

Municipal Taxation 102

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8 am – 11 am

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Overview of Business Occupation Taxes and Regulatory Fees

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Overview

Occupation taxes are appropriate for raising revenue

Regulatory fees may not raise revenue; instead serve to reimburse cost of regulation

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Occupation Taxes: Who Pays & Administration

- Assessed on *businesses* and *practitioners* with location or office within the city limits.
- Administrative fees may be charged, but such fees *cannot exceed the cost of administration*.

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Taxation of In-State Businesses

Occupation taxes may be imposed on, and collected from, businesses with one or more “*locations or offices*” in jurisdiction.

- A vehicle can constitute a location or office.

Not a location or office:

- Temporary or construction worksite serving a single customer or project;
- Vehicle used for sales or delivery where business has a separate office;
- Location of leased personal property does not constitute an office or location for owner of such personal property (e.g., place where leased copier is located doesn’t constitute an office or location for owner of copier); and
- Real property rented or leased to another unless owner conducts business on site (e.g., rental apartments are not a location or office if no leasing or management activities, other than showing property and maintenance, are conducted on site).

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Taxation of Out-of-State Businesses

- May impose on businesses and practitioners with no location or office in Georgia if:
 - Has one or more employees or agents who “*exert substantial effort*” inside the city or county limits in order to solicit business or serve customers; or
 - Owns income-generating property, personal or real, that is located in the jurisdiction.


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Taxation of Door-to-Door Sales

Ineligible for taxation:

- ❖ Salesperson who delivers goods previously ordered from a business
- ❖ Salesperson who takes orders but does not deliver goods



Eligible for taxation:

- ❖ Individuals who conduct business in a city or county and have location in that jurisdiction
- ❖ Out-of-state business that has employees who conduct door-to-door sales
- ❖ Sale and delivery from vehicle (vehicle = location)


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Taxation of Real Estate Brokers

Generally, can only levy or collect a fixed amount license, occupation, or professional tax on real estate brokers at the real estate broker's **principal or branch office**.

*If using gross receipts method, however, can impose and collect an occupation tax on real estate brokers transacting business in the jurisdiction **based on gross receipts** derived from transactions within the boundaries of local government.*



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Taxation of Insurance Companies

- May **not** impose occupation taxes on insurance companies.
- Cities may impose a "license fee" based on population on each business location in the city (O.C.G.A. § 33-8-8)

Population of municipality	Annual Fee
Under 1000	\$15.00
1000-1999	\$25.00
2000-4999	\$40.00
5000-9999	\$50.00
10000-24999	\$75.00
25000-49999	\$100.00
Over 50,000	\$150.00

- Additionally, a city may levy an annual license fee of \$10.00 OR 35% of the above schedule on an insurance company for each additional business location that is not otherwise subject to an annual municipal license fee (e.g., term financing insurance).

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Insurance Premium Taxes

Up to **1%** of gross direct premiums from **life insurance policies** insuring county or municipal residents (except annuities)
(O.C.G.A. § 33-8-8.1)

Up to **2.5%** of gross direct premiums of **insurance companies** doing business in Georgia on non-life insurance policies
(O.C.G.A. § 33-8-8.2)

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Depository Financial Institutions

- Cities and counties may each levy and collect a “business license tax” from each depository financial institution located in the jurisdiction.
(includes banks and savings and loan associations)
- ❖ Rate may not exceed 0.25% of Georgia gross receipts of the depository institutions
- ❖ May provide that minimum amount be \$1,000 (or such lesser amt. established by gov. auth.)
O.C.G.A. § 48-6-93

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Statewide Occupation Tax Exemptions

- Disabled veterans (O.C.G.A. § 43-12-1, et seq.);
- Blind persons (O.C.G.A. §§ 43-12-1 and 49-4-51(b));
- A practitioner whose office is maintained by a governmental entity;
- Any state or local authority, non-profit organization, or vendor with a tax-exempt agricultural fair;
- Businesses regulated by the Public Service Commission and the Department of Public Safety;
- Electrical service businesses;
- Any farm operation, but not including agribusiness (a business that provides goods and services for the production, harvesting, processing, marketing and distribution of agricultural products);
- Persons purchasing guano, meats, meal, flour, bran, cottonseed, or cottonseed meal and hulls for distribution among the purchasers for use and not sale;
- Persons selling or introducing into the city livestock or other agricultural products raised in Georgia;
- Non-profit, agricultural co-ops; Charter schools;
- Depository institutions; and
- Motor common carriers.

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Local Exemptions for Economic Development

A city may, by ordinance or resolution, provide an exemption, reduction or credit in order to promote economic development or attract and maintain certain selected types of businesses or practitioners.

Cannot be arbitrary or capricious. Permissible examples:

- Dollar amount limitations on the total amount of tax
- Credits for the creation or retention of jobs
- Credits for other taxes paid to local government, such as ad valorem taxes
- Exemption or reduction for sales to outside the jurisdiction
- Credit or rebate for paying occupation taxes in prior year
- Limit on the dollar or percentage increase in tax
- Adjustments for fluctuations in the number of employees.

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Permissible Methods of Calculating Tax

Local governments may classify businesses and practitioners and may assess different taxes on different classes of businesses and practitioners

Four methods of classification:

- (1) Number of employees
- (2) Profitability ratio
- (3) Gross receipts & profitability ratio
- (4) Flat fee

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Method 1: Number of Employees

Local government may tax based on the number of employees working for a business:

- Based on full-time (40 hours per wk) positions or full-time equivalents (part-time workers are included)
- More than one tax rate may be adopted (e.g., 1-10 employees, 11-50 employees)

Employee: a person who works under the direction and supervision of an employer if that employer does one or more of the following: withholds fica, income tax; issues W-2 and not 1099

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Method 2: Profitability Ratio


- Local governments may classify businesses according to profitability ratio, measured by nation-wide averages.
- Profitability ratio** = Net income/Gross receipts
 Use IRS or OMB data to stratify businesses
 Use North American Industry Classification System (NAICS)
- Must impose tax at rate increasing **from lowest to highest** profitability ratios

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Method 3: Gross Receipts

Local governments may base occupation tax on the gross receipts of a business or practitioner, in combination with profitability ratio.



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Taxation of Businesses Located in More Than One Local Government

- If using gross receipts:**
 - ❖ If business/practitioner can allocate dollar amount of gross receipts to one or more locations/offices, city may tax gross receipts generated by the location/office inside city;
- OR**
 - ❖ If the business/practitioner cannot allocate dollar amount of gross receipts among its locations/ offices, divide total gross receipts reported in Georgia by number of locations/offices that contributed to gross receipts.

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What are Gross Receipts?

<p>Included:</p> <p>Total income, without deduction for the cost of goods sold or expenses incurred;</p> <p>Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;</p> <p>Proceeds from commissions on the sale of property, goods or services;</p> <p>Proceeds from fees charged for services rendered; and</p> <p>Proceeds from rent, interest, royalty or dividend income.</p>	<p>Not Included:</p> <p>Sales, use, or excise taxes;</p> <p>Sales returns, allowances and discounts;</p> <p>Certain interorganizational sales or transfers;</p> <p>Payments made to a subcontractor or independent agent for services that contributed to the gross receipts;</p> <p>Grants & charitable contributions received by a nonprofit organization <i>if the funds constitute 80 percent or more of the organization's receipts</i>; and</p> <p>Proceeds from sales delivered to or received by customers who are outside the state at the time of delivery.</p>
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Method 4: Flat Fee

- Must be applied **uniformly** to all businesses/practitioners of professions/ occupations.
- Each business/practitioner pays the same amount of tax for each office or location.

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Taxation of Business with More Than One Service or Product

Dominant Service or Product

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Taxation of Businesses Located in More Than One Local Government

- If using number of employees:
 - May tax the number of the business' employees who work inside the local government's jurisdiction.
 - If an employee works for a business in more than one jurisdiction, the city or county in which the employee **works the most** in a calendar year controls.

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Additionally: The 400 Club

- Certain businesses/practitioners may choose between the city's occupation taxes and a fee set by the city.

E.g., Lawyers, accountants, surveyors, dentists, social workers, funeral directors, et al.
- Fee **may not exceed \$400** per practitioner licensed to provide the service.
- City may *not* require a practitioner electing to pay this fee to provide information on gross receipts.

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Taxation of Attorneys

- Can Be Difficult – Constitutional and statutory issues

Moss v. City of Dunwoody (survived challenge)
Barnes v. City of Atlanta (did not survive)
- Cannot require payment of tax as precondition to practice of law.
- There is a statutory prohibition against imposing a regulatory fee on attorneys. O.C.G.A. § 48-13-9(c)(1).

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Collection of Taxes

- **Due date:** January 1, or as otherwise specified by ordinance.

If operational after July 1, pay 50% (except gross receipts and flat fee)

Remedies for delinquency or failure to pay:

- Interest not to exceed 1.5% per month
- A fine not to exceed \$500
- A penalty of 10% of amount owed imposed after 90 days delinquent
- An entry of "nulla bona" in clerk's records
- Pursue in municipal court as code violation

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Confidentiality

Gross receipts data provided for occupation tax purposes is generally considered confidential. Violations are treated as a misdemeanor.

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Occupation Tax *Don'ts*

- ❖ Divide business into constituent parts and impose separate occupation tax on each portion of business
- ❖ Levy occupation tax on more than 100 percent of gross receipts
- ❖ Determine taxation by size or square footage of office or location
- ❖ Require payment of fee by business for the cost of determining if that business has paid occupation tax to another local government
- ❖ Use any criterion other than those specified to calculate occupation tax

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Regulatory Fees

- May only impose if only if customarily perform investigation or inspection of business/ practitioners to **protect the public health, safety or welfare**, or in an effort to enforce a state or local building, health or safety code.

Fee must approximate the reasonable cost of regulation

See O.C.G.A. § 48-13-9 for examples of who can and cannot be regulated.

- Regulatory fee *may not* include an administrative fee or registration fee.

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Statutory Methods for Calculating Regulatory Fees

- A **flat fee** for each business/practitioner doing business in city;
- A **flat fee for each type of permit or inspection** requested;
- An **hourly rate** determined by the hourly wage or salary, including employee benefits, **of the persons assigned to inspect** multiplied by the number of hours estimated for the inspection;
- An **hourly rate** as determined above **with the addition of other expenses** reasonably related to the regulation, such as administrative and travel expenses, multiplied by the number of hours estimated for the inspection.

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Regulatory Fee *Don'ts*

- Cannot impose different regulatory fees based on whether a business or practitioner has a location in the city**
- Cities may not use regulatory fees to raise money for general purposes**

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Exemptions from Regulatory Fees

- **Disabled veterans** of any war or armed conflict in which any branch of the United States armed forces was involved, whether under United States command or otherwise;
- **Blind persons**;
- **Veterans of peace-time service** in the United States armed forces who have a physical disability which was incurred during that service;
See O.C.G.A. § 43-12-1 et seq. for process for obtaining certificate of eligibility
- A local **board of education**; and
- Any state or local authority, nonprofit organization, or vendor acting pursuant to a contract with a **tax-exempt agricultural fair**.

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When are Regulatory Fees Due?

- Generally, regulatory fees must be paid **before** commencing business as a condition precedent for transacting business or practicing a profession
- Regulatory fees may be paid **after** commencing business when:
 - Work/services are necessary for the health, comfort or safety of one or more individuals;
 - Work/ services have no adverse effect on any other person;
 - Fees are paid to city within two business days after commencing business; and
 - Work/ services begin within 24 hours of receiving the request and it is impossible to obtain permit due to city hours of operation.

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How are Regulatory Fees paid?

- Most common method of payment of regulatory fees includes the requirement that the applicant tender the application and fee at City Hall
- Law carves out exemption for permits for installation, replacement or improvement of heating, ventilation, air-conditioning, plumbing or electrical equipment or systems:
 - ✓ Must accept application by mail or electronic means
 - ✓ May require applicant to appear in person **when applying for first permit**

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Additional Resources

- *Occupation Taxes and Regulatory Fees: Make Them Work for Your City* (GMA, 2015). www.gmanet.com/Advice-Knowledge/GMA-Publications/Occupation-Taxes-and-Regulatory-Fees-Make-Them-Wor.aspx
- *A Move Toward Equity: Taxing and Licensing Businesses and Occupations under Georgia Law* by Les A. Schneider and Robert E. Sellers (CVIOG, 1994).
- *Update on Georgia's Occupation Tax Law*, by Betty J. Clements (CVIOG, 1996).

GMA Insurance Business License Compliance Services
www.gmanet.com/Services/Revenue/Delinquent-Business-License-Fees.aspx
GMA Hotel-Motel Compliance Services
www.gmanet.com/Services/Revenue/Hotel-Motel-Tax-Recovery.aspx
GMA Alcoholic Beverage Excise Tax Compliance
www.gmanet.com/Services/Revenue/Alcoholic-Beverage-Excise-Tax-Compliance.aspx
GMA Debt Collection Services
www.gmanet.com/Services/Revenue/Debt-Collection.aspx

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