

ORDINANCE NO. 2001-172

ORDINANCE TAXING THE OCCUPATION OF THE LEASE OR RENTAL OF TANGIBLE PERSONAL PROPERTY

WHEREAS, the Town of Brookwood desires to regulate and impose a fee for the privilege of renting or leasing tangible personal property within the Town Limits of the Town of Brookwood and the police jurisdiction thereof; the Town of Brookwood hereby imposes the following ordinance:

**Definitions.**

The following terms when used in this article shall have the respective meanings ascribed to them:

*Business:* All activities engaged in or caused to be engaged in, by any person with the object of gain, profit, benefit or advantage, either direct or indirect, to such person.

*Gross proceeds:* The value proceeding or accruing from the leasing or rental of tangible personal property, without any deduction on account of the cost of the property so leased or rented, the cost of materials used, labor or service cost, interest paid or any other expenses whatsoever, and without any deductions on account of loss.

*Leasing or rental:* A transaction whereunder the person who owns or controls the possession of, tangible personal property permits another person to have the possession or use thereof for a consideration and for the duration of a definite or indefinite period of time, without transfer of the title to such property. The detention by the user thereof of freight cars, oxygen and acetylene tanks, and similar property, in respect of which detention a demurrage or per diem charge is made against the user of such property, shall not be deemed to constitute a transaction whereunder property is leased or rented to another within the meaning of this article.

*Tangible personal property:* Personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other contracts, or securities.

**Section I. Levy of Tax.**

- (a) In addition to all other licenses or taxes now imposed by law or ordinance, there is hereby levied and shall be collected as herein provided a privilege or license tax on each person engaging or continuing in the business of leasing or renting tangible personal property in the Town at the rate of two (2) per cent of the gross proceeds derived by the lessor from the lease or rental of tangible personal property; provided that the privilege or license tax on each person engaging or continuing in the business of leasing or renting any automotive vehicle or truck trailer, semitrailer or house trailer in the Town shall be at the rate of one-half (½) of one (1) per cent of the gross proceeds derived by the lessor from the lease or rental of such automotive vehicle or truck trailer, semitrailer or house trailer; provided further, that the tax levied in this article shall not apply to any leasing or rental, as lessor, by the state or any municipality or county in the state, or any public corporation organized under the provisions of the Code of Alabama 1975, section 11-54-80 et seq., as amended; provided further that the privilege or license tax on each person engaging or continuing in the business of the leasing and rental of linens and garments in the Town shall be at a rate of one (1) per cent of the gross proceeds derived by the lessor from the lease or rental of such linens and garments.
- (b) In addition to all other licenses or taxes now imposed by law or ordinance, there is hereby levied and shall be collected a privilege or license tax on each person engaging or continuing in the police jurisdiction of the Town in any of the businesses set out in subsection (a) above, at a rate equal to one-half (½) of the rate hereinabove established for engaging in such business within the corporate limits of the Town.

**Exemptions.**

There are exempted from the computation of the amount of the tax levied, assessed or payable under this article the following:

- (1) The gross proceeds accruing from the leasing or rental of a film to a lessee who charges, or proposes to charge, admission for viewing the films;
- (2) The gross proceeds accruing from any charge in respect of the use of docks and docking facilities furnished for boats or other craft operated on waterways.
- (3) The gross proceeds accruing from any charge made by a landlord to a tenant in respect of the leasing or furnishing of tangible personal property to be used on the premises of real property leased by the same landlord to the same tenant for use as a residence or dwelling place, including mobile homes. In this situation the landlord shall pay a tax as outlined in Section \_\_\_ of the Town's Business License Ordinance.
- (4) The gross proceeds accruing from the leasing or rental of tangible personal property to a lessee who acquires possession of the property for the purpose of leasing or renting to another the same property under a leasing or rental transaction subject to the provisions of this article;
- (5) The gross proceeds accruing from any charge made by a landlord to a tenant in respect of the leasing or furnishing of tangible personal property to be used on the premises of any room, lodging or accommodation leased or rented to transients in any hotel, motel, inn, tourist camp, tourist cabin or any other place in which rooms, lodgings or accommodations are regularly furnished to transients for a consideration.
- (6) The gross proceeds accruing from the leasing or rental of tangible personal property which the Town is prohibited from taxing under the constitution or laws of the United States or under the constitution of the state;
- (7) The gross proceeds accruing from the leasing or rental of nuclear fuel assemblies together with the nuclear material contained therein and other nuclear material used or useful in the production of electricity and assemblies containing radiation sources together with the ionizing radiation sources contained therein or useful in medical treatment or scientific research;
- (8) A transaction whereunder the lessor leases a truck or tractor trailer or semitrailer, for operation over the public roads and highways, and such lessor furnishes a driver for each such vehicle; such transaction shall be deemed to constitute the rendition of service and not a "leasing or rental" within the meaning of this article;
- (9) The gross proceeds accruing from the leasing or rental of vehicles in interchange between regulated motor carriers on a per diem basis;
- (10) The gross proceeds accruing from the leasing or rental of all structures, devices, facilities and identifiable components of any thereof acquired primarily for the control, reduction or elimination of air or water pollution, and the gross proceeds accruing from the leasing or rental of all materials used or intended for use in structures built primarily for the control, reduction or elimination of air and water pollution;
- (11) The gross proceeds derived by the lessor, which term includes a sublessor, from the leasing or rental of tangible personal property when the lessor and lessee, which term includes a sublessee, are wholly owned subsidiary corporations of the same parent corporation or one is the wholly owned subsidiary of the other; provided, that the appropriate sales or use tax, if any was due, has been paid on such item of personal property; and provided further, that in the event of any subsequent subleasing of such tangible personal property to any person other than any such sister, parent or subsidiary corporation, any privilege or license tax due and payable with respect to such subsequent subleasing under the provisions of this article shall be paid;

- (12) The detention by the user thereof of freight cars, oxygen and acetylene tanks, and similar property, in respect of which detention a demurrage or per diem charge is made against the user of such property.

**Section II. Property rented in Town for use outside Town; property rented outside Town for use in Town; rental of certain vehicles.**

- (a) When a lessor in the Town, who is in the business of leasing and renting tangible personal property, leases tangible personal property to a lessee in another Town, said property to be used in the other town (outside of this Town and its police jurisdiction), and the lessor's records in this Town show that the property is so leased to be used in the other town, the receipts derived from the property so leased are not subject to the tax imposed in this article.
- (b) When the lessor is located outside of this Town and rents tangible personal property to a lessee within this Town, and the property so rented is being used in this Town, the total gross receipts from the rental of said tangible personal property in this Town will be subject to the tax.
- (c) Any person engaging in the business of renting any automotive vehicle, truck trailer, semitrailer or house trailer, within this Town will be liable for the tax on the gross proceeds derived therefrom, although the automotive vehicle, truck trailer, semitrailer or house trailer may be turned in to the lessor, its agents or assigns in another town. In any case where an automotive vehicle, truck trailer, semitrailer or house trailer is leased in another town and turned in to the lessor or lessor's agent in this Town, the rental receipts therefrom will not be subject to the tax imposed herein.
- (d) In any case where a lessor leases or rents a truck, truck trailer or semitrailer to a motor carrier in this Town, the total gross receipts from the rental of the truck, truck trailer or semitrailer are subject to the tax affixed herein, although the truck, truck trailer or semitrailer may occasionally travel outside of this Town. In those cases where the lessor leases a truck, truck trailer or semitrailer to a motor carrier outside this Town and its police jurisdiction, the receipts therefrom will not be subject to the tax, although the truck, truck trailer or semitrailer may occasionally travel in this Town.
- (e) In any case when a lessor leases tangible personal property to a lessee in the police jurisdiction of the Town but outside the corporate limits, said property to be used only outside of the corporate limits of the Town, the tax imposed herein shall be at the rate of one-half (½) of the rate otherwise prescribed and fixed herein.

**Section III. Monthly report and payment.**

- (a) The privilege license tax levied under the provisions of this article, except as otherwise provided, shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the privilege license tax accrues. On or before the twentieth day of each month, every person on whom the amounts levied by this article are imposed shall render to the Town, on a form prescribed by the Town, a true and correct statement showing the gross proceeds of such person's business, for the next preceding month the amount of gross proceeds which are not subject to the privilege license tax or are not to be used as a measurement of the amounts due by such person, and the nature thereof, together with such other information as the Town may require; and at the time of making such monthly report such person shall compute the privilege license taxes due and shall pay to the Town the amounts shown to be due.
- (b) If any person subject to this article should fail to pay the license tax imposed herein, or should fail to render any report required hereby or should wilfully make a false statement of fact in the statement or return required hereunder, such person shall be guilty of a misdemeanor and upon conviction shall be punished as provided in section 1-8.

**Section IV. Recordkeeping.**

It shall be the duty of every person engaging or continuing in any business for which a privilege tax is imposed by this article to keep and preserve suitable records of the gross proceeds of any such business and such

other books or accounts as may be necessary to determine the amount of tax for which such person is liable, under the provisions of this article. It shall be duty of every person to keep and preserve for a period of three (3) years all invoices of gross proceeds, proceeding or accruing from the leasing or rental herein taxed; and all such books, invoices and other records shall be open for examination at any time by the Town or its agent. Any person leasing, who in addition leases for re-leasing, shall keep books so as to show separately the gross proceeds of leasing for re-leasing.

**Section V. Records, etc., to be open for inspection.**

- (a) The books, records and accounts mentioned in the next preceding section shall at all times be open to examination by the Town license inspector or any person designated to act for the Town. Upon demand by the Town license inspector or authorized deputy, auditor or representative, it shall be the duty of any person subject to this license tax to submit to the Town license inspector or authorized deputy, auditor or representative for inspection and examination, during reasonable business hours, in the Town or the police jurisdiction thereof, all books of account. Each occurrence of a failure to keep records, or allow examination thereof, shall constitute a separate offense.
- (b) Any person who shall fail to keep such records or who shall refuse to permit such examination thereof or who violates any other provisions hereof shall be guilty of a misdemeanor and upon conviction shall be punished as provided in section 1-8.

**Section VI. Cash leases and rentals.**

Any person taxable under this article, making cash and credit leases or rentals, may if such person desires, report such cash leases or rentals only, and shall thereafter include in each monthly report all credit collections made during the month preceding and shall pay the privilege license tax due thereon at the time of filing such report.

**Penalty for late payment.**

Any person who fails to pay the license levied herein within the time required in section 7-114 shall pay an additional license equal to ten (10) per cent of the amount of license due, as a penalty, such penalty to be assessed and collected as a part of the license. Any person who willfully violates this ordinance shall be guilty of a misdemeanor and shall pay a fine not to exceed \$500 for each offense.

ORDAINED THIS THE 2 Day of Oct, 2001.

BROOKWOOD TOWN COUNCIL  
BY: Anton C. Hyche  
Mayor

ATTEST:

Town Clerk Linda Barger

**CERTIFICATE OF POSTING**

I hereby certify that the above and foregoing Ordinance was posted on the 3 day of Oct, 2001 at the following locations:

1. Brockwood Town Hall
2. Henry's
3. Hudson's Hardware
4. Ken's (C) Store
5. Brockwood Shell
6. A T'S

Linda Barger  
Town Clerk

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Definitions.

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*Gross proceeds:* The value proceeding or accruing from the leasing or rental of tangible personal property, without any deduction on account of the cost of the property so leased or rented, the cost of materials used, labor or service cost, interest paid or any other expenses whatsoever, and without any deductions on account of loss.

*Leasing or rental:* A transaction whereunder the person who owns or controls the possession of, tangible personal property permits another person to have the possession or use thereof for a consideration and for the duration of a definite or indefinite period of time, without transfer of the title to such property. The detention by the user thereof of freight cars, oxygen and acetylene tanks, and similar property, in respect of which detention a demurrage or per diem charge is made against the user of such property, shall not be deemed to constitute a transaction whereunder property is leased or rented to an other within the meaning of this article.

*Tangible personal property:* Personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other contracts, or securities.

Section I. Levy of Tax.

- (a) In addition to all other licenses or taxes now imposed by law or ordinance, there is hereby levied and shall be collected as herein provided a privilege or license tax on each person engaging or continuing in the business of leasing or renting tangible personal property in the Town at the rate of two (2) per cent of the gross proceeds derived by the lessor from the lease or rental of tangible personal property; provided that the privilege or license tax on each person engaging or continuing in the business of leasing or renting any automotive vehicle or truck trailer, semitrailer or house trailer in the Town shall be at the rate of one-half (½) of one (1) per cent of the gross proceeds derived by the lessor from the lease or rental of such automotive vehicle or truck trailer, semitrailer or house trailer; provided further, that the tax levied in this article shall not apply to any leasing or rental, as lessor, by the state or any municipality or county in the state, or any public corporation organized under the provisions of the Code of Alabama 1975, section 11-54-80 et seq., as amended; provided further that the privilege or license tax on each person engaging or continuing in the business of the leasing and rental of linens and garments in the Town shall be at a rate of one (1) per cent of the gross proceeds derived by the lessor from the lease or rental of such linens and garments.
- (b) In addition to all other licenses or taxes now imposed by law or ordinance, there is hereby levied and shall be collected a privilege or license tax on each person engaging or continuing in the police jurisdiction of the Town in any of the businesses set out in subsection (a) above, at a rate equal to one-half (½) of the rate hereinabove established for engaging in such business within the corporate limits of the Town.

Exemptions.

There are exempted from the computation of the amount of the tax levied, assessed or payable under this article the following:

- (1) The gross proceeds accruing from the leasing or rental of a film to a lessee who charges, or proposes to charge, admission for viewing the films;
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- (3) The gross proceeds accruing from any charge made by a landlord to a tenant in respect of the leasing or furnishing of tangible personal property to be used on the premises of real property leased by the same landlord to the same tenant for use as a residence or dwelling place, including mobile homes. In this situation the landlord shall pay a tax as outlined in Section \_\_\_ of the Town's Business License Ordinance.
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- (5) The gross proceeds accruing from any charge made by a landlord to a tenant in respect of the leasing or furnishing of tangible personal property to be used on the premises of any room, lodging or accommodation leased or rented to transients in any hotel, motel, inn, tourist camp, tourist cabin or any other place in which rooms, lodgings or accommodations are regularly furnished to transients for a consideration.
- (6) The gross proceeds accruing from the leasing or rental of tangible personal property which the Town is prohibited from taxing under the constitution or laws of the United States or under the constitution of the state;
- (7) The gross proceeds accruing from the leasing or rental of nuclear fuel assemblies together with the nuclear material contained therein and other nuclear material used or useful in the production of electricity and assemblies containing radiation sources together with the ionizing radiation sources contained therein or useful in medical treatment or scientific research;
- (8) A transaction whereunder the lessor leases a truck or tractor trailer or semitrailer, for operation over the public roads and highways, and such lessor furnishes a driver for each such vehicle; such transaction shall be deemed to constitute the rendition of service and not a "leasing or rental" within the meaning of this article;
- (9) The gross proceeds accruing from the leasing or rental of vehicles in interchange between regulated motor carriers on a per diem basis;
- (10) The gross proceeds accruing from the leasing or rental of all structures, devices, facilities and identifiable components of any thereof acquired primarily for the control, reduction or elimination of air or water pollution, and the gross proceeds accruing from the leasing or rental of all materials used or intended for use in structures built primarily for the control, reduction or elimination of air and water pollution;
- (11) The gross proceeds derived by the lessor, which term includes a sublessor, from the leasing or rental of tangible personal property when the lessor and lessee, which term includes a sublessee, are wholly owned subsidiary corporations of the same parent corporation or one is the wholly owned subsidiary of the other; provided, that the appropriate sales or use tax, if any was due, has been paid on such item of personal property; and provided further, that in the event of any subsequent subleasing of such tangible personal property to any person other than any such sister, parent or subsidiary corporation, any privilege or license tax due and payable with respect to such subsequent subleasing under the provisions of this article shall be paid;

- (12) The detention by the user thereof of freight cars, oxygen and acetylene tanks, and similar property, in respect of which detention a demurrage or per diem charge is made against the user of such property.

**Section II. Property rented in Town for use outside Town; property rented outside Town for use in Town; rental of certain vehicles.**

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- (b) When the lessor is located outside of this Town and rents tangible personal property to a lessee within this Town, and the property so rented is being used in this Town, the total gross receipts from the rental of said tangible personal property in this Town will be subject to the tax.
- (c) Any person engaging in the business of renting any automotive vehicle, truck trailer, semitrailer or house trailer, within this Town will be liable for the tax on the gross proceeds derived therefrom, although the automotive vehicle, truck trailer, semitrailer or house trailer may be turned in to the lessor, its agents or assigns in another town. In any case where an automotive vehicle, truck trailer, semitrailer or house trailer is leased in another town and turned in to the lessor or lessor's agent in this Town, the rental receipts therefrom will not be subject to the tax imposed herein.
- (d) In any case where a lessor leases or rents a truck, truck trailer or semitrailer to a motor carrier in this Town, the total gross receipts from the rental of the truck, truck trailer or semitrailer are subject to the tax affixed herein, although the truck, truck trailer or semitrailer may occasionally travel outside of this Town. In those cases where the lessor leases a truck, truck trailer or semitrailer to a motor carrier outside this Town and its police jurisdiction, the receipts therefrom will not be subject to the tax, although the truck, truck trailer or semitrailer may occasionally travel in this Town.
- (e) In any case when a lessor leases tangible personal property to a lessee in the police jurisdiction of the Town but outside the corporate limits, said property to be used only outside of the corporate limits of the Town, the tax imposed herein shall be at the rate of one-half (1/2) of the rate otherwise prescribed and fixed herein.

**Section III. Monthly report and payment.**

- (a) The privilege license tax levied under the provisions of this article, except as otherwise provided, shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the privilege license tax accrues. On or before the twentieth day of each month, every person on whom the amounts levied by this article are imposed shall render to the Town, on a form prescribed by the Town a true and correct statement showing the gross proceeds of such person's business, for the next preceding month the amount of gross proceeds which are not subject to the privilege license tax or are not to be used as a measurement of the amounts due by such person, and the nature thereof, together with such other information as the Town may require; and at the time of making such monthly report such person shall compute the privilege license taxes due and shall pay to the Town the amounts shown to be due.
- (b) If any person subject to this article should fail to pay the license tax imposed herein, or should fail to render any report required hereby or should wilfully make a false statement of fact in the statement or return required hereunder, such person shall be guilty of a misdemeanor and upon conviction shall be punished as provided in section 1-8.

**Section IV. Recordkeeping.**

It shall be the duty of every person engaging or continuing in any business for which a privilege tax is imposed by this article to keep and preserve suitable records of the gross proceeds of any such business and such



other books or accounts as may be necessary to determine the amount of tax for which such person is liable, under the provisions of this article. It shall be duty of every person to keep and preserve for a period of three (3) years all invoices of gross proceeds, proceeding or accruing from the leasing or rental herein taxed; and all such books, invoices and other records shall be open for examination at any time by the Town or its agent. Any person leasing who in addition leases for re-leasing, shall keep books so as to show separately the gross proceeds of leasing for re-leasing.

**Section V. Records, etc., to be open for inspection.**

- (a) The books, records and accounts mentioned in the next preceding section shall at all times be open to examination by the Town license inspector or any person designated to act for the Town. Upon demand by the Town license inspector or authorized deputy, auditor or representative, it shall be the duty of any person subject to this license tax to submit to the Town license inspector or authorized deputy, auditor or representative for inspection and examination, during reasonable business hours, in the Town or the police jurisdiction thereof, all books of account. Each occurrence of a failure to keep records, or allow examination thereof, shall constitute a separate offense.
- (b) Any person who shall fail to keep such records or who shall refuse to permit such examination thereof or who violates any other provisions hereof shall be guilty of a misdemeanor and upon conviction shall be punished as provided in section 1-8.

**Section VI. Cash leases and rentals.**

Any person taxable under this article, making cash and credit leases or rentals, may if such person desires, report such cash leases or rentals only, and shall thereafter include in each monthly report all credit collections made during the month preceding and shall pay the privilege license tax due thereon at the time of filing such report.

**Penalty for late payment.**

Any person who fails to pay the license levied herein within the time required in section 7-114 shall pay an additional license equal to ten (10) per cent of the amount of license due, as a penalty, such penalty to be assessed and collected as a part of the license. Any person who willfully violates this ordinance shall be guilty of a misdemeanor and shall pay a fine not to exceed \$500 for each offense.

ORDAINED THIS THE \_\_\_\_ Day of \_\_\_\_\_, 2001.

BROOKWOOD TOWN COUNCIL

BY:

Mayor

ATTEST

Town Clerk

**CERTIFICATE OF POSTING**

I hereby certify that the above and foregoing Ordinance was posted on the \_\_\_\_ day of \_\_\_\_\_, 2001 at the following locations:

1. Brookwood Town Hall
2. Henry's
3. Hudson's Hardware
4. Ken's (C) Store
5. Brookwood Shell
6. Brookwood Cafe

Linda Barger  
Town Clerk