

AN ORDINANCE

AN ORDINANCE PROVIDING FOR AN OCCUPATION TAX FOR FRANKLIN COUNTY, GEORGIA; TO PROVIDE FOR DEFINITIONS; TO PROVIDE FOR AN OCCUPATION TAX STRUCTURE; TO PROVIDE FOR RESTRICTIONS; TO PROVIDE FOR A PURPOSE AND SCOPE; TO PROVIDE FOR EXEMPTIONS THEREOF; TO PROVIDE FOR PENALTIES AND ENFORCEMENT OF SAID ORDINANCE; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

Be it ordained by the governing body of Franklin County, Georgia:

Section 1.

The Ordinance adopting an occupation tax as set forth in Exhibit "A" attached hereto is hereby adopted.

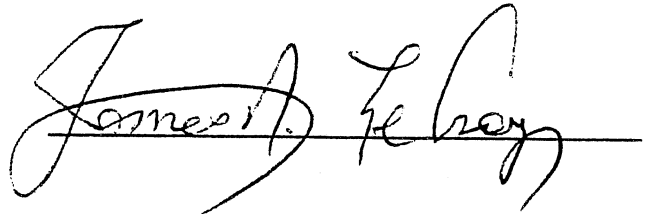
Section 2.

All ordinances in conflict with this ordinance are hereby repealed.

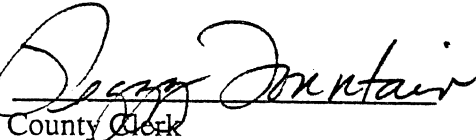
Section 3.

This ordinance shall become effective on the 1st day of January, 2001.

ORDAINED this 20 day of Nov., 2000, by the governing body of Franklin County, Georgia.

A handwritten signature in cursive script, reading "James A. Leary", written over a horizontal line.

Attest:

A handwritten signature in cursive script, reading "Peggy Montair", written over a horizontal line.
County Clerk

OCCUPATION TAX ORDINANCE

Sec. 10-100. Occupation Tax Required; Occupation Tax Required For Business Dealings Within The County.

(A) For the year 2001 and succeeding years thereafter, each person engaged in any business, trade, profession or occupation in the unincorporated areas of Franklin County, Georgia, whether with a location in unincorporated Franklin County, 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 pay an occupation tax for said business, trade, profession or occupation; which tax and any applicable registration shall be displayed in a conspicuous place in the place of business, if the taxpayer has a permanent location in unincorporated Franklin County, Georgia. If the taxpayer has no permanent business location in unincorporated Franklin County, Georgia, such business tax registration shall be shown to the Treasurer or to any law enforcement officer of said Franklin County, Georgia upon his or their request.

Sec. 10-101. Construction of Terms; Definitions.

(A) Whenever the term "Franklin County" is used herein, such term shall be construed to mean the unincorporated areas of "Franklin County, Georgia"; wherever the term "County" is used herein, it shall be construed to mean "Franklin County, 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) (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; and
 - (v) Proceeds from rent, interest, royalty or dividend income.

- (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-subsidiary controlled group of corporations as defined by 26 U.S.C. § 1563(a)(1), or between or among the units of a brother-sister controlled group of corporations as defined by 26 U.S.C. § 1563(a)(2).
 - (iv) Payments made to a subcontractor or an independent agent; and
 - (v) Governmental and foundation grants, charitable contributions or the interest income derived from such funds received by a nonprofit organization which employs salaried practitioners otherwise covered by this chapter, if such funds constitute 80 percent or more of the organization's receipts.
- (3) "Location of office" shall not include a temporary worksite which serves a single customer or project.
- (4) "Occupation tax" means a tax levied on persons, partnerships, corporations or other entities for engaging in an occupation, profession or business for revenue raising purposes.
- (5) "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 County. 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.
- (6) "Dominant line" means the type of business within a multiple line business that the greatest amount of income is derived from.
- (7) "Person" wherever used in this Article shall be held to include sole proprietors, corporations, partnerships, nonprofit or any other form of business organization.
- (8) "Practitioner of profession or occupation" is one who by state law requires state licensure regulating such profession or occupation.

- (9) "Practitioners of professions and occupations" shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

Sec. 10-102. Administrative And Regulatory Fee Structure; Occupation Tax Structure.

- (A) A non-prorated, non-refundable administrative fee of \$10.00 shall be required on all business occupation tax accounts for the initial start-up, renewal or re-opening of those accounts.
- (B) A regulatory fee may be imposed as provided under O.C.G.A. § 48-13-9 on those applicable businesses. A regulatory fee may not include an administrative fee.
- (C) The regulatory fee schedule for persons in occupations and professions shall be set by the Board of Commissioners from time to time and shall be published for public inspection.

Sec. 10-103. Occupation Tax Levied, Restrictions.

- (A) An occupation tax shall be levied upon those businesses and practitioners of professions and occupations with one or more locations or offices within Franklin County or upon the applicable out-of-state businesses with no location or office in Georgia pursuant to O.C.G.A. §48-13-7 based upon the number of employees of the business or practitioner.
- (B) An occupation tax fee schedule shall be formulated from time to time by the Board of Commissioners and shall be available for public inspection.
- (C) The County shall not require the payment of more than one occupational tax for each location that a business or practitioner shall have.
- (D) The County shall not require an occupation tax from those real estate brokers, agents or companies whose offices are located outside the County and sell property inside the County.

Sec. 10-104. Paying Occupation Tax On Business With No Location In Georgia.

Registration and the assessment of an occupation tax is hereby imposed on those businesses and practitioners of professions with no location or office in the state of Georgia if the business's largest dollar volume of business in Georgia is in Franklin County and the business or practitioner has one or more employees or agents who exert substantial efforts within the jurisdiction of Franklin County for the purpose of soliciting business or serving customers or clients.

Sec. 10-105. Each Line Of Business To Be Identified On Business Registration.

The business registration of each business operated in the County shall identify the dominant line of business that the business conducts.

Sec. 10-106. The Number Of Businesses Considered Operating In County.

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 occupation tax.

Sec. 10-107. Professionals As Classified In O.C.G.A. § 48-13-9(c), Paragraphs 1 Through 18.

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

- (1) The occupation tax based on number of employees.
- (2) A fee of \$25.00 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 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. 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 election is to be made on an annual basis and must be done by **October 15** of each year.

Sec. 10-108. 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 or pay an occupation tax for that practice.

Sec. 10-109. Purpose And Scope Of Tax.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any such profession, trade or calling. The occupation tax that only applies to those businesses and occupations which are covered by the provisions of O.C.G.A. §§ 48-13-5 to 48-13-26. All other applicable businesses and occupations are taxed by the local government pursuant to the pertinent general and/or local law and ordinance.

Sec. 10-110. When Tax Due And Payable; Effect Of Transacting Business When Tax Delinquent.

- (A) Each such occupation tax shall be for the calendar year 2001 and succeeding calendar years thereafter unless otherwise specifically provided. Said registration and occupation tax shall be

payable January 1 of each year and shall be delinquent if not paid by March 1 of each year, be subject to penalties for delinquency as prescribed in Section 10-117 of this Chapter. On any new profession, trade or calling begun in Franklin County in 2001 or succeeding years thereafter, the registration and tax shall be delinquent if not obtained immediately upon beginning business and a penalty imposed. The tax registration herein provided for shall be issued by the County Clerk and if any person, firm or corporation whose duty it is to obtain a registration shall, after said registration or occupation tax becomes delinquent, transact or offer to transact, in Franklin County, any of the kind of profession, trade or calling in this Article specified without having first obtained said registration, such offender shall, upon the conviction of the Magistrate, be punished by a fine or imprisonment, either or both in the discretion of the Magistrate.

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

Sec. 10-111. Allocation of Employees Of Business With Multiple Intra Or Interstate Locations.

For those businesses who have multiple locations inside and outside of the County where the employees can be allocated to each location, the employees used to determine the occupational tax assessed will be those employees attributed to each Franklin County location. Upon request, the business or practitioner with a location or office situated in more than one jurisdiction shall provide to the County the following:

- (1) Information necessary to allocate the number of employees of the business or practitioner; and
- (2) Information relating to the allocation of the business's or practitioner's number of employees by other local governments.

Sec. 10-112. Exemption On Grounds That Business Operated For Charitable Purpose.

No business on which a business registration or occupation tax is levied by this Article shall be exempt from said registration or tax on the ground that such business is operated for a charitable purpose, unless 100 percent of the entire proceeds from said business are devoted to such purpose.

Sec. 10-113. Evidence Of State Registration Required If Applicable; State Registration 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 County registration may be issued.

(B) Each person who 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 time while the license

remains valid.

Sec. 10-114. Evidence Of Qualification Required If Applicable.

(A) Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of a County business registration, show evidence of such qualification.

Sec. 10-115. Liability Of Officers And Agents; Registration Required; Failure To Obtain.

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

Sec. 10-116. When Registration And Tax Due And Payable; Effect of Transacting Business When Tax Delinquent.

(A) Each such registration shall be for the calendar year in which the registration was obtained unless otherwise specifically provided. There is hereby imposed a penalty upon each business which fails to apply for and obtain an appropriate business registration and pay all tax and fees as provided herein before March 1 of each year, on the second day of March of each hereafter. Every person commencing business in Franklin County after January 1 of each year shall obtain the registration required before commencing such business. Any person transacting or offering to transact in Franklin County any business, trade, profession or occupation without first having obtained said registration shall be subject to the penalties provided in Sec. 10-117. Said penalties shall be in addition to all other penalties, civil and criminal 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 registration herein provided for shall be issued by the County Clerk, and if any person, firm or corporation whose duty it is to obtain a registration shall, after said occupation tax becomes delinquent, transact or offer to transact, in Franklin County, any of the kind of business, trade, profession or occupation without having first obtained said registration, such offender shall be subject to the penalties provided thereof.

Sec. 10-117. Penalty Of Article Violation.

Any person violating any provisions of this Article shall, upon conviction before the Magistrate, be

fined in an amount not exceeding that allowed by law or imprisonment, either or both, in the discretion of the Magistrate.

Sec. 10-118. Treasurer; Subpoena And Arresting Powers.

The County and its duly designated officer and inspectors or its successors shall be classified as deputy marshal-business inspector with full subpoena and arresting powers in conjunction with any violation pertaining to the Business Tax Ordinance for 2001 (this Article) and succeeding years thereafter.

Sec. 10-119. Businesses Not Covered By This Article.

The following businesses are not covered by the provisions of this Article but may be assessed an occupation tax or other type of tax pursuant to the provisions of other general laws of the State of Georgia or by act of 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 agribusiness.
- (4) Cooperative marketing associations governed by O.C.G.A. § 2-10-105.
- (5) Insurance companies governed by O.C.G.A. § 33-8-8, 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.

Sec. 10-120. Occupation Tax Inapplicable Where Prohibited By Law Or Provided For Pursuant To Other Existing Law.

An occupation tax shall not apply to a business where such levy is prohibited or exempted by the

laws of Georgia or of the United States.

Sec. 10-121. When Occupation Tax Due And Payable; Payment Options.

The amount of occupation tax shall be payable to the said County, at the office of the County Clerk, on January 1 of each year and delinquent if not paid on or before March 1 each year.

Sec. 10-122. 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 number of employees of each location will be entered on a separate occupation tax return and the tax will be calculated at the rate of the dominant line of business conducted by the business identified on a form to be furnished by the County.

Sec. 10-123. 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 Franklin County or any other person to divulge or make known in any manner the amount of employees 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 County using said returns for the purpose of this occupation tax levy and the collection of the tax. Independent auditors or bookkeepers employed by the County shall be classed as "employees". Nothing herein shall be construed to prohibit the publication by the County officials of statistics, so classified as to prevent the identification of particular reports or returns and items thereof, or the inspection of the records by duly qualified employees of the tax departments of the state of Georgia or of the United States, and other local governments.

Sec. 10-124. Inspections Of Books And Records.

In any case the County Clerk, 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 Franklin County, Georgia, and upon demand of the Clerk such books or records shall be submitted for inspection by a representative of Franklin County within thirty days. Failure of submission of such books or records within thirty days shall be grounds for revocation of the tax registration currently existing to do business in Franklin County. Adequate records shall be kept in Franklin County, Georgia, for examination by the Clerk at his discretion. If, after examination of the books or records, it is determined that a deficiency occurs as a result of underreporting, a penalty will be assessed for the period delinquent.

Sec. 10-125. Tax Registration 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 permit inspection of its books as above provided, any business tax registration granted by Franklin County under this Article permitting the owner of said business to do business in the County for the current year shall be, ipso facto, revoked. No new business tax registration shall be granted by the County for the operation of a business for which any part of the occupation tax herein provided for is at that time unpaid, or to an individual, firm or corporation who has failed to submit adequate records as requested by the Clerk in accordance with provisions 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. 10-126. Effect Of Failure To Comply With Article Provisions; Continuing In Business After Tax Registration Revocation.

Any person, their managers, agents or employees, who do business in said Franklin County after the registration for said business has been revoked as above; 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 County 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. 10-127. Execution For Delinquent Occupation Tax.

In addition to the other remedies herein provided for the collection of the occupation tax herein levied, the Clerk of Franklin County, Georgia, 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 eighteen percent per annum from the date when such tax or installment becomes delinquent, and the lien shall cover the property (in the County) of the person, partnership or corporation liable for said tax, all as provided by the ordinances and charter of said County 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 becomes delinquent. The execution shall be levied by the County Clerk of said County upon the property of defendant located in said County, 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 said County 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 said County 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 County Clerk against any person defaulting on the occupation 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. 10-128. Amendment, Repeal Of Provision.

This Article shall be subject to amendment or repeal, in whole or in part, at any time, and no such amendment or repeal shall be construed to deny the right of the Board of Commissioners 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 County of additional occupation taxes upon the same person, property or business.

Sec. 10-129. Applications Of Provisions To Prior Ordinance.

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 pay regulatory fees 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, regulatory fee or assessment shall be fully paid.

Sec. 10-130. Enforcement Of Provision.

It is hereby made the duty of the County Clerk and/or County Marshal 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 Magistrate's Court. It is hereby made the further duty of the Clerk, Marshal, and their assistants, to inspect all registrations issued by Franklin County, as often as in their judgment it may seem necessary to determine whether the registration held is the proper one for the business sought to be transacted thereunder.

Sec. 10-131. Provisions To Remain In Full Force And Effect Until Changed By Board of Commissioners.

This Article shall remain in full force and effect until changed by amendment adopted by the Board of Commissioners. All provisions hereto relating to any form of tax herein levied shall remain in full force and effect until such taxes have been paid in full.

Sec. 10-132. Requirement Of Public Hearing Before Tax Increase.

After January 1, 2001, the Board of Commissioners shall conduct at least one public hearing before adopting any ordinance or resolution which will increase the rate of occupation tax as set forth in this ordinance.

Sec. 10-133. Option To Establish Exemption Or Reduction In Occupation Tax.

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

Sec. 10-134. 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. 10-135. 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. 10-136. 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.