxes levied under such prior ordinance have not been paid in full. So much and such parts of ordinances heretofore and hereinafter passed as provided for the issuing and enforcing of execution for any tax or assessment required by such ordinances, or that imposed fines or penalties for the nonpayment of such tax, or for failure to take out license provided for in said ordinance or ordinances, or failure to comply with any other provisions hereof, shall continue and remain in force until such tax or assessment shall be fully paid.

*Sec. 19-70. Administrative rules authorized.*

The Finance Director is authorized to promulgate such rules or regulations as are deemed necessary to administer the business license and occupation tax systems or to facilitate enforcement of the provisions of this article. All such rules or regulations shall be filed in the Revenue Collection Office. All such rules or regulations shall have the same validity as the provisions of this article.

*Sec. 19-71. Enforcement of provisions.*

It is hereby made the duty of the Revenue Collection Office, Police Department and the Sheriff's Office to see that the provisions of this article relating to occupation taxes are observed; and to summon all violators of the same to appear before the Recorder's Court. It is hereby made the further duty of the Revenue Collection Officer, the Special Enforcement Officer, the Chief of Police, the Sheriff, and members of their departments, to inspect all licenses issued by the City of Columbus, as often as in their judgment it may seem necessary to determine whether the license held is the proper one for the business sought to be transacted thereunder.

*Sec. 19-72. Requirement of public hearing before tax increase.*

After January 1, 1996, the council shall conduct at least one public hearing before adopting any ordinance or resolutions which will increase the rate of occupation tax as set forth in this ordinance.

*Sec. 19-73. Option to establish exemption or reduction in occupation tax.*

The Council may by subsequent ordinance or resolution provide for an exemption or reduction in occupation tax to one or more types of businesses or practitioner of professions as part of a plan for economic development or attracting or encouraging selected types of businesses or practitioners of professions. Such exemption or reductions in occupation tax shall not be arbitrary or capricious and the reasons shall be set forth in the minutes of the council.

*Sec. 19-74. Conflicts between specific and general provisions.*

Where there is an apparent conflict in this article between specific and general provisions, it is the intention hereof that the specific shall control.

*Sec. 19-75. Severability.*

If any section, provision or clause of any part of this article shall be declared invalid or unconstitutional, or if the provisions of any part of this article as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to effect the portions of this article not so held to be invalid, or the application of this article to other circumstances not so held to be invalid. It is hereby declared as the intent that this article would have been adopted had such invalid portion not been included herein.


Sec. 19-76. Repeal of conflicting provisions.

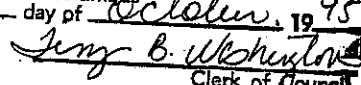
All ordinances or parts of ordinances in conflict with this ordinance, and not preserved hereby, be, and the same are, hereby repealed. However, any license fee or tax liability of any person incurred prior to December 31, 1995 pursuant to ordinances repealed by this Section shall continue in full force and effect until paid, and all enforcement provisions which now exist shall continue to be in full force and effect solely as to such unpaid liabilities incurred prior to December 31, 1995.

Introduced at the regular meeting of the Council of Columbus, Georgia, held on the 3rd day of Oct, 1995, introduced a second time at the regular meeting held on the 10th day of Oct, 1995, and adopted at said meeting by the affirmative vote of nine members of said Council.

Councilor Allen voting	<u>YES</u>
Councilor Batastini voting	<u>YES</u>
Councilor Chester voting	<u>YES</u>
Councilor Land voting	<u>YES</u>
Councilor McClung voting	<u>YES</u>
Councilor McDaniel voting	<u>YES</u>
Councilor Rodgers voting	<u>YES</u>
Councilor Suber voting	<u>YES</u>
Councilor Turner voting	<u>ABSENT FOR THIS VOTE</u>
Councilor Woodson voting	<u>YES</u>

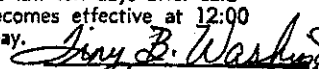
  
TINY WASHINGTON, CLERK

  
BOBBY G. PETERS, MAYOR

This is to certify that this ordinance was published in its entirety in the Columbus Ledger on the 2nd day of October, 1995  
Sec: 3-206(2)  
  
Clerk of Council

This ordinance submitted to the Mayor for his signature, this the 11th day of October, 1995  
Sec: 3-202 (1)

  
Clerk of Council

This ordinance received, signed by the Mayor, at 9:30 A.M. on the 11th day of October, 1995, and becomes law ten days after said time received and becomes effective at 12:00 noon the following day.  
Sec: 3-202 (2)  
  
Clerk of Council

## MEMORANDUM

TO: Columbus City Council  
FROM: Business Tax Commission  
RE: Report of the Occupation Tax Committee  
DATE: September 27, 1995

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BACKGROUND

During 1994, an ordinance to revise the occupation tax of the city of Columbus, Georgia was passed to bring the tax system into compliance with the provisions of state law. That ordinance was greeted with much controversy and objected to by many members of the Columbus business community. Across the state of Georgia similar complaints brought about the rewriting of the state law and the opportunity to reconsider the Columbus ordinance. City Council wisely decided to establish a committee representing the business community to make recommendations to the Council to reestablish a fairer and less objectionable occupation tax and moreover to consider all taxes levied by the city on businesses and recommend changes to keep Columbus competitive with other cities and counties in both Georgia and the Southeast in attracting new business and new jobs.

COMPOSITION OF THE COMMITTEE

Councilman Jack Rodgers was appointed chairman of a group of business people chosen to provide a cross section of Columbus businesses. The group represented segments from large manufacturers to the corner druggist, from flower shops to multi location retailers. A list of the members is attached and has representation from automobile dealers, rental companies, and a myriad of others all subject to the tax. There should certainly be very few business people not on the committee who could argue that they were not represented by someone with similar interests within the committee.

PROBLEMS WITH THE PRIOR ORDINANCE

The principal concern with the prior system for assessing the Occupation Tax was that the rates charged were too similar across businesses whose profitability on gross receipts were significantly different. In other words, the rates were too flat. The obvious intent of a gross

receipts based collection system as contemplated in the state act was to be progressive vs net profit of businesses being taxed. In addition, various issues of fairness came to light resulting in the recommended ordinance.

#### METHODOLOGY

In order to establish the tax base under the new state law, the city finance department conducted a survey which had a response rate of 31% of Columbus businesses. These businesses represented 57% of all taxable gross receipts in 1995. This provided a data base from which the remainder of the business tax base could be projected. We could then create a series of rate classes structured to provide a target revenue of \$6,000,000 which was considered as revenue neutral, a significant goal for the committee. The rate structure was discussed in a series of meetings. Out of this came the recommended structure which is based on several principals we enumerate below:

1. The use of the IRS net profit and gross receipts for corporations eliminates concerns that sole proprietorships and partnerships would be unduly taxed on personal income related to their business enterprise.
2. Ten years of these statistics generates an average profitability over a period long enough that no industry's rate would be skewed by a few years of unduly high or low profits during any part of a short term business cycle.
3. The same ten year floating average continued as statistics are made available by the IRS by dropping and adding a year will insulate the tax system from movement of a businesses rate more than one class at a time.
4. It is obvious that a low floor rate needed to be created that reflected a minimal contribution from every business to the incremental city services this tax was intended to offset. (\$1 per \$1000)
5. Our analysis showed that virtually all taxpayers would fall into the lower profit classes with very few in higher ranges. A ceiling was established to reflect the maximum that any business might be taxed. (\$6 per \$1000)
6. In order to be fair, the curve of the rates between the floor and ceiling parameters in eight tax classes must reflect the profitability curve of Standard Industry Classifications. We recommend that whenever rates are adjusted by the city that these relationships remain.
7. The committee in proceeding through several iterations of statistics found that the use of two digit Standard Industry Classifications was not precise enough to insure fairness to sub

Memo to Columbus City Council  
September 27, 1995

Page 3

classified industries whose profitability might be distinctly different from more general classes. Therefore, the committee used and recommends the continued use of a four digit SIC. This also provides more precision when administrative personnel are asked to set classifications and tax classes of new businesses.

#### NON-TAXABLE RECEIPTS

On advise from the city attorney, the ordinance does not define each class of non-taxable receipts under Federal and Georgia law. This is based on a decision made to allow each taxpayer to argue their case and cite any applicable statute to establish non taxability. The city will decide each issue on its merit as part of its standard audit procedures. This applies to out of state sales and non-taxable products or transactions.

#### RENTAL INCOME

The committee is recommending that businesses engaged in the rental of property be required to file for a business license. Currently, businesses who file for a business license on another enterprise find themselves subject to this tax on their incidental rental receipts while individuals whose business is renting real estate have escaped the tax. This is patently unfair and we feel it should be corrected. As the state statute does not allow us to exclude all rental income from this tax then we recommend the enforcement of the rule across all businesses. We recognize that many individuals will own rental property as a personal investment and it is not our intent that these activities, which we do not consider to be businesses, should be licensed. We have defined as businesses and therefore subject to the occupation tax those operations with more than five rental units or gross receipts from rental property of \$75,000 or more. We believe this administrative threshold is fair because it excludes the individual with one to five small units. The proposed ordinance assumes \$200,000 of the \$6,000,000 target will come from these new sources.

#### FEE FOR CITY SERVICES

State law permits the city to charge fees for specific services performed when the cost of those services can be calculated. We recommend that the city begin isolating costs for certain services it performs and assess appropriate fees for those services.

#### TRANSITION RULES

Because the proposed tax is so much fairer and less subject to criticism than the current system, we propose a very simple transition rule of up to four years to reach a new higher rate class from current levels with no business being subject to more than a doubling of its



bill from one year to the next. The system is simple to understand so every business should be able to budget and plan for this transition.

#### NEW BUSINESS INCENTIVES

We recommend that a start up period waiver of or a employment increase related credit against this tax be included in the incentives available to the development authorities when attracting new business and jobs to Columbus. The exact method and recommendation is still a subject to be further discussed after implementation of the ordinance.

#### TAX RELIANCE

The Committee found in its research that Columbus relies on the Business Occupation tax much more heavily as other cities in Georgia both in dollars to size and as a percentage of the budget. We believe that the business community is taxed too heavily and the city should not continue to overburden its employers. However, we do not recommend a cap as we feel caps are how this situation was created.

#### CONTINUED CHARTER

The committee was chartered to look at all business taxes. By necessity its work has dealt first with the Business Occupation tax issue. We feel, however, that this task is only partly complete. The entire issue of business taxation in Columbus must be addressed. Current tax levels serve as a disincentive to locate here. There is entirely too much reliance on business which does not benefit from homestead exemptions and other ameliorating adjustments enjoyed by individuals. Work should continue on other areas of taxation to try to make them fairer as well.

Mr. Jack Rodgers, Chairperson

Mr. Nathan Suber  
473 N. Oakley Drive  
Columbus, Georgia 31906  
689-6665

Mr. Gary Allen  
AFLAC  
1932 Wynnton Road  
Columbus, Georgia 31999  
596-3306

Mr. Ted J. Land  
1069 Standing Boy Court  
Columbus, Georgia 31904  
322-1683

Mr. Tommy Williams  
Columbus Fire & Safety  
3101 - 2nd Avenue  
Columbus, Georgia 31901  
323-8010

Mr. Jim Jordan  
The CBC Group  
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327-0251

Ms. Valerie Moore  
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571-5186

Mr. Rick McKnight  
Warren's  
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Columbus, Georgia 31908  
327-0334

Mr. Ken Pruitt  
Johnny's Shoe Repair  
3617 Hilton Avenue  
Columbus, Georgia 31904  
323-6222

Ms. Evelyn Turner  
325 Jefferson Drive  
Columbus, Georgia 31907  
571-5140

Ms. Linda Beyer  
215 Munson Drive  
Columbus, Georgia 31903  
687-6755

Mr. Frank A. Turman  
Turman Realty Company  
3453 Victory Drive  
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689-4545

Ms. Evelyn "Mimi" Woodson  
2931 Avondale Road  
Columbus, Georgia 31903  
689-1786

Ms. Cathy Vaughn  
Home Builders Association of Columbus  
6432 Bradley Park Drive  
Columbus, Georgia 31904  
322-8590

Mr. Norbert Snyder  
Snyder M. Company, Inc.  
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Columbus, Georgia 31906  
323-1771

Ms. Bobbie Alexander  
LBN Travel  
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Columbus, Georgia 31909  
327-6559

Ms. Ann McNeer  
McNeer Accounting  
5118 - 13th Avenue  
Columbus, Georgia 31901  
323-2968

SEPT 28 1995 14:44 FROM SPECTRUM WESTPOINT  
Edgewood Pharmacy  
2212 Elm Drive  
Columbus, Georgia 31907  
561-7942

Post Office Box 2707  
Columbus, Georgia 31902  
324-0201

Mr. Dan Snow  
Gateway Lincoln  
1300 5th Ave.  
Columbus, Georgia  
322-5575

Mr. Loring F. Perez  
Spectrum Stores  
Post Office 272  
West Point, Georgia 31833  
706-645-3446  
706-645-2275

Stan Swinehart  
Park Properties  
1110 Farr Road  
Columbus, Georgia 31907  
689-4873

Ms. Lucille Evans  
Swift Textile Company  
Post Office Box 1400  
Columbus, Georgia 31994  
324-3623

Mr. R. E. Watson  
Controller  
Johnston Industries Inc.  
105 13th Street  
Columbus, Georgia 31901  
Home: 641-3140  
Fax: 641-3158

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**ATTENDEES:**

Mr. Chris Chronis  
Finance Director

Mr. Ray Lopez  
Columbus Chamber of Commerce  
Post Office Box 1200  
Columbus, Georgia 31902-1200  
327-1566

Mr. Paul Nipper  
Business License Division  
West Wing - Government Center  
571-4752

**MEMORANDUM**

**DATE:** March 22, 2011

**TO:** Mayor Teresa Tomlinson

**FROM:** Jaimie DeLoach, Assistant City Attorney

**SUBJECT:** Tax Revenue Questions from February Meeting

---

QUESTION 1: Is it possible under state/local law for Council to establish a Sales Tax Free (Reduced) Zone?

ANSWER 1: Article VII, Section I, Paragraph III of the Georgia Constitution mandates uniformity of taxation as follows: "All taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." This would lead one to believe that all Columbus businesses and individuals are taxed equally and in the same manner. However, state law has created a few exceptions to this general rule through the creation of Enterprise Zones, Urban Services Districts and the Urban Redevelopment Act. While all of these have been created by Constitutional amendment or by statute, they do not apply to the present question as our issue centers on what the City can do to create certain sales tax exempt areas within its boundaries.

The Council can only levy and collect taxes, license fees and other charges to the extent that it has been authorized to do so by the Georgia Constitution and the laws of the State of Georgia. Columbus Charter Art. 1, Sec. 7-100. As the power to tax is inherent in the State General Assembly, the Council cannot impose a tax (or grant an exemption) unless it has been given direct authorization from the General Assembly. *Board of Com'r of Taylor Co. v. Cooper*, 245 Ga. 251 (1980). Therefore, without a constitutional amendment or direct authorization from the General Assembly, the Council cannot designate certain areas of the City to be "Sales Tax Free (or reduced) Zones" as it would violate the uniformity of taxation clause of the Constitution.

Note 1: O.C.G.A. § 48-8-6 states there shall not be imposed in any jurisdiction in this State on any transaction local sales and use taxes in excess of two percent. Currently, Columbus levies the maximum amount of sales tax that may be charged as it collects 1% for LOST and 1% for SPLOST.

Note 2: Council may designate a certain area in Columbus as an Enterprise Zone in order to promote rehabilitation, renovation or restoration for housing and the economic viability of such area. In these Enterprise Zones, ad valorem taxes, occupation taxes, license fees and other local fees and taxes can be reduced or even exempted from applying to qualified businesses. However, O.C.G.A. § 36-88-5 specifically prohibits Council from reducing or exempting local sales and use taxes. Therefore, even if Council designates a certain area as an Enterprise Zone and reduces other tax burdens of qualified businesses, it will not be able to reduce the sales and use tax liability for those areas.

**QUESTION 2: Does Council have the authority, other than what is available at the state level, to issue property tax rebates or credits?**

ANSWER 2: "The assessment and collection of property taxes by the consolidated government shall be as provided by state law." Columbus Charter Art. 1, Sec. 7-300. As a result, property tax exemptions, rebates and credits are controlled by state law. Georgia has provided a few property tax exemptions and credits through programs such as the Homeowners Tax Relief Grant and other state sponsored programs. However, Council's authority to provide such exemptions and credits only exists to the extent that Georgia law grants such authority to it.

State law provides for , rebates, exemptions and credits in the following manner. Under O.C.G.A. § 48-5-380, each county and municipality must refund to taxpayers any and all taxes and license fees a) which have been erroneously or illegally assessed and collected or b) have been voluntarily or involuntarily overpaid by the taxpayers. The Georgia Code provides a way for the Council to place unused funds into a reserve fund of the county but it does not grant it a way to provide rebates or credits to the taxpayers. In sum, the Council has the ability to refund overpaid amounts and reserve any excess and unused amounts but it does not have the ability to grant exemptions or credits unless otherwise authorized to do so under state law. To date, no such exemptions or credits have been granted to local governments.

**QUESTION 3: Can the City levy an income tax on non-residents who work in Columbus?**

ANSWER 3: No, under O.C.G.A. § 48-7-140, there shall be no local income taxes whatsoever levied or collected by any political subdivision of this state, and no local income tax returns shall be required.



**QUESTION 4: Can the City levy an income tax on individuals who work for the City government but do not live in Columbus Georgia?**

ANSWER 4: No, see O.C.G.A. § 48-7-140 in Answer 3 above.

**QUESTION 5: If the City cannot collect property taxes from local non-profit organizations, may the City charge such non-profit organizations a "user fee"?**

ANSWER 5: Georgia law prohibits a local government from imposing "any occupation tax, regulatory fee, or administrative fee on any...nonprofit organization." O.C.G.A. § 48-13-13(5). This provision has been included in Columbus' Code of Ordinances at Section 19-49. For purposes of analyzing whether the "user fee" is substantively a prohibited tax, the first inquiry must be whether the user fee operates as a means to generate revenue, if so it will be deemed a prohibited tax.

An occupation tax is a tax levied for the purpose of engaging in an occupation, profession or business and enacted by local government as a revenue-raising ordinance or resolution. O.C.G.A. § 48-13-5(4). More specifically, a tax is an enforced contribution exacted pursuant to legislative authority for the purpose of raising revenue to be used for public or governmental purposes. *Gunby v. Yates*, 214 Ga. 17, 19 (1958). By comparison, payment for a special privilege or service rendered by a public officer amounts to a "fee." *Gunby v. Yates*, 214 Ga. 17 (1958). As an example, if a non-profit corporation is charged a \$100.00 user fee each time it calls the fire department, but the \$100.00 is applied towards a superior court clerk's salary, it will most likely be considered as "raising revenue to be used for public or governmental purposes." *Id.* On this basis, it is important that the City actually apply any monies received as a result of a user fee to the government department that provided a service to the nonprofit corporation. If the City is going to charge a nonprofit \$500 to collect its trash, then the City must apply those funds towards the cost of providing such service and the amount of the fee must be reasonable. For purposes of O.C.G.A. § 48-13-5(4), so long as the user fee does not raise revenue for the City but rather cover the cost of providing the service, it will not be considered an occupation tax.

The next inquiry is whether a user fee is considered a prohibited "regulatory fee" or "administrative fee." A regulatory fee is a fee imposed under a local government's police power and is intended primarily as a means of or as an aid in regulating an occupation, profession, or business. O.C.G.A. § 48-13-5(6); *Hadley v. City of Atlanta*, 232 Ga. App. 871, 872 (1998). An administrative fee "is a component of an occupation tax which approximates the reasonable cost of handling and processing the occupation tax." O.C.G.A. § 48-13-5(1).

A reasonable assumption is that the City does not regulate non-profit organizations and that no fee that it collects would be connected to such nonexistent processing costs. Therefore, the permissible user fee is unlikely to be recategorized as a prohibited "regulatory fee". Instead, as long as the fee is only required when a non-profit

desires to use a particular government service, it is likely to be categorized as a permissible user fee. This conclusion will be furthered if the fee is reasonably related to the cost of providing such a service and does not interfere with the non-profit corporation's ability to engage in its business.

In sum, the more specific the fee, the more it relates to the cost of providing the service and is credited to the departments providing the services, then the more it will qualify as a user fee that can be charged to non-profits. For instance, if the City imposes a fee for garbage service, the fee for garbage service is reasonably related to the cost of providing garbage service, and the City credits the fee to a garbage fund, then the fee is clearly a permissible user fee that can be enforced upon a non-profit. However, the conclusion would be different if a fee covered all government services, was credited to the City's General Fund, and thus was used to support a wide variety of governmental purposes. In this situation, a fee is likely to be recategorized as an impermissible tax. Therefore, in order to charge non-profits a mandatory user fee, the Council should delineate the services that are covered by the fee, there should be calculation of the cost of providing those services and the fee should be applied to the budgets of the departments supplying those services.

## **MEMORANDUM**

To: Revenue Review Commission

From: Tyler Townsend

Date: June 20, 2011

RE: Urban Service Districts & Revitalization

*Overview:* Columbus City Council currently has the authority to create new Urban Service Districts with varying millage rates. It is therefore possible to create Urban Service Districts with revitalization efforts in mind, perhaps with reduced millage rates for a defined period of time.

*Example:* A geographic area currently is under-used. It produces very little revenue to the city and receives very little services from the city. A revitalization project proposes to create an Urban Service District that will have a 0 millage rate for the first 5 years and a 5 millage rate for the next 5 years. After a total of 10 years, the term of the Urban Service District, the Urban Service District will be absorbed into Urban Service District 1 and have the same millage rate as Urban Service District 1.

*Notes:*

- The Urban Service District (USD) approach to revitalization can be used as an economic development tool to complement Enterprise Zones (EZ), Tax Allocation Districts (TAD), and the use of Industrial Revenue Bonds (IRB).
- The private sector, working with economic development representatives, will likely seek the appropriate tool(s) for their project, which may include use of the USD approach.
- The USD should generate a net positive revenue stream throughout the term. In other words, the amount of incremental revenue received by the city each year (even at the reduced millage rates) should be greater than the incremental cost to provide city services each year. The standard used in this analysis should be the “But-For” test... “But for the implementation of the USD with the reduced millage rate, the city would not have received the additional net revenue (net of additional services provided).

*Challenges:*

- Validation of the economics behind the proposal, particularly in regards to the estimated revenue produced and the city services required during the term of the USD. The model currently used for evaluating EZ applications could be used to evaluate USD proposals.
  - Multi-parcel USDs may prove challenging. Different property owners may not commit to development plans at the same time and in a manner that will justify the reduced millage rate for the entire USD.
- Existing businesses within the new USD may prove challenging. The millage rate applies to the new USD and the new USD applies to a defined geography. It may not be legally viable to charge different millage rates to different parcels within the same USD. The challenge becomes defining the boundaries of the USD so that it includes only parcels with true revitalization potential.