

Chapter 24 - TAXATION ^[81]

ARTICLE I. - INSURANCE COMPANIES, INSURANCE PREMIUM TAX

***State law references:** Municipal authority to impose license fees on insurers, O.C.G.A. § 33-8-8 et seq.

Sec. 24-1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Gross direct premiums means gross direct premiums as used in O.C.G.A. § 33-8-4, which provides:

- (1) All foreign, alien, and domestic insurance companies doing business in this state shall pay a tax of 2 1/4 percent upon the gross direct premiums received by them on and after July 1, 1955. The tax shall be levied upon persons, property, or risks in the state, from January 1 to December 31, both inclusive, of each year without regard to business ceded to or assumed from other companies. The tax shall be imposed upon gross premiums received from direct writings without any deductions allowed for premium abatements of any kind or character or for reinsurance or for cash surrender values paid, or for losses or expenses of any kind; provided, however, deductions shall be allowed for premiums returned on the change of rate or canceled policies; provided, further, that deductions may be permitted for return premiums or assessments, including all policy dividends, refunds, or other similar returns paid or credited to policyholders and not reapplied as premium for additional or extended life insurance. The term "gross direct premiums" does not mean and include annuity considerations.
- (2) For purposes of this chapter, annuity considerations received by nonprofit corporations licensed to do business in this state issuing annuities to fund retirement benefits for teachers and staff personnel of private secondary schools and colleges and universities shall not be considered gross direct premium.

Insurer means a company which is authorized to transact business in any classes of insurance designated in O.C.G.A. § 33-3-5.

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Sec. 24-2. License Fees.

There is hereby levied for an annual license fee upon each insurer doing business within the city in the amount of \$100.00. For each separate business location within the city, which is operating on behalf of such insurers within the city, there is hereby levied a license fee in the amount of \$100.00.

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State law references: Authority for above tax, O.C.G.A. § 33-8-8.

Sec. 24-3. Additional License Fees.

For each separate business location, not otherwise subject to a license fee hereunder, operated and maintained by a business organization which is engaged in the business of lending money or transacting sales involving term financing and in connection with such loans or sales offers, solicits or takes application for insurance through a licensed agent of an insurer for insurance, said insurer shall pay an additional license fee in the amount \$35.00 per location for the year 2012, and each year thereafter.

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State law references: Authority for above tax, O.C.G.A. § 33-8-8.

Sec. 24-4. Gross Premiums Tax -- Life, accident and sickness insurers.

- (a) There is hereby levied an annual tax based solely upon gross direct premiums upon each insurer writing life, accident and sickness insurance within the state in an amount equal to one percent of the gross direct premiums received during the preceding calendar year in accordance with O.C.G.A. § 33-8-8.1.
- (b) The premium tax levied by this section is in addition to the license fees imposed by section 24-2.

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State law references: Authority for above tax, O.C.G.A. § 33-8-8.1.

Sec. 24-5. Gross Premiums Tax -- All other insurers.

- (a) There is hereby levied an annual tax based solely upon gross direct premiums upon each insurer, other than an insurer transacting business in the class of insurance designated in O.C.G.A. § 33-3-5(1), doing business within the state in an amount equal to 2 1/2 percent of the gross direct premium received during the preceding calendar year in accordance with O.C.G.A. § 33-8-8.2.
- (b) The premium tax levied by this section is in addition to the license fees imposed by section 24-2.

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State law references: Authority for above tax, O.C.G.A. § 33-8-8.2.

Sec. 24-6. Fees Due on January 1.

License fees imposed by sections 24-2 and 24-3 shall be effective immediately upon passage of this Code and be due and payable on January 1 and on the first day of each subsequent year.

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Secs. 24-7—24-30. - Reserved.

ARTICLE II. - AD VALOREM TAXES [\[82\]](#)

24-31: Annually Set

The ad valorem tax rate for each year shall be established annually by the City Council. Until such time as the Mayor and City Council sets the 2013 ad valorem tax rate, the most recent DeKalb County ordinance in existence setting the ad valorem tax rate shall control pursuant to Section 6.03(e) of the City Charter.

24-32: Maximum Rate

Except as otherwise allowed by law, for all years, the millage rate imposed for ad valorem taxes on real property shall not exceed 3.35, unless a higher millage rate is recommended by resolution of the City Council and subsequently approved by a majority of the qualified electors of the City of Brookhaven voting on the issue, provided that the amount of millage associated with general obligation bonds shall not count as part of the 3.35 limit since such millage is already subject to approval by the electors of the city in a separate referendum.

24-33: Fines for Delinquent Returns

(a) Any person failing to properly return his real property, for tax purposes, on or before the 1st day of March of each year shall be assessed a penalty of 10 percent (10%) of the amount of taxes due the City. Said penalty shall be in addition to the amount of ad valorem taxes due the City and also in addition any costs and interest and interest permitted by law.

24-34: Due Date

(a) The ad valorem taxes due the City for the first installment shall become due and payable on July 1 and shall be delinquent after September 30, taxes for the 2nd installment are due October 1 and shall be delinquent after November 15 of each tax year.

(b) Any installment of ad valorem taxes due to the City that is not paid on or before the delinquency date shall be in default, and shall bear interest and penalties, now or hereafter, as provided by law for taxes which are delinquent or in default, and executions shall be issued therefore, at such time the City has met the legal requirements of all state and local laws.

(c) In addition, interest shall accrue on such unpaid taxes at the rate of one (1) percent per month beginning on January 2 following the November when such taxes were due and continuing thereafter until paid in full. All interest shall be computed at the rate of one (1) percent per month or for any fraction thereof.

24-35: Collection of Delinquent Taxes

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(a) The duty to collect by levy and sale, or otherwise, for delinquent taxes is hereby imposed upon the City Tax Collector or his designee as issuing officer, and the Sheriff of DeKalb County as execution officer. All levies of execution for delinquent taxes shall be in the name of the City. This duty may be contracted, by the City Council, to a third party.

(b) It shall be the duty of the City Tax Collector or his designee, to comply with all provisions of Georgia law for issuing, sale and transfer of tax executions and laws governing judicial sales and to:

- (i) Keep a file of all newspapers in which an official advertisement appears;
- (ii) Keep an execution docket in which shall be entered a full description of all executions;
- (iii) Maintain a book of all sales;
- (iv) Maintain an index to the sales and executions.

(c) The City Tax Collector shall sign all levies, notices, advertisements, and the like in his name for the City.

(d) Execution issued in the name of the City for delinquent ad valorem taxes shall be directed and delivered to the Sheriff of DeKalb County, who shall enter the execution upon the docket to be kept in his office and he shall proceed to enforce the collection of the execution in the manner prescribed by law.

(e) The City Tax Collector will issue all fieri facias (fi. fas.) for delinquent taxes and the Sheriff of DeKalb County shall execute such fi. fas. under the same procedures provided by law governing execution of such process from the superior court, or by the use of any other available legal process and remedies.

24-36: Assessment of Property for Ad Valorem Taxes

(a) The DeKalb County Board of Tax Assessors is hereby designated to have the responsibility for assessment and valuation of property within the City limits. The City Council shall adopt the assessments and valuations made by the Board of Tax Assessors of DeKalb County for all property located within the City limits, as may be established from year to year by the DeKalb County Board of Tax Assessors.

(b) The City Council authorizes the Tax Commissioner of DeKalb County to make such adjustments in the collection of individual items of tax, and to make such refunds as may be proper and necessary, by adding to or deducting from the distribution due the City at the next period of accounting, along with stated explanation of the correction.

Secs. 24-37—24-40. - Reserved.

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ARTICLE III. - MOBILE HOMES ⁽⁶³⁾

Sec. 24-41. - Decal required.

- (a) All persons owning a mobile home based in the city on January 1 of each year shall obtain from the tax collector a decal before May 1, as provided in O.C.G.A. § 48-5-492. This requirement pertains to all mobile homes, including those exempt from taxation by homestead exemption, or other provisions of state law.
- (b) Such decals shall be affixed to the mobile homes in such a manner as to cause them to be easily visible for inspection.
- (c) Owners of mobile homes locating in the city after January 1 of any year shall be required to report their mobile homes to the office of the tax collector within ten (10) working days.
- (d) The tax collector shall issue a decal only after a valid development permit has been issued by the public works department to ensure that all applicable zoning and other development standards have been met.

Sec. 24-42. - Reports by mobile home park owners.

- (a) Every owner and operator of a mobile home park is required to give the tax collector or designated representative an inventory report of all mobile homes based in the park as of October 1 of each year. Such reports shall consist of the manufacturers identification number, title number (if any), manufacturer, year of manufacture, model, serial number, the location including lot number and park name or situs address, and the mobile home owner's name and mailing address for each mobile home in the park. Such report shall be submitted to the tax commissioner no later than October 15 of each year. The tax collector or designated representative shall make the mobile home inventory report available on November 1.
- (b) Every owner, manager and operator of a mobile home park is required to report any mobile home removal from the park prior to said home being removed, if known to the park manager, operator or owner.
- (c) Every owner, manager and operator of a mobile home park shall furnish to the tax collector an updated lot map of each park, and any changes shall be reported before January 1 of each year.
- (d) Every owner, manager and operator of a mobile home park shall notify the city of any change in ownership or of name of any mobile home park within thirty (30) days of such change.
- (e) Any mobile home park managers, owners or operators convicted of a violation of this section shall be punished by a fine not exceeding one thousand dollars (\$1,000.00).

Sec. 24-43. - Mobile homes without decals may not remain on property.

It shall be unlawful for any person owning or controlling land in the city to authorize any mobile home to remain upon its premises for more than forty-eight (48) hours without the display of a decal issued by the issuing authority of the city.

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Secs. 24-44—24-60. - Reserved.

ARTICLE IV. - DEPOSITORY FINANCIAL INSTITUTIONS BUSINESS LICENSE TAX ^[84]

Sec. 24-61. - Levy; applicability.

An annual business license tax is hereby levied upon all depository financial institutions located within the city at a rate of one-quarter of one percent of the gross receipts of such depository financial institutions. Gross receipts shall mean gross receipts as defined in O.C.G.A. § 48-6-93. Depository financial institutions shall mean state and national banks, state building and loan associations, and federal savings and loan associations.

Sec. 24-62. - Minimum tax.

The minimum annual amount of business license tax due from any depository financial institution shall be one thousand dollars (\$1,000.00).

Sec. 24-63. - Filing of return; payment.

Each depository financial institution subject to the tax levied by this article shall file a return of its gross receipts with the finance department not later than March 1 of the year following the year in which such gross receipts are measured. The return shall be in the manner and in the form prescribed by the commissioner of the state department of revenue based on the allocation method set forth in O.C.G.A. § 48-6-93. The tax imposed by this article shall be paid at the time of filing the return.

Sec. 24-64. - Penalty and interest for failure to pay tax; executions.

- (a) In accordance with section 2-65, any portion of the tax levied by this article not paid before it comes delinquent shall be assessed a late penalty and shall bear interest from the date the tax is due until the tax is paid.
- (b) For purposes of this section, any period of less than one (1) month shall be considered to be one (1) month. The finance department shall issue executions against such taxpayer owing taxes, penalties or interest as provided in this section when the same become delinquent. The execution shall be recorded on the general execution docket in the office of the clerk of Superior Court of DeKalb County.

Sec. 24-65. - Administration.

- (a) *Authority of finance department.* The finance department shall administer and enforce the provisions of this article for the levy and collection of the tax imposed by this article.
- (b) *Rules and regulations.* The finance director shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other laws of the city and the state or the constitution of this state or the United States for the administration and enforcement of the provisions of this article and the collection of the taxes hereunder.

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- (c) *Examination of records; audits.* The finance director or any person authorized in writing by the director may examine the books, papers, records, financial reports, equipment and other facilities of any licensee liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the licensee, to ascertain and determine the amount required to be paid.
- (d) *Disclosure of business of operators, etc.; limitations on rule.* The finance director or their designee shall not make known in any manner the business affairs, operations or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any licensee or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not having such administrative duty under this article, except in the case of judicial proceedings or other proceedings necessary to collect the tax hereby levied and assessed. Successors, receivers, trustees, executors, administrators, and assignees if directly interested, may be given information as to the items included in the measure and amount of unpaid tax, interest and penalties, or amounts of tax, interest and penalties required to be collected.

Secs. 24-66—24-81. - Reserved.

ARTICLE V. - HOTEL OCCUPANCY TAX ^[85]

Sec. 24-82. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City means the City of Brookhaven, Georgia.

Guestroom means a room occupied, or intended, arranged or designed for occupancy, by one (1) or more occupants.

Hotel means any structure or any portion of a structure, including any lodging house, roominghouse, dormitory, turkish bath, bachelor hotel, studio hotel, motel, auto court, inn, public club or private club, containing guestrooms and which is occupied, or is intended or designed for occupancy, by guests, whether rent is paid in money, goods, labor or otherwise. It does not include any jail, hospital, asylum, sanitarium, orphanage, prison, detention or other buildings in which human beings are housed or detained under legal restraint.

Monthly period means the calendar month in which the tax imposed by this article was collected from the occupants.

Occupancy means the use or possession, or the right to the use or possession, of any room or apartment in a hotel or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room.

Occupant means any person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

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Operator means any person operating a hotel in the city, including, but not limited to, the owner or proprietor of the premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating the hotel.

Permanent resident means any occupant as of a given date who has or shall have occupied, or has or shall have the right of occupancy, of any guestroom in a hotel for at least ten (10) consecutive days next preceding that date.

Person means an individual, firm, partnership, joint venture, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or other group or combination acting as a unit excepting the United States of America, the state and any political subdivision of either thereof upon which the city is without power to impose the tax herein provided.

Rent means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also the amount for which credit is allowed by the operator to the occupant, without any deduction therefrom.

Return means any return filed or required to be filed as provided in this article.

Tax means the tax imposed by this article.

Sec. 24-83. - Exemptions.

- (a) This article does not apply to any person as to whom, or to any occupancy as to which, it is beyond the power of the city to impose the tax. This article does not apply to any person not licensed by or required to be licensed by the city for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin or any other place in which rooms, lodging or accommodations are regularly furnished for value.
- (b) No tax shall be imposed under this article upon any of the following:
 - (1) Rooms, lodgings, or accommodations furnished for a period of more than ten (10) consecutive days or for use as meeting rooms.
 - (2) Rooms, lodgings, or accommodations furnished for a period of one (1) or more days for use by state or local government officials or employees when traveling on official business.

Sec. 24-84. - Imposition; rate.

There shall be paid a tax of five (5) percent of the rent for occupancy of a guestroom in a hotel in the city, as authorized by O.C.G.A. § 48-13-51(a)(3).

Sec. 24-85. - Persons liable for tax; extinguishment of liability.

Every person occupying a guestroom in a hotel in this city is liable for the tax. The person's liability is not extinguished until the tax has been paid to the city except that a receipt from an operator maintaining a place of business in this city or from an operator who is authorized by the finance department, under such rules and regulations as the finance department may prescribe, to collect the tax and who is, for the purposes of this article, regarded as an operator maintaining a place of business in this city, which receipt is given to the occupant pursuant to [section 24-86](#), is sufficient to relieve the occupant from further liability for the tax to which the receipt refers.

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Sec. 24-86. - Collection by operator; receipt, rules for collection schedules.

Every operator maintaining a place of business in the city as provided in [section 24-85](#), and renting guestrooms in the city, not exempted under [section 24-83](#) of this article shall, at the time of collecting the rent from the occupant and on demand, give the occupant a receipt therefor. In all cases of transactions upon credit or deferred payment, the payment of tax to the operator may be deferred in accordance therewith, and the operator shall be liable therefor at the time and to the extent that these credits are incurred in accordance with the rate of tax owing on the amount thereof. The finance department shall have the power to adopt rules and regulations prescribing methods and schedules for the collection and payment of tax.

Sec. 24-87. - False advertising.

It is unlawful for any operator to advertise or hold out or state to the public or to any guest, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rental of the guestroom, or that, if added, it or any part thereof will be refunded.

Sec. 24-88. - Registration of operator; certificate of authority.

- (a) Every person engaging or about to engage in business as an operator of a hotel in the city shall immediately register with the finance department on a form provided by the finance department. This registration shall set forth the name under which the person transacts business or intends to transact business, the location of the person's place of business and such other information to facilitate the collection of the tax as the finance department may require. The registration shall be signed by the owner if a natural person; in case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the registration. The finance department shall, within ten (10) days after such registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of the registrant. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy. This certificate shall be nonassignable and nontransferable and shall be rendered immediately to the finance department upon the cessation of business at the location named or upon its sale or transfer.
- (b) If the finance department deems it necessary in order to facilitate initial registration hereunder of persons engaged in business or prior to the date of imposition of tax as set forth in this article, the finance department may prescribe provisions therefor other than those provided in this section. Those provisions shall be made to effect the purposes of this article. For these purposes, those provisions shall be in lieu of those provided herein. The registration and the certificate thereof shall have the same effect as that provided herein.

Sec. 24-89. - Determinations, returns, payments.

- (a) *Due date.* The tax imposed by this article shall become due and payable from the occupant at the time of occupancy of any hotel in this city. All amounts of taxes collected by any operator are due and payable to the finance department on or before the twentieth day of the month following each monthly period.
- (b) *Filing of returns.* On or before the twentieth day of the month following each monthly period, a return for the preceding monthly period shall be filed with the finance department, in such form as the finance department may prescribe, by every operator and by every person liable to payment of tax

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hereunder during that monthly period who has not paid the tax, and made return in regard to the related occupation which is the subject of the tax.

- (c) *Contents of return.* All returns shall show the gross rent, rent from permanent residents, taxable rent, amount of tax collected or otherwise due for the related period and such other information as required by the finance department.
- (d) *Delivery of return and remittance.* The person required to file the return shall deliver the return, together with the remittance of the net amount of tax due to the finance department.
- (e) *Collection fee.* Operators collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if the amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state sales and use tax under O.C.G.A. tit. 48, ch. 8, art. 1 [§ 48-1-1- et seq.], as now or hereafter amended.
- (f) *Extension of time for filing return, paying tax.* For a good cause the finance department may extend, but not to exceed one (1) month, the time for making any return or payment of tax. No further extension of time may be granted. Any person to whom an extension of time has been granted, who makes a return and pays the tax within the period of extension shall pay in addition to the tax, interest on the amount thereof at an annual rate specified by section 2-65. Interest shall be assessed for each month, or fraction thereof, for the period of the extension to the time of return and payment.

Sec. 24-90. - Deficiency determinations.

- (a) *Recomputation of tax.* If the finance department is not satisfied with the return or returns of the tax imposed by this article or the amount of such tax required to be paid to the city by any person, it may compute and determine the amount required to be paid upon the basis of any information within its possession or that may come into its possession. One (1) or more than one (1) deficiency determination may be made of the amount due for one (1) or more than one (1) period.
- (b) *Interest on deficiency.* The amount of the determination, exclusive of penalties, shall bear interest at an annual rate set by the finance department. Interest shall be assessed for each month, or fraction thereof, from the twentieth day of the month, following each monthly period for which the amount or any portion thereof should have been returned until the date of payment.
- (c) *Offsetting of overpayments.* In making a determination, the finance department may offset overpayments for a period or periods against underpayments for another period or periods, against penalties and against the interest on underpayments. The interest on underpayments shall be computed in the manner set forth by the finance department.
- (d) *Penalty for negligence or disregard of rules and regulations.* If any part of the deficiency for which a deficiency determination has been made is due to negligence or disregard of rules and regulations, a penalty set forth by the finance department shall be added thereto.
- (e) *Penalty for fraud or intent to evade.* If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade any provisions of this article or other authorized rules and regulations, a penalty of twenty-five (25) percent of the deficiency shall be added thereto.
- (f) *Notice of determination; service.* The finance department representative shall give to the operator written notice of the determination. The notice may be served personally or by mail; if by mail, service shall be pursuant to O.C.G.A. § 9-11-5 and shall be addressed to the operator at the operator's address as it appears in the records of the finance department. In case of service by mail of any notice required by this article, the service is complete at the time of deposit in the United States post office.
- (g) *Time within which notice of deficiency mination to be mailed.* Except in the case of fraud, intent to evade this article or authorized rules or regulations, or failure to make a return, every notice of a

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deficiency determination shall be mailed within three (3) years after the last day of the calendar month following the monthly period for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires later.

Sec. 24-91. - Determination if no return made.

- (a) *Estimate of gross receipts.* If any person fails to make a return under this article, the finance department shall make an estimate of the amount of the gross receipt of the person, or as the case may be, of the amount of the total rentals in the city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the person failed to make the return and shall be based upon any information which is in its possession or may come into its possession. Upon the basis of this estimate, the finance department shall compute and determine the amount required to be paid the city adding to the sum thus arrived at a penalty equal to fifteen (15) percent thereof. One (1) or more determinations may be made for one (1) or more than one (1) period.
- (b) *Manner of computation; offsets; interest.* In making a determination, the finance department may offset overpayments for a period or penalties, and against the interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in subsection (c) of this section.
- (c) *Interest on amount due.* The amount of the determination, exclusive of penalties, shall bear interest at the rate specified by the finance department. Interest shall be assessed for each month, or fraction thereof, from the twentieth day of the month following each monthly period for which the amount or any portion thereof should have been returned until the date of payment.
- (d) *Penalty for fraud or intent to evade.* If the failure of any person to file a return is due to fraud or an intent to evade this article or rules and regulations, penalties shall be added as set forth by the finance department.
- (e) *Notice; manner of service.* Promptly after making a determination, the finance department shall give to the person written notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Sec. 24-92. - Penalties and interest for failure to pay tax; license suspension or revocation.

Any person who fails to pay any tax to the city or any portion of the taxes specified by this article within the time required shall pay a late payment penalty, in addition to the taxes, plus interest on the unpaid tax or any portion thereof as specified by the finance department; failure to pay said taxes, penalty and interest shall subject the person to business license suspension or revocation in accordance with this Code.

Sec. 24-93. - Collection of tax; security bond; refunds.

- (a) The finance department, whenever necessary to ensure compliance with this article, may require any person subject hereto to deposit such security as the finance department may determine. The amount of the security shall be fixed by the finance department, but shall not be greater than twice the person's estimated average liability for the period for which the person files returns, determined in such a manner as the finance department deems proper, or ten thousand dollars (\$10,000.00), whichever amount is the lesser. The amount of the security may be increased by the finance department subject to the limitations herein provided. The finance department may sell the security at public auction, with the approval of the City Council, if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale

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may be served upon the person who deposited the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination, and shall be addressed to the person at the person's address as it appears in the records of the finance department. Upon any sale, any surplus above the amounts due shall be returned to the person who deposited the security.

- (b) If any person is delinquent in the payment of the amount required to be paid, or if a determination has been made against a person which remains unpaid, the finance department may, not later than three (3) years after the payment became delinquent, give notice thereof by registered mail to all persons in the city having in their possession or under their control any credit or other personal property belonging to the delinquent person, or owing any debts to the delinquent person. After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property or debts in their possession or under their control at the time they receive the notice until the finance department consents to a transfer or disposition or until twenty (20) days elapse after the receipt of the notice. All persons so notified shall within five (5) days after receipt of the notice advise the finance department of all these credits, other personal property, or debts in their possession, under their control or owing by them.
- (c) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three (3) years after the delinquency of any tax or any amount of tax required to be collected, the finance department may bring an action in the courts of this state, of any other state or of the United States in the name of the city to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.
- (d) If any operator liable for any amount under this article sells out the business or quits the business, successors or assigns shall withhold sufficient of the purchase price to cover this amount until the former owner produces a receipt from the finance department showing that the amount has been paid or a certificate stating that no amount is due.
- (e) If the purchaser of a business fails to withhold purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld to the extent of the purchase price, valued in money. Within thirty (30) days after receiving a written request from the purchaser for a certificate, the finance department shall either issue the certificate or mail notice to the purchaser at the purchaser's address as it appears on the records of the department of the amount that must be paid as a condition of issuing the certificate. Failure of the finance department to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells out the business or at the time that the determination against the operator becomes final, whichever event occurs later.
- (f) Whenever the amount of the tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the city under this article, it may be refunded provided a verified claim in writing therefor, stating the specific ground upon which the claim is founded, is filed with the finance department within three (3) years from the date of payment. The claim shall be audited and shall be made on forms provided by the finance department. If the claim is approved by the finance department and the board, the excess amount collected or paid may be refunded or may be credited on any amount then due and payable from the person from whom it was collected or by whom paid and the balance may be refunded.

Sec. 24-94. - Administration.

- (a) *Authority of finance department.* The finance department shall administer and enforce the provisions of this article for the imposition.

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- (b) *Rules and regulations.* The finance department shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other laws of the city and the state, or the constitution of this state or the United States for the administration and enforcement of the provisions of this article and the collection of the taxes hereunder.
- (c) *Records required from operators; form.* Every operator renting guestrooms in the city shall keep such records, receipts, invoices and other pertinent papers in such form as the finance department may require.
- (d) *Examination of records; audit.* The finance department may examine the books, papers, records, financial reports, equipment and other facilities of any person renting guestrooms and any person liable for the tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or if no return is made by the person, to ascertain and determine the amount required to be paid.
- (e) *Authority to require reports; contents.* In administration of the tax, the finance department may require the filing of reports by any person or class of persons having possession or custody of information relating to rentals of guestrooms which are subject to the tax. The reports shall be filed with the finance department as required and shall set forth the rental charged for each occupancy, the date or dates of occupancy and such other information as the finance department may require.
- (f) *Disclosure of business of operator; limitation on rule.* The finance department shall not make known in any manner the business affairs, operations or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any operator or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses or expenditures, or any particular thereof, set forth or disclosed in any return, or permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not having that administrative duty under this article. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of unpaid tax or amounts of tax required to be collected, interest and penalties.

Sec. 24-95. - Fraudulent returns, reports.

Any operator or other person who fails to register as required in this article, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the finance department, or who renders a false or fraudulent return, is guilty of and punishable under the general penalties of this Code. Any person required to make, render, sign or verify any report who makes any false or fraudulent report, with intent to defeat or evade the determination of an amount due required by this article to be made, is guilty of and punishable under the general penalties of this Code.

Sec. 24-96. - Disposition of proceeds.

All proceeds generated from the assessment of a hotel/motel occupancy tax shall be spent only for those purposes which benefit the citizens of the city. The finance department shall maintain a separate accounting of the proceeds generated under this article. The proceeds shall be used in accordance with O.C.G.A. § 48-13-51(a)(3).

Secs. 24-97—24-100. - Reserved.

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ARTICLE VI. - ENTERPRISE ZONE PROGRAM

Secs. 24-101—24-149. - Reserved.

ARTICLE VII. - EXCISE TAX ON RENTAL MOTOR VEHICLES

Sec. 24-150. - Definitions.

For purposes of this article, the following terms shall have the following meanings respectively ascribed to them:

Director of finance means the head or director of City of Brookhaven finance department or their designee.

Month or monthly period means the calendar months of any year.

Rental charge means the total value received by a rental motor vehicle concern for the rental or lease for thirty-one (31) or fewer consecutive days of a rental motor vehicle, including the total cash and nonmonetary consideration for the rental or lease including, but not limited to, charges based on time or mileage and charges for insurance coverage or collision damage waiver but excluding all charges for motor fuel taxes or sales taxes.

Rental motor vehicle means a motor vehicle designed to carry ten (10) or fewer passengers and used primarily for the transportation of persons that is rented or leased without a driver regardless of whether such vehicle is licensed in the State of Georgia.

Rental motor vehicle concern means a person or legal entity that owns or leases five (5) or more rental motor vehicles and which regularly rents or leases such vehicles to the public for value in the city.

Tax, excise tax or taxes means the tax imposed by this article.

Sec. 24-151. - Authority; effective date; rules and regulations; records.

- (a) *Authority.* The finance department shall administer and enforce this article for the levy and collection of the tax as authorized by, and in accordance with, O.C.G.A. § 48-13-90 et seq., and as may hereinafter be amended.
- (b) *Effective date.* The tax levied by this article shall be effective on the first day of January, 2013 and shall continue until December 31, 2038 as provided by law, or unless earlier terminated by the Georgia General Assembly or the City Council.
- (c) *Rules and regulations.* The director of finance shall have the power and authority to make and publish reasonable administrative rules and regulations not inconsistent with this article or other ordinances of the city or laws of the state or the constitution of this state or the United States for the administration and enforcement of this article and the collection of the tax under this article.
- (d) *Records required.* Every rental motor vehicle concern subject to this article shall keep records, receipts, invoices and other pertinent papers reflecting the number of rental motor vehicles rented or leased and the gross rental charges received by each rental motor vehicle concern for each month, in such form as the director of finance may require.
 - (1) The customer picks up the rental motor vehicle outside the State of Georgia and returns it within the State of Georgia;

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- (2) The customer picks up the rental motor vehicle in the State of Georgia and returns it outside the State of Georgia.

Sec. 24-155. - Amount of tax allowed to be retained for expenses.

Each rental motor vehicle concern collecting the tax imposed by this article shall be allowed to retain three (3) percent of the tax due and collected and may retain that amount in the form of a deduction for expenses incurred in submitting, reporting and paying the amount of taxes due, but only if the amounts due are not delinquent at the time of payment.

Sec. 24-156. - Monthly statement required showing rental charges and taxes.

- (a) On or before the 20th day of each month following the month of January, 2013, the rental motor vehicle concern liable for the tax provided for herein shall transmit to the director of finance a statement showing the rental charges and taxes collected by authority of this article for the immediately preceding calendar month. Along with said statement, the rental motor vehicle concern shall submit to the director of finance the taxes due pursuant to this article for that particular month.
- (b) Failure to remit taxes by the due date shall subject the rental motor vehicle concern to a penalty of five (5) percent of the taxes then due and in addition to such penalty, interest on the unpaid taxes then due computed at the rate of one (1) percent per month. Interest shall not be assessed on interest or penalties.

Sec. 24-157. - Records.

In order to aid in the administration and enforcement of the provisions of this article and to collect all the tax imposed, all rental motor vehicle concerns are hereby required to keep a record of the number of rental motor vehicles rented or leased and all rental charges for rental motor vehicles and taxes collected which are related thereto. Said records shall be open for inspection and copying by any duly authorized agent of the city during regular business hours.

Sec. 24-158. - Deficiency determinations.

- (a) If the director of finance is not satisfied with the statement or statements of the excise tax provided for in [section 24-156\(a\)](#) herein, or the amount of the tax paid to the city by any rental motor vehicle concern, the director of finance may compute and determine the amount required to be paid upon the basis of any information that is or may come into possession of the director of finance. One (1) or more deficiency determinations may be made of the amount due for one (1) or more monthly periods.
- (b) The amount of the deficiency determination made by the director of finance shall bear interest at the rate of one (1) percent per month or fraction thereof from the due date of the taxes found to be due but not paid.
- (c) The director of finance shall give to the rental motor vehicle concern a written notice of any such deficiency determination. The notice may be served personally or by mail and if by mail the service shall be addressed to the operator or the owner of the rental motor vehicle concern at the address as the same appears in the business license or other records of the director of finance as provided to him by each rental motor vehicle concern. Service by mail is complete when delivered by certified mail with a receipt signed by an addressee or agent of the addressee.
- (d) Except in cases of failure to make a return, every notice of deficiency determination shall be mailed within three (3) years after the 20th day of the calendar month following the monthly period in which

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the amount proposed to be determined or within three (3) years after the return is filed, whichever period shall expire last.

Sec. 24-159. - Failure to file a statement.

- (a) If any rental motor vehicle concern fails to file a statement as required by [section 24-156](#)(a), the director of finance shall make an estimate of the excise tax due. The estimate shall be made for the period or periods in respect to which the rental motor vehicle concern has failed to file a statement and shall be based upon such information that is or may come into the possession of the director of finance. Written notice shall be given in the manner as prescribed above in [section 24-158](#)(c).
- (b) The amount of the delinquency determination shall bear interest at the rate of one (1) percent per month or fraction thereof from the 20th day of the month following the monthly period for which the amount of any portion thereof should have been paid until the date of payment.

Sec. 24-160. - Audit authority.

Duly authorized employees of the city upon exhibition of identification and during regular business hours may examine and copy the books, papers, records, financial reports, equipment and other facilities if necessary of any rental motor vehicle concern in order to verify the accuracy of any statement filed pursuant to [section 24-156](#)(a), or if no statement is filed by the rental motor vehicle concern, to ascertain or determine the amount of tax required to be paid.

Sec. 24-161. - Withholding tax on sale of business.

- (a) If any rental motor vehicle concern liable for any amount under this article transfers or sells its business or quits the business, its successors or assigns shall withhold sufficient amounts from the purchase price to cover any amounts required to be paid pursuant to this article until the former owner or operator of the rental motor vehicle concern produces a receipt from the director of finance or his designee showing that the indebtedness has been paid or a certificate stating that no amount is due.
- (b) If the purchaser of a business or rental motor vehicle concern fails to withhold from the purchase price all amounts due as required herein such purchaser will be personally liable for the payment of the amount of the outstanding tax required to be withheld to the extent of such purchase price.

Sec. 24-162. - Penalty for violation.

- (a) In addition to the interest charges and delinquent penalties specified in this article, any person who fails or refuses to comply with the provisions of this chapter, upon citation by the finance department and conviction of the violation in a court of competent jurisdiction, will be subject to a fine and/or imprisonment in accordance with this Code. Where any violation or offense continues from day to day, each day's continuance thereof will constitute a separate offense.
- (b) For a third and each subsequent violation of this chapter, the court shall impose a fine of not less than two hundred fifty dollars (\$250.00) in addition to any other penalty or punishment imposed by the court.

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Secs. 24-163—24-199. - Reserved.

Sec. 24-200. – Provision for Transition Period

During the period of transition and start up of the City of Brookhaven, any duties required by this Chapter to be fulfilled by an employee or officer of the City who has not been appointed or such position or agency not yet established shall be fulfilled by the City Manager or the City Manager's designee.