

CITY OF FOLKSTON
OCCUPATION TAX ORDINANCE

SECTION 1. OCCUPATION TAX REQUIRED.

For the year 1995 and succeeding years thereafter, each person engaged in any business, trade, profession or occupation in the City of Folkston, Georgia, whether with a location in Folkston, 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. Sec, 48-13-7, shall pay an occupation tax for said business, trade, profession or occupation; which tax and any application registration shall be displayed in a conspicuous place in the place of business, if the taxpayer has a permanent business location in the City of Folkston, Georgia, If the taxpayer has no permanent business location in Folkston, Georgia, such business tax registration shall be shown to the City Clerk or his deputies or to any police officer of said Folkston, Georgia upon his or their request.

SECTION 2. CONSTRUCTION OF TERMS; DEFINITIONS.

(A) Wherever the term "City of Folkston" is used herein, such term shall be construed to mean "Folkston, Georgia"; wherever the term "City" is used herein, it shall be construed to mean "Folkston, 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) "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 a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office.

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

(4) "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 any 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 OCGA Section 36-71-2 or other costs or condition of zoning or land development are not regulatory fees.

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

(6) "Practitioner of profession or occupation" is one who by state law requires state licensure regulating such profession or occupation.

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

(8) "Employee" means an individual whose work is performed under the direction and supervision of an 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 purpose of documenting compensation a form I.R.S. W-2 but not a form I.R.S. 1099.

SECTION 3. OCCUPATION TAX LEVIED BASED ON NUMBER OF EMPLOYEES.

(A) An occupation tax shall be levied upon those businesses and practitioners of professions and occupations with one or more locations or offices within the corporate limits of the City or upon the applicable out-of-state businesses with no location or office in Georgia pursuant to O.C.G.A. Sec. 48-13-7 based on the following criteria: The number of employees of the business or practitioner.

(B) Occupation tax schedule.

<u>Number of employees</u>	<u>Tax Rate</u>
0 - 2	\$50.00
3 - 5	\$100.00
6 - 10	\$150.00
11- 15	\$200.00
16- 20	\$300.00
20 and over	\$500.00

(C) An employee shall be determined on a full time position basis or a full time equivalent position basis. An employee shall be a full time employee working 40 hours or more weekly. Part time employees shall be counted by adding the average weekly hours of those employees who work less than 40 hours per week and dividing the total by 40 to produce full time position equivalents. Any fraction of an employee shall be rounded down to the nearest whole number.

(D) The city shall not require an occupation tax from those real estate brokers, agents or companies whose offices are located outside the city and sell property inside the limits of the city.

SECTION 4. PAYING OCCUPATION TAX OF BUSINESS WITH NO LOCATION IN GEORGIA.

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

- (1) has one or more employees or agents who exert substantial efforts within the jurisdiction of Folkston 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 in the jurisdiction of Folkston.

SECTION 5. EACH LINE OF BUSINESS TO BE IDENTIFIED ON BUSINESS REGISTRATION.

The business registration of each business operated in the City shall identify the dominate line of business that the business conducts.

SECTION 6. 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 occupation tax.

SECTION 7. PROFESSIONALS.

Practitioners of professions as described in O.C.G.A. Sec. 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 \$100.00 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 number of employees of the business of 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 December 1 of each year.

SECTION 8. PRACTITIONERS EXCLUSIVELY PRACTICING FOR A 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.

SECTION 9. PURPOSE AND SCOPE OF TAX.

The occupation tax levied herein is for revenue purposes only and 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 only applies to those businesses and occupations which are covered by the provisions of O.C.G.A. Sections 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.

SECTION 10. WHEN TAX DUE AND PAYABLE; EFFECT OF TRANSACTING BUSINESS WHEN TAX DELINQUENT.

(A) Each such occupation tax shall be for the calendar year 1995 and succeeding calendar years thereafter unless otherwise specifically provided. Said registration and occupation tax shall be payable January 1 of each year and shall, if not paid by January 31 of each year, be subject to penalties for delinquency as prescribed in this Ordinance. On any new profession, trade, or calling begun in Folkston in 1995 or succeeding years thereafter, the registration and tax shall be delinquent if not obtained immediately upon beginning business and a ten percent (10%) penalty imposed. The tax registration herein provided for shall be issued by the City 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 Folkston, any of the kind of profession, trade, or calling subject to this Ordinance within having first obtained said registration, such offender shall, upon conviction by the City judge, be punished by a fine not to exceed \$120,00 or imprisonment not to exceed 120 days, either or both in the discretion of the city judge.

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

SECTION 11. OCCUPATION TAX OF BUSINESS WITH MULTIPLE INTRA OR INTERSTATE LOCATIONS.

Where the business has locations outside of the City and taxation is levied based on the number of employees, only the employees who work in the local government's jurisdiction will be counted for taxing purposes.

SECTION 12. PROHIBITIONS ON OCCUPATION TAX LEVY

The City shall not:

(A) Require the payment of a fee by whatever name in any amount by a business or practitioner for the cost of ascertaining whether such a business or practitioner has paid occupation tax to another local government;

(B) Levy any occupation tax, regulatory fee, or administrative fee on any state or local authority or nonprofit organization.

SECTION 13. 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 property and current state licensure before the city 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 times while the license remains valid.

SECTION 14. EVIDENCE OF QUALIFICATION REQUIRED IF APPLICABLE.

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 city business registration, show evidence that such requirements have been met.

SECTION 15. 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 the City 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 Folkston, any of the kinds of business, trade, profession, or occupation without first having so obtained said registration, shall be subject to penalties provided thereof.

SECTION 16. 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 January 1 of each year, and on January 1 of each year hereafter. Every person commencing business in Folkston after January 1 of each year shall obtain the registration required before commencing such business. Any person transacting or offering to transact any business, trade, profession, or occupation in Folkston without first having obtained said registration shall be subject to the penalties provided in Section 17. 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 City 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 Folkston, 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.

SECTION 17. PENALTY OF ORDINANCE VIOLATION.

Any person violating any provisions of this Ordinance shall, upon conviction before the city judge, be fined in an amount not exceeding \$120,00 or imprisoned not exceeding 120 days, either or both, in the discretion of the city judge.

(A) The City shall impose interest on all delinquent occupation taxes, regulatory fees, and administrative fees at the rate of 1 ½ (1.50%) percent per month.

SECTION 18. SUBPOENA AND ARREST POWERS.

The City Clerk and its duly designated officer and inspectors or its successors shall be classified as deputy marshal-business inspectors with full subpoena and arrest powers in conjunction with any violation pertaining to the Business Tax Ordinance for 1995 and succeeding years.

SECTION 19. BUSINESSES NOT COVERED BY THIS ORDINANCE.

The following business are not covered by the provisions of this Ordinance 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 business 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 include agribusiness.
- (4) Cooperative marketing associations governed by O.C.G.A. Section 2-10-105.
- (5) Insurance companies governed by O.C.G.A. Sec. 33-8-8 et seq.
- (6) Motor common carriers governed by O.C.G.A. Sec. 46-7-15.
- (7) Those businesses governed by O.C.G.A. Sec. 48-5-355.
(Businesses that purchase carload lots of guano, meats, meal, flour, bran, cottonseed, or cottonseed meal and hulls.)
- (8) Agricultural products and livestock raised in the state of Georgia governed by O.C.G.A. Sec, 48-5-356.
- (9) Depository financial institutions governed by O.C.G.A. Sec. 48-6-93.
- (10) Facilities operated by a charitable trust governed by O.C.G.A. Sec. 48-13-55.

SECTION 20. OCCUPATION TAX INAPPLICABLE WHERE PROHIBITED BY LAW OR PROVIDED FOR PURSUANT TO OTHER EXISTING LAW.

An occupation tax shall not apply to the gross receipts of any part of a business where such levy is prohibited or exempted by the laws of Georgia or of the United States.

SECTION 21. WHEN OCCUPATION TAX DUE AND PAYABLE; PAYMENT OPTIONS.

The amount of occupation tax shall be payable to the City of Folkston, at the office of the City Clerk, on January 1 each year and delinquent if not paid on or before January 31 each year.

SECTION 22. 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 the City of Folkston in the preceding year, the owner, proprietor, manager, or executive officer of the business liable for occupation tax shall estimate the number of employees from the commencing date to the end of the calendar year.

SECTION 23. MORE THAN ONE PLACE OR LINE OF BUSINESS.

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

SECTION 24. INSPECTION OF BOOKS AND RECORDS.

In any case the City Clerk of the City of Folkston, through its officers, agents, employees, or representatives, may inspect the books of the business for which the returns are made. The City Clerk shall have the right to inspect the books or records for the business of which the return was made in Folkston, Georgia, and upon demand of the City Clerk such books or records shall be submitted for inspection by a representative of the City 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 the City of Folkston. Adequate records shall be kept in Folkston, Georgia, for examination by the City Clerk at that officer's discretion. If, after examination of the books or records, it is determined that a deficiency occurs as a result of underreporting a penalty of _____ will be assessed for the period delinquent.

SECTION 25. TAX REGISTRATION TO BE REVOKED FOR FAILURE TO PAY TAX, FILE RETURNS, PERMITS 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 item 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 tax registration granted by the City of Folkston under this Ordinance permitting the owner of said business to do business for the current year shall be, ipso facto, revoked. No new business tax registration shall be granted by the City of Folkston 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 which has failed to submit adequate records as required by the City Clerk in accordance with provisions found in Section 19-58. In the case of those practitioners where the local government cannot suspend the right of the practitioner to conduct business, the imposition of civil penalties shall be permitted and pursued by the local government in the case of delinquent occupation tax.

SECTION 26. AMENDMENT, REPEAL OF PROVISION.

This Ordinance 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 City 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 jurisdiction of additional occupation taxes upon the same person, property, or business.

SECTION 27. ENFORCEMENT OF PROVISIONS.

It is hereby made the duty of the City Clerk and Police Department to see that the provisions of this Ordinance relating to occupation taxes are observed; and to summon all violators of the same to appear before the Court. It is hereby made the further duty of the City Clerk, or members of the Police Department and their assistants to inspect all registrations issued by the City of Folkston, 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.

SECTION 28. PROVISIONS TO REMAIN IN FULL FORCE AND EFFECT UNTIL CHANGED BY GOVERNING BODY.

This Ordinance shall remain in full force and effect until changed by amendment adopted by the City Council. 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.

SECTION 29. OPTION TO ESTABLISH EXEMPTION OR REDUCTION IN OCCUPATION TAX.

The City Council 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 be arbitrary or capricious, and the reasons shall be set forth in the minutes of the governing authority.

SECTION 30. CONFLICTS BETWEEN SPECIFIC AND GENERAL PROVISIONS.

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

SECTION 31, SEVERABILITY.

In the event any section, subsection, or portion of this Ordinance shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect or invalidate the other sections, subsection, or portion of this Ordinance unless it clearly appears that such other parts are wholly and necessarily dependent upon the part or parts held to be invalid or unconstitutional, it being the intent in adopting this Ordinance that each section, subsection, or portion of this Ordinance be enacted separately and independently of each other.

SECTION 32. REPEAL OF CONFLICTING PROVISIONS.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Adopted by the City Council of the City of Folkston, Georgia on this the 12th day of September, 1994

All terms and provisions of this Ordinance shall be of full force and effect as of December 11, 1995.

Amended: December 11, 1995