CHAPTER 300-2-3 TAX RATES AND COVERED EMPLOYMENT

300-2-3-.01 Quarterly Reports. Amended.

(1) (a) Except as otherwise provided in these rules for the annual reporting of wages and taxes by employers with domestic employment only, pursuant to the provisions of O.C.G.A. Sections 34-8-121, 34-8-150, 34-8-158, 34-8-159, 34-8-160, 34-8-161, and 34-8-180, "Employer's Quarterly Tax and Wage Reports", Form DOL-4, shall be filed on a quarterly basis and all taxes thereon shall be due and paid on or before the last day of the month which follows the end of the quarter to which they apply. Employers of domestic workers under O.C.G.A. Section 34-8-33(a)(2) with domestic employment only shall file reports annually on or before January 31st of each year for the prior calendar year on such form(s) as may hereafter be adopted for report of wages paid and taxes due with respect to such domestic employment for the prior calendar year, and all taxes thereon shall be due and paid on or before January 31st immediately following the calendar year to which such taxes apply.

(b) Report Form DOL-4 must be filed and taxes and administrative assessments paid within ten (10) days from the date any employer discontinues or makes a transfer of the assets of the business.

(c) Any amount owed the department by an employing unit which has elected to reimburse benefits paid in lieu of contributions shall be due and payable on or before the thirtieth (30th) day after the release date of the "Reimbursable Employer's Quarterly Bill", Form DOL-621.

(2) Each employer (other than those who have elected the Reimbursable Option) is required to pay taxes and administrative assessments on the taxable wage base portion of wages paid to each individual employee during the calendar year as defined in O.C.G.A. Section 34-8-49. Wages paid during such calendar year with respect to employment performed in another state for the same employer (legal entity), which wages were reported to another state and the taxes thereon paid, shall be considered as wages reported to the State of Georgia for the purposes of computing taxable wages paid to an individual during such calendar year (if the other state has a lower taxable wage base the difference will be taxable wages of Georgia). When a change in ownership (successorship) occurs, all taxable wage base wages paid and reported by the predecessor employer, excluding wages paid by a reimbursable employer, for the same individual for the same calendar year shall be treated as taxable wages paid by the successor employer.

(a) Wages. Salaries, commissions, drawing accounts, lodging and board, bonuses, holiday and vacation pay are wages within the meaning of the Employment Security Law. Flat fee expense payments shall be considered wages, whereas reimbursement expenses for which

adequate documentation of actual expense reimbursed is maintained shall not be considered wages.

(b) Bonus means the sum paid to or other thing of value received by an employee from an employer as additional payment for services performed in insured employment.

(c) Drawing accounts, or advances against commissions, shall be deemed wages for services in insured employment in the amount actually drawn by the employee at the time so drawn. Any advance against commission, including that paid to insurance agents, shall not be exempt from the definition of wages.

(d) Board and lodging furnished an employee by an employer shall be construed as wages for services in insured employment.

1. In the case of employees of apartment complexes, the value of an apartment given in lieu of wages shall be the same value accepted as rent for a like apartment in the same complex. Such value placed thereon shall be included as wages for reporting purposes.

2. For the purpose of reporting wages and taxes the minimum value of board and lodging shall be computed as follows, and no agreement between the employer and the employee shall reduce the value of said meals and lodging below these amounts: meals--breakfast $ 3.00, lunch $ 4.00, dinner $ 6.00; lodging--$ 200.00 per month, $ 50.00 per week, or $ 10.00 per day.

(3) All payroll tax payments shall be made directly to the Georgia Department of Labor by check, draft or money order, payable to the Georgia Department of Labor. Payments by cash may be remitted only by registered mail or paid to an authorized representative of the Georgia Department of Labor. The authorized representative who received the cash must issue a receipt to the payer.

NOTE: The payment of this tax is covered by the criminal bad check law, O.C.G.A. Section 16-9-20 and civil damages are as specified in O.C.G.A. Section 13-6-15.

(4) The tax payment of any employing unit which becomes liable for payroll taxes, except those employers who have elected to make payments in lieu of contributions and employers of domestic workers under O.C.G.A. Section 34-8-33(a)(2) with domestic employment only, shall become due and payable on the last day of the month next following the end of the calendar quarter within which:

(a) The twentieth (20th) calendar week occurred during the calendar year in which there were employed four or more individuals for some portion of a day in each of any twenty different weeks within a calendar year under O.C.G.A. Sections 34-8-33(a)(4) or 34-8-33(a)(9). The first payment of such employer shall include taxes with respect to all wages paid for employment from the first day of the calendar year, or from the first day of employment within such calendar year; or

(b) Such employing unit became an employer under O.C.G.A. Sections 34-8-33(a)(5), 34-8-33(a)(6) or 34-8-33(a)(8). The first payment of such employer shall include taxes with respect to all wages paid for employment from the first day of the calendar year or from the first day of employment within such calendar year; or

(c) Such employing unit was notified of its liability by this department under O.C.G.A. Sections 34-8-33(a)(7) or 34-8-33(a)(10). The first payment of such employer shall include taxes with

respect to all wages paid for employment from the effective date of liability; or

(d) Such employing unit paid for service in employment wages of $ 1,500.00 or more in any calendar quarter under O.C.G.A. Section 34-8-33(a)(1)(A). The first payment of such employer shall include taxes with respect to all wages paid for employment from the first day of the calendar year or from the first day of employment within such calendar year; or

(e) The twentieth (20th) calendar week matured during the calendar year in which there were employed one or more individuals for some portion of a day in each of any twenty (20) different weeks within a calendar year under O.C.G.A. Section 34-8-33(a)(1)(B). The first payment of such employer shall include taxes with respect to all wages paid for employment from the first day of the calendar year or from the first day of employment within such calendar year; or

(f) Such employing unit paid for service in domestic employment cash remuneration of $ 1,000.00 or more in any calendar quarter under O.C.G.A. Section 34-8-33(a)(2). The first payment of such employer shall include taxes with respect to all wages paid for employment from the first day of the calendar year or from the first day of employment within such calendar year; or

(g) Under O.C.G.A. Section 34-8-33(a)(3), the twentieth (20th) calendar week occurred during the calendar year in which there was employed in agricultural labor ten (10) or more individuals for some portion of a day in each of any twenty (20) different weeks within a calendar year, or such employing unit paid for service in agricultural employment cash remuneration of $ 20,000.00 or more in any calendar quarter. The first payment of such employer shall include taxes with respect to all wages paid for employment from the first day of the calendar year or from the first day of employment within such calendar year. (See Rule 300-2-3-.18.)

(5) All provisions of these regulations with respect to taxes, contributions, penalty, interest and costs shall apply with equal force and effect to the administrative assessment specified in O.C.G.A. Section 34-8-180 et seq. All information with respect to the administrative assessments imposed under O.C.G.A. Section 34-8-180 et seq. shall be submitted on the Form DOL-4, "Employer's Quarterly Tax and Wage Report" except that employers with domestic employment only shall submit all information with respect to the administrative assessments imposed under O.C.G.A. Section 34-8-180 et seq. on the report required to be made annually by such employers on or before January 31st of each year for the prior calendar year on such form(s) as may hereafter be adopted for report of wages paid and taxes due with respect to domestic employment for such calendar year.

(6) All employers shall report additional wage information whenever requested by the department to determine alternative base period wages in compliance with O.C.G.A. Section 34-8-21(b), or to determine regular or alternative base period wages for any individual employed in domestic service by an employer under O.C.G.A. Section 34-8-33(a)(2) with domestic employment only. Employers shall provide such additional wage information in accordance with the Rules of the department.

Authority O.C.G.A. Secs. 34-8-21, 34-8-49, 34-8-70, 34-8-150, 34-8-158, 34-8-159, 34-8-165, 34-8-166, 34-8-180, 34-8-181, 34-8-184, 34-8-190, 34-8-191, and 34-8-192.

300-2-3-.02 Penalty and Interest. Amended.

(1) Pursuant to the provisions of O.C.G.A. Sections 34-8-49, 34-8-158, 34-8-159, 34-8-160, 34-8-161,

34-8-166 and 34-8-184 interest on delinquent unemployment insurance tax contributions, administrative assessments and reimbursements in lieu of contributions shall be computed from the first day following the due date thereof at the rate specified in the Employment Security Law. Interest will be charged from due date until payment is received.

(2) Form DOL-4, "Employer's Quarterly Tax and Wage Report", is considered as received only when report is complete.

(a) Such reports are deemed filed when received by the department as further provided in Rule 300-2-2-.02, or when placed in the mail service. When placed in the mail service, the postmark cancellation date shall control over any prior postage meter date shown on the envelope or package.

(b) Penalty shall be assessed at the greater of $ 20.00 per report, per month or .05 percent of total wages for each month or fraction of a month that a Form DOL-4, "Employer's Quarterly Tax and Wage Report" is late in filing.

(3) Liability under O.C.G.A. Section 34-8-33(a)(8) -- acquisition of a liable business:

(a) Penalty. In all cases, penalty will be charged from the end of the month following the quarter in which the acquisition occurred or from the end of the month following the month in which the employer was notified of the liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the end of the month following the quarter in which the acquisition occurred.

(4) Liability under O.C.G.A. Section 34-8-33(a)(9) -- combined employment of two or more not liable employing units:

(a) Penalty. In all cases, penalty will be charged from the regular due date for the quarter in which the twentieth (20th) week during the calendar year was reached or from the end of the month following the month in which the employer was notified of its liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer reached the twentieth (20th) week during the calendar year.

(5) Liability under O.C.G.A. Section 34-8-33(a)(6) -- re-registration of an employer after being inactive (unless terminated):

(a) Penalty. In all cases, penalty will be charged from the end of the month following the quarter in which the employer re-entered business.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the end of the month following the quarter in which the employer re-entered business.

(6) Liability under O.C.G.A. Section 34-8-33(a)(7) -- election of coverage:

(a) Penalty. In all cases, penalty will be charged from the end of the month following the month in which the employer was notified of liability or from the end of the month following the initial

quarter of liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer was notified of its liability.

(7) Liability under O.C.G.A. Section 34-8-33(a)(10) -- liability under federal law:

(a) Penalty. In all cases, penalty will be charged from the end of the month following the month in which the employer was notified of liability or from the end of the month following the initial quarter of liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the end of the month following the quarter in which the employer employed its first worker in Georgia.

(8) Liability under O.C.G.A. Section 34-8-33(a)(1)(A) -- payment of $ 1,500.00 or more in wages for any one quarter in either the current or preceding calendar year:

(a) Penalty. In all cases, penalty will be charged from the regular due date for the quarter in which the employer had $ 1,500.00 or more in wages or from the end of the month following the month in which the employer was notified of liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer had $ 1,500.00 or more in wages.

(9) Liability under O.C.G.A. Section 34-8-33(a)(1)(B) -- employment of one or more employees:

(a) Penalty. In all cases, penalty will be charged from the regular due date for the quarter in which the twentieth (20th) week during the calendar year was reached or from the end of the month following the month in which the employer was notified of liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer reached the twentieth (20th) week during the calendar year.

(10) Liability under O.C.G.A. Section 34-8-33(a)(5) -- operation of a governmental organization:

(a) Penalty. In all cases, penalty will be charged from the end of the month following the quarter in which the employer was notified of liability.

(b) Interest. In all cases, where an employer is on a contributory basis, interest will be charged on delinquent taxes from the regular due date of each Form DOL-4 "Employer's Quarterly Tax and Wage Report" (which the employer must file and pay), regardless of when the employer was notified of liability.

(c) In all cases, where an employer is on a reimbursable basis, interest will be charged beginning thirty (30) days after the release date of Form DOL-621, "Reimbursable Employer's Quarterly Bill".

(11) Liability under O.C.G.A. Section 34-8-33(a)(4) -- operation of a non-profit organization:

(a) Penalty. In all cases, penalty will be charged from the regular due date for the quarter in

which the twentieth (20th) week during the calendar year was reached or from the end of the month following the month in which the employer was notified of liability, whichever is the later date.

(b) Interest. In all cases, where an employer is on a contributory basis, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer reached the twentieth (20th) week during the calendar year.

(c) In all cases, where an employer is on a reimbursable basis, interest will be charged beginning thirty (30) days after the release date of Form DOL-621, "Reimbursable Employer's Quarterly Bill".

(12) Liability under O.C.G.A. Section 34-8-33(a)(8) -- acquisition by a not liable employer of a liable business causing liability:

(a) Penalty. In all cases, penalty will be charged from the end of the month following the quarter in which the acquisition occurred or from the end of the month following the month in which the employer was notified of liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the end of the month following the quarter in which the acquisition occurred.

(13) Liability under administrative decision -- coverage of employer under administrative decision:

(a) Penalty. In all cases, penalty will be charged from the end of the month following the month in which the employer was notified of liability.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer was notified of liability.

(14) Liability under O.C.G.A. Section 34-8-33(a)(2) -- employment of employees in domestic service:

(a) Penalty. Except as otherwise provided herein, penalty will be charged from the regular due date for the quarter in which the employer paid $ 1,000.00 or more in cash remuneration or from the end of the month following the month in which the employer was notified of liability, whichever is the later date. Employers with domestic employment only shall be charged penalty from the regular due date for the calendar year in which the employer paid $ 1,000.00 or more in cash remuneration or from the end of the month following the month in which the employer was notified of liability, whichever is the later date.

(b) Interest. Except as otherwise provided herein, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer paid $ 1,000.00 or more in cash remuneration. Employers with domestic employment only shall be charged interest from the last day of the month following the calendar year in which the employer paid $ 1,000.00 or more in cash remuneration.

Authority O.C.G.A. Secs. 34-8-49, 34-8-70, 34-8-150, 34-8-158, 34-8-159, 34-8-165, 34-8-166, 34-8-180, 34-8-181, and 34-8-184.

300-2-3-.03 Refund and Adjustment Procedure. Amended.

(1) Initiation by department. The Commissioner may make refunds or adjustments to an account upon discovery of errors with respect to overpayment of amounts due.

(2) Request by employer.

(a) Any request for refund or adjustment of unemployment tax, interest, cost, administrative assessments or any combination of the foregoing must be made in writing and directed to the Commissioner.

(b) Such written request must be received by the Commissioner within three (3) years from the date the report was due or was assessed by the department.

(c) The specific basis of the request must be stated in the request.

(3) Review of the request.

(a) The Commissioner or his authorized representative shall have a reasonable time, normally not to exceed one hundred twenty (120) days, in which to review the request and furnish a written decision thereon if the request is denied.

(b) The decision may be reviewed or reconsidered by the Commissioner if a written request for such review or reconsideration is received by the Commissioner within fifteen (15) days of the release date of the original decision denying the refund or adjustment request.

(c) A decision not to grant a refund or adjustment shall be final within fifteen (15) days as described herein and shall not be subject to review in the absence of such a request for reconsideration or review.

(d) If a request for reconsideration or review as stated in (c) above, of a decision is timely received, it will be processed under the provisions of OCGA Section 34-8-220, except that decisions from this level of administrative appeal must be appealed to the courts, as stated in (e) below, without review by the board of review.

(e) The decision of the Commissioner not to grant a reconsideration or review request shall be final unless there is an appeal therefrom to the Superior Court of the county in which such decision was rendered within fifteen (15) days of the release date of the denial.

(4) If the request for refund or adjustment is granted by the Commissioner a refund shall be made, if the account of the employer is currently inactive; there are no current employees of the employer; the account is current with the department and the employer does not owe the department money for any purpose. The refund shall not include interest.

(5) If a refund or adjustment request is granted and the account of the employer with the Department is still active, the employer may, at its option, receive a refund without interest, or make the appropriate credit adjustment in future "Employer's Quarterly Wage and Tax Reports", Form DOL-4, provided the account is current in every respect. If the account is not current then no refund shall be made, but rather adjustments will be made out of future quarters as deemed appropriate by the department.

(6) The experience rate history account created pursuant to OCGA Section 34-8-154 is strictly an account used to track the history of a particular employer's unemployment tax history. Nothing establishes an employer or any individuals in its employ the right to claim funds paid by the employer into the fund, regardless of whether the employer ceases business, or the experience rate history account of that employer is inactivated, terminated or otherwise ceases to exist.

Authority O.C.G.A. Secs. 34-8-4, 34-8-70.

300-2-3-.04 Computation of Rates. Amended.

(1) Pursuant to the provisions of OCGA Section 34-8-152 a newly covered employer's experience rating account must have been chargeable with benefits throughout the thirty-six (36) consecutive calendar month period ending on the computation date, as that term is defined in OCGA Section 34-8-28, before becoming eligible to earn a rate reduction below the new employer rate.

(2) As used in OCGA Section 34-8-156, total covered wages means all wages paid to an employee during his or her employment by a contributory employer which were covered under the Employment Security Law. Wages paid by employers who have elected to reimburse payments under the provisions of OCGA Section 34-8-158 are not included in total covered wages for purposes of computing the State-wide Reserve Ratio.

(3) Any predecessor employing unit's experience rate history account shall be transferred upon written request of the successor employer within 30 days from the date of notice by the department advising the successor employer that the experience rate history has not been transferred.

Authority O.C.G.A. Secs. 34-8-70, 34-8-122, 34-8-150, 34-8-153, 34-8-157.

300-2-3-.05 Charges to Experience Rating Account. Amended.

(1) An employer shall be charged for all benefits paid as a consequence of the employer's failure to provide a timely written response to a claim for unemployment insurance benefits, regardless of whether the previous determination to pay benefits is later reversed on appeal or if an overpayment is established.

(2) The statutory "cap" on benefit charges provided in OCGA Section 34-8-157 shall not apply to Extended Benefits paid under OCGA Section 34-8-197.

Authority O.C.G.A. Secs. 34-8-70, 34-8-157.

300-2-3-.06 Constructive Knowledge of Work Performed. Amended.

(1) General definition. The purpose of this section of the rules is to establish who is liable for the

employment of an individual hired to assist in performing the work of an employee. In a situation where an individual is employed to perform or assist in performing the work of an employee, the individual is deemed to be employed by the employer provided the employer had actual or constructive knowledge of the work performed by the individual. This is the case even when the individual who is hired to assist the employee is hired or paid by the employee.

(2) Constructive knowledge. An employer is deemed to have constructive knowledge if the employer should have reasonably known or expected that an employee would engage another individual to assist in performing the work. If an employer has a rule against the employee hiring another worker or has instructed the employee not to hire another worker, the employee who hired the extra worker is the employer unless it is unreasonable to expect one person to complete the work assigned.

(3) Examples of actual or constructive knowledge. The following situations demonstrate when there is actual or constructive knowledge and show the employer's responsibility.

(a) The employer who operates a trucking business, employs A to drive a truck to a certain location, unload the truck and return. A hires B to help unload the truck. The following examples show whether the employer is considered to have actual or constructive knowledge of the work performed by B.

1. If the employer knows B is helping A, the employer has actual knowledge of the work performed by B and therefore, B is considered to be employed by the employer.

2. If the employer does not know about B but knows that the unloading A is engaged to perform requires more than one person, the employer has constructive knowledge of the work performed by B and, therefore, B is considered to be employed by the employer.

3. The employer tells A to do the work himself, however, A still hires B and the employer finds out but takes no action to prevent B from helping A in the future. In this case the employer has actual knowledge of the work performed by B and, therefore, B is considered to be employed by the employer for both the past and future work performed. However, if the employer takes action to prevent A from hiring help in the future, then B would not be considered to be employed by the employer even for the work already performed.

4. The employer tells A that he may do the work himself or hire someone to help him. A hires B but the employer is not told and does not know about B. The employer is considered to have constructive knowledge because he knows A might hire B.

(b) Reporting requirement (constructive knowledge). The employer has a responsibility to report all employment for which he is liable, therefore, the employer in the examples above should require that A report B's employment to him in those situations where the employer had actual or constructive knowledge of B's employment. However, A's failure to report B to the employer does not relieve the employer of the liability for the employment.

Authority O.C.G.A. Secs. 34-8-70, 34-8-190, 34-8-191.

300-2-3-.07 Included Employment: Localization of Services. Amended.

(1) General definition. The objective of this rule is to explain when employment is covered under Georgia law if an individual worked for one employer in more than one state. Unemployment insurance programs in all states use the parameters established in this section of the rules.

(2) Service is localized in this state. The service is considered to be localized in Georgia if it is performed entirely within Georgia. The service is also considered to be localized in Georgia if performed both inside and outside of Georgia, but the service outside of Georgia is incidental to the service in Georgia. The service is incidental if it is temporary or transitory in nature or consists of isolated transactions. The intent of the employer and employee will be used to determine whether the service is incidental to the service performed in Georgia.

(3) Service is not localized in any state. If the service is not localized in any state but some of the service is performed in Georgia by the individual, the entire service is covered in Georgia if one of the following conditions apply:

(a) The base of operations is in Georgia. The individual's base of operations is in Georgia. The base of operations is the place from which the employee starts work and to which he or she customarily returns for instructions from the employer, communications from customers, to replenish stocks or materials, to repair equipment or to perform any other function necessary in the individual's trade or profession. The base of operations may be an individual's residence.

(b) The place from which service is controlled or directed is in Georgia. If the individual has no base of operations or does not perform any service in the state in which the base of operations is located, it is necessary to determine if any service is performed in the state from which the service is controlled or directed. The place from which the service is controlled or directed is the place at which the basic authority exists rather than the place at which a manager or foreman supervises the service.

(c) The place of residence is in Georgia. If the conditions in paragraphs (a) or (b) do not apply, it is necessary to apply the test of residence. Under this test, the service is covered in Georgia provided the individual lives in Georgia and performs some of the services in Georgia.

(4) Employer may elect one state for coverage. If the conditions in paragraphs (2) or (3) of this rule do not apply, the employer may elect to cover all of the individual's service in one state. This election must be made under the provisions for reciprocal coverage arrangements (See OCGA Section 34-8-35).

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-.08 Repealed.

300-2-3-.09 Domestic Service Included in Employment. Amended.

(1) General definition. This section of the rules shows when domestic services become subject employment.

(2) $ 1000.00 in a calendar quarter. Domestic service is employment if performed in a private home, local college club or local chapter of a college fraternity or sorority for a person who paid cash remuneration of $ 1000.00 or more in a calendar quarter in the current calendar year or the preceding calendar year.

(3) All remuneration is reportable. Once the $ 1000.00 cash test is met, all remuneration including cash and noncash payments such as room and board are reportable as wages.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-.10 Domestic Service Excluded from Employment. Amended.

(1) General definition. This section of the rules defines domestic services which are exempt under the law, provided they are not included under OCGA Section 34-8-33.

(2) Domestic service.

(a) Services which are domestic services. Domestic services include services of a household nature in or about a private home, local college club, or local chapter of a college fraternity or sorority, performed by individuals such as cooks, maids, baby-sitters, handymen, gardeners, and chauffeurs of automobiles for family use. The domestic services must be performed by an individual in or about the private home, local college club or local chapter of a college fraternity or sorority of the person employing the individual.

(3) Services which are not domestic services. Some examples of services, which are not domestic services, are secretarial services performed in a private home and services in relation to remodeling or building a private home, local college club or local chapter of a college fraternity or sorority.

(a) Private home. A private home is a fixed place of abode of an individual or family; this may include a dwelling unit in an apartment building or hotel. It shall also include a nursing home when the family of the patient hires sitters who are not employees of the nursing home.

(b) Local college club or local chapter of a college fraternity or sorority. A local college club does not include an alumni club or chapter.

(c) Services not exempt. Services of a household nature are not exempt if performed in or about rooming or boarding houses, hotels, hospitals, commercial offices or for home-owners associations. Services not of a household nature, regardless of where performed, are not exempt. Authority OCGA Sections 34-8-70 and 34-8-150.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-.11 Family Service. Amended.

(1) General definition. Family service is exempt under the law only if a required family relationship

exists between the employee and all members of the employing unit (individual owner or partners). Services performed in the employ of a corporation are not exempt.

(2) Family relationship requirement.

(a) One of the following relationships must exist for family service to be exempt:

1. An individual employed by his or her spouse;

2. A parent employed by his or her son or daughter; or

3. A child under the age of twenty-one (21), married or single, employed by a parent.

(b) In the parent-child employment situation, the exempt family relationship is met even if the child is an adopted child, stepchild, or foster child; the foster child, however, must be living with the foster parent.

(3) Examples of family relationships which are or are not exempt. A required family relationship (not necessarily the same relationship) must exist between the employee and each member of the employing unit. Examples are:

(a) A woman who is employed by a partnership composed of her husband and her son is exempt from "employment";

(b) A woman who is employed by a partnership composed of her husband and his brother is not exempt from "employment" because the required family relationship between the woman and her brother-in-law does not exist; or

(c) A man who is employed by a partnership composed of his wife and his son-in-law is not exempt from "employment" because the required family relationship between the man and his son-in-law does not exist.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-.12 Casual Labor. Amended.

(1) General definition. Casual labor is exempt under the law only if it is not in the course of the employing unit's trade or business. Casual labor does not apply to exempt domestic service.

(2) Casual labor. Services performed by an individual for an employing unit which are not in the course of the employing unit's trade or business are casual labor, unless:

(a) Cash remuneration for such service is $ 50.00 or more in a calendar quarter; and

(b) The individual performs such service on each of twenty-four (24) days during the calendar quarter or twenty-four (24) days during the preceding calendar quarter.

(3) Not in the course of the employing unit's trade or business. Services not in the course of the

employing unit's trade or business include services that do not promote or advance the trade or business, for example; services performed in connection with the employer's hobby or repairs to the employer's private home. Casual labor (as defined above) performed by an individual for a property owner in regard to building or remodeling the owner's home is exempt under this section.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-.13 Commissioned Insurance Agents. Amended.

(1) General definition. "Employment" does not include services performed as an insurance agent if remuneration for such services is solely by way of commission.

(2) Services performed as an insurance agent. Services performed by an individual as an insurance agent are exempt if all such services are paid solely by way of commission. For example, if this individual works for an insurance company both as an insurance agent and an accountant, is paid for services as an insurance agent by way of commission and paid a salary for the accounting services, the commissions are excluded from employment and the salary for the accounting services is included. If the payment for all services (commissions and salary) is for the same pay period, the "included and excluded service" provision of OCGA Section 34-8-35 must be applied.

(3) Solely by way of commission.

(a) If any part of remuneration for services as an insurance agent is a salary, all of these services are considered to be employment and the total remuneration (salary and commission) is included.

(b) If the individual performing services as an insurance agent is guaranteed a minimum salary for any pay period in which his commissions are less than the guaranteed minimum, all remuneration paid during that particular pay period shall not be considered as payment "solely by way of commission".

(c) If the individual performing services as an insurance agent is given advances against future commissions and the individual is required to repay any advances which exceed the commissions, the advances against future commissions are considered to be remuneration solely by way of commission and are excluded. The employer must provide satisfactory proof that advances are, in fact, repaid.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-.14 Real Estate Agents. Amended.

(1) General definition. "Employment" does not include services as a licensed real estate agent if remuneration for such services is solely by way of commission.

(2) Services performed as a licensed real estate agent. Services performed by an individual as a licensed real estate agent are exempt if all such services are paid solely by way of commission. For example, if this individual works for a real estate company both as a real estate agent and an accountant, is paid for services as a real estate agent by way of commission and paid a salary for the accounting services, the commissions are excluded from employment and the salary for the accounting services is included. If the payment for all services (commissions and salary) is for the same pay period, the "included and excluded service" provision of OCGA Section 34-8-35 must be applied.

(3) Solely by way of commission.

(a) If any part of the remuneration for services as a real estate agent is a salary, all of these services are considered to be employment and the total remuneration (salary and commission) is included.

(b) If the individual performing services as a real estate agent is guaranteed a minimum salary for any pay period in which the commissions are less than the guaranteed minimum, the individual's earnings are included when the individual is paid the guaranteed salary. In any pay period in which the individual's commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are excluded.

(c) If the individual performing services as a real estate agent is given advances against future commissions and is required to repay any advances which exceed the commissions, the advances against future commissions are considered to be remuneration solely by way of commission and are excluded.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-.15 Included and Excluded Service During a Pay Period. Amended.

(1) General definition. When some of an individual's services performed for the person employing the individual during a pay period are included and some excluded from employment, all the services are considered to be included or excluded for that pay period. Whether all the services are considered to be included or excluded depends on the time spent in each activity.

(2) Time spent in a pay period.

(a) If fifty percent (50%) or more of an individual's time in the employ of a particular person is spent in performing services which constitute employment, all the services are considered to be employment.

(b) This fifty percent (50%) test must be applied to each pay period. An individual could have all services performed included in one period and excluded in another.

(3) Employer must verify time spent. In order to have all services performed by an individual excluded, the employer must show to the satisfaction of the department that less than fifty percent (50%) of the time spent in any pay period is for services which constitute employment.

(4) Pay period. This section of the Law does not apply if there is no regular pay period, the pay period covers more than thirty-one (31) consecutive days or there are separate pay periods for the included and excluded services.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-.16 Agricultural Labor. Amended.

(1) General definition. Generally, agricultural labor is exempt under OCGA Section 34-8-35, unless it is covered under OCGA Section 34-8-33(a)(3). OCGA Section 34-8-33 covers larger agricultural employers based on wages paid or number of individuals employed.

(2) Definition of terms. The terms used in this section are defined as follows:

(a) Agricultural commodities. Agricultural commodities include livestock, bees, poultry, fur-bearing animals, wildlife and all crops such as fruits, nuts, vegetables, grains and other commodities grown in the soil or other growth mediums for use or profit.

(b) Horticultural commodities. Horticultural commodities are flowers and nursery products such as sod, fruit trees, shade trees, Christmas trees, ornamental plants and shrubs.

(c) Raising and harvesting. Raising includes such things as planting the seeds, watering or irrigating, applying insecticide or fertilizer and otherwise caring for the commodity prior to harvesting. In regard to livestock, bees, poultry, fur-bearing animals and wildlife, raising includes caring for, feeding, shearing, breeding, training and managing. Harvesting includes such things as picking, cutting, threshing, shucking corn, baling hay, and hulling nuts. Horticultural commodities are harvested when they are available for sale.

(d) Farm. A farm is any place used mainly for raising agricultural or horticultural commodities such as a ranch, orchard, nursery, greenhouse or other similar structure.

(3) Agricultural labor. "Agricultural labor" means any service performed in any one of the following:

(a) On a farm, in the employ of any person in connection with:

1. Cultivating the soil, which includes plowing, dragging and fertilizing; or

2. Raising or harvesting any agricultural or horticultural commodity.

(b) In the employ of the owner or operator of a farm, if the major part of the service is performed on a farm, in connection with:

1. The operation, management, conservation, improvement or maintenance of the farm and its tools and equipment. This includes clearing land, leveling land, selling agricultural commodities raised by the operator and services performed by painters, mechanics, farm supervisors and bookkeepers, provided the individual is not an

employee of another firm hired by the farm operator; or

2. Salvaging timber or clearing land of brush or other debris left by a hurricane, storm, flood or other natural disaster.

(c) In the employ of any person in connection with:

1. The production or harvesting of agricultural commodities defined in Section 15(g) of the Federal Agricultural Marketing Act. These commodities are limited to crude gum (oleoresin) from a living tree, and gum spirits of turpentine and gum rosin processed from crude gum by the original producer of the crude gum; or

2. The ginning of cotton; or

3. The operation or maintenance of ditches, canals, reservoirs or waterways if not owned or operated for profit and used primarily for farming purposes.

(d) In the employ of the operator of a farm or group of operators of farms who produce more than one-half of the commodity and perform services with respect to such commodity in its unmanufactured state in:

1. Handling, planting, drying, packing, packaging, processing, freezing, grading or storing the commodity. However, services performed in connection with commercial canning or commercial freezing do not constitute agricultural labor; or

2. Delivery to storage or to market or to a carrier for transportation to market of the commodity. However, services performed in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or in connection with the wholesaling and retailing of the commodity do not constitute agricultural labor. The selling activity, however, is agricultural when it is performed on the farm.

(4) Examples of the application of the definition of agricultural labor.

(a) Raising and selling. Services in connection with raising agricultural or horticultural commodities are agricultural labor. However, if this business also sells the commodity, the selling activity is not agricultural labor unless performed on the farm.

(b) Included and excluded services (agricultural labor). If in example (a) above, the same individual performs both agricultural and nonagricultural labor, the entire service will be considered to be agricultural labor if fifty percent (50%) or more of the individual's time in a pay period was spent in agricultural labor (see OCGA Section 34-8-33).

(c) Poultry hatchery. Poultry hatchery services are agricultural labor provided they are performed on the farm or in the employ of a farm operator or group of operators who produced more than one-half the commodity (the eggs). Services for a commercial hatchery that is not part of a farm that raises poultry are not agricultural labor.

(d) Raising livestock. Raising livestock and related activities performed on a farm are agricultural labor. Services in connection with livestock held, cared for and fed in a feed lot over an extended period of time to make an appreciable weight increase are agricultural labor. However, operating a stable or stud farm where no animals are raised is agricultural labor only

if it is performed on a farm. Services in connection with racing, using livestock in rodeos, exhibiting livestock and training livestock for these purposes are not agricultural labor when not performed on the farm where the animals were raised.

(e) Forestry, lumbering and landscaping. Services performed in forestry, lumbering and landscaping are not agricultural labor.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-.17 Successorship.

Any legal entity who acquires by purchase, merger, consolidation or other means substantially all of the trade, business or assets of any employer and continues such business shall be deemed a successor to the employer from whom the business was acquired, subject to the mandatory and prohibited successorship provisions in subsections (g) and (h) of O.C.G.A. Section 34-8-153. Pursuant to Section 303(k) of the federal Social Security Act, as amended by the SUTA-Dumping Prevention Act of 2004 (P.L. 108-295), the requirements of mandatory and prohibited transfers of unemployment experience rates of contribution stated therein shall be applicable effective January 1, 2006 to all transfers of experience on or after that date. Factors to be considered by the Commissioner in making a determination of whether a successorship has occurred and whether successorship treatment is required or prohibited include, but are not limited to, the following:

(a) When successorship is not otherwise required or prohibited, a rebuttable presumption of successorship shall arise if 90% or more of the predecessor's trade, business or assets were transferred;

(b) Continuity of workforce;

(c) Continuity of the predecessor's business enterprise;

1. Whether the same facility is used;

2. Whether the same customers are used;

3. Whether the business services the same geographic area;

4. Whether the same trade or business enterprise is continued;

5. Whether there are any significant changes in management and supervision of employees;

(d) Continuity of bargaining unit, if any; if there is a bargaining unit, did the acquirer:

1. Expressly assume the bargaining unit?

2. Expressly reject the bargaining unit?

3. Make any change in the craft designations?

4. Continue to use the same hiring hall?

5. Hire new employees such that the bargaining unit no longer represents a majority of the workers?

(e) Whether there occurred a hiatus in the business activities. The length of the hiatus shall be considered by the Commissioner.

1. When successorship is not otherwise required or prohibited, there shall be a rebuttable presumption in favor of successorship if the hiatus is less than two (2) weeks.

2. When successorship is not otherwise required or prohibited, there shall be a rebuttable presumption against successorship if the hiatus is two (2) weeks or more.

(f) Whether the employees of the predecessor had reason to believe that employment would continue.

(g) Substantially common ownership, management, or control over the trade or business acquired;

1. Whether there are any significant changes in ownership of the predecessor and the successor before, during or after the acquisition;

2. Whether the predecessor and the successor are owned by any of the same individual(s), any of the same legal entities, or any of the same legal entities which are owned by any of the same individual(s);

3. Whether any of the owners of the predecessor and the successor have familial or financial relationships without regard to the acquisition;

4. Whether there are any significant changes in the management and supervision of employees before and after the acquisition;

5. Whether any officer, major stockholder, or other person having charge of the affairs of the predecessor, or of the successor, has meaningful authority, directly or indirectly, by contract or in fact, regarding the affairs of the other;

6. Whether capital investments in the predecessor and the successor were supplied by any of the same individual(s) or legal entities;

7. Whether the operational financing of the predecessor and the successor are controlled or directed by any of the same individual(s) or legal entities.

(h) Whether or not the successor acquired the trade, business or assets of the predecessor solely or primarily for the purpose of obtaining a lower rate of unemployment tax contributions;

1. Whether the predecessor's business enterprise was active at the time of the acquisition;

2. The cost of acquiring the predecessor's trade or business;

3. Whether the cost of acquiring the predecessor was reasonably related to the market value of the predecessor's trade or business;

4. Whether the successor actually continued the business enterprise of the predecessor;

5. How long the successor continued the business enterprise activity of the predecessor;

6. Whether a substantial number of new employees were hired by the successor for performance of duties unrelated to the business enterprise activity conducted by the predecessor before the acquisition;

7. The potential unemployment insurance tax savings in contributions costs which favorable successorship treatment might achieve compared to the cost of the acquiring the predecessor's trade or business.

Authority O.C.G.A. Secs. 34-8-70, 34-8-153, 34-8-157, 42 U.S.C. 503(k), SUTA-Dumping Prevention Act of 2004 (P.L. 108-295).

300-2-3-.18 Partial Transfer of Employment Experience.

(1) Partial transfers of experience shall be subject to the mandatory and prohibited successorship provisions in subsections (g) and (h) of O.C.G.A. Section 34-8-153. The department shall consider, without limitation, the factors listed in Section 300-2-3-.17 to determine the applicability of subsections (g) and (h) of O.C.G.A. Section 34-8-153 to partial transfers of employment experience. Pursuant to Section 303(k) of the federal Social Security Act, as amended by the SUTA-Dumping Prevention Act of 2004 (P.L. 108-295), the requirements of mandatory and prohibited transfers of unemployment experience rates of contribution stated therein shall be applicable effective January 1, 2006 to all transfers of experience on or after that date attributable to transfers of any part of an existing trade or business, including transfers of any clearly identifiable or separable portion of the organization.

(2) When successorship is not otherwise required or prohibited, upon mutual agreement by both predecessor and successor, partial transfer of employment experience and payroll records of an employer may be approved if:

(a) A clearly identifiable or separable portion of the organization, trade or business was transferred as provided in O.C.G.A. Section 34-8-153.

(b) The acquiring unit continues to operate the acquired portion of such organization, trade or business and is a liable employer or becomes liable as provided by O.C.G.A. Section 34-8-153.

1. Where the successor is an employer or becomes an employer, application and agreement signed by both predecessor and successor are made by the successor employer within the two (2) calendar quarters following the quarter in which the acquisition occurred;

2. For good cause shown, time for filing such application may be extended not

exceeding thirty (30) days;

3. Application and agreement shall be made on Georgia Department of Labor forms and shall include payroll and other information as required by such form; and

(c) Notice of said transfer was made as provided by Rule 300-2-2-.02.

(3) The predecessor and successor employers, after the formal application shall, upon request, file with the Georgia Department of Labor such other reports and forms as are deemed necessary.

(4) Upon receipt of the application and agreement, a transfer percentage will be determined by relating the total taxable payroll of the acquired portion for the eighteen (18) month period immediately preceding the date of acquisition to the total taxable payroll of the predecessor for the same period. In cases where taxable payroll information for the eighteen (18) month period is not available, taxable payroll for a lesser period may be used.

(5) When not otherwise required or prohibited, where the successor is a liable employer and acquires a liable employer and, at the time of acquisition, the predecessor's tax rate is higher than that of the successor, the successor's current rate shall continue until the end of the calendar year. The experience history of the predecessor shall not be transferred to the successor. If the predecessor's tax rate at the time of acquisition is lower than or equal to the rate of the successor, the experience history shall be transferred to the successor and used in future rate calculations.

(6) When not otherwise required or prohibited, where a successor who is not a liable employer acquires an existing business and, at the time of acquisition, the tax rate is greater than the new employer rate, the successor shall be assigned the new employer tax rate. The experience history of the predecessor shall not be transferred to the successor. The successor shall retain the new tax rate until eligible for a rate computation based on the successor's own experience history.

(7) When not otherwise required or prohibited, where a successor who is not a liable employer acquires an existing business and, at the time of acquisition, the predecessor's tax rate is lower than the new employer tax rate, the experience history shall be transferred to the successor, and the successor shall retain the predecessor's tax rate for the remainder of the calendar year. The successor's tax rate for future years will be computed based on the combined experience history of the predecessor and successor.

(8) When not otherwise required or prohibited, where a successor employer acquires multiple predecessors, the experience history of any predecessor with a tax rate lower than the new employer tax rate shall be transferred, but the experience history of any predecessor with a tax rate higher than the new employer tax rate shall not be transferred.

(9) Termination of an employing unit's unemployment experience history account means the employer either has ceased doing business in Georgia, with no reasonable expectation or intention to resume doing business in Georgia in the future, or the employer has fallen below the threshold of minimum coverage for a particular category of employer as more fully described in O.C.G.A. Section 34-8-33. For example, an agricultural employer which no longer has ten or more individuals in the employ, or a non-profit employer which no longer has four or more individuals in its employ may request termination of coverage. In either event, an employer must specifically request, in writing, termination of its account, and specify the reason for the termination. A statement to the effect that the employer no longer has employees or has ceased doing business shall not suffice as a request for termination, but shall constitute grounds for inactivation of an account.

(a) Inactivation of an account means the account may be re-activated in the future. In such event, the unemployment insurance experience tax rate history of the account remains, and will be merged with future experience for purposes of tax rate calculation.

(b) The unemployment insurance experience tax rate history of a terminated account ceases to exist. In the remote event such an employer were to reactivate its account in the future, it would be assigned a new employer rate, without regard for its prior tax rate history or experience.

Authority O.C.G.A. Secs. 34-8-70, 34-8-33, 34-8-153, 34-8-157, 42 U.S.C. 503(k), SUTA-Dumping Prevention Act of 2004 (P.L. 108-295).

300-2-3-.19 Inactivation of Accounts.

The experience rated account of any employer which submits eight (8) successive reports showing no wages paid shall be automatically inactivated. In the event such employer resumes employment at some future date, the employer shall be assigned the new employer rate, until such employer has accumulated at least thirty-six (36) consecutive calendar months of employment ending on the computation date for that calendar year. After that time, the entire experience rating history shall be used in computing the contribution rate.

Authority O.C.G.A Secs. 34-8-70, 34-8-157.

300-2-3-.20 Voluntary Contributions.

OCGA Section 34-8-178 of the law allows employers the annual option of making voluntary contributions for the purpose of lowering their tax rate. All employers are notified annually of the provision and their eligibility for a rate buy down.

(a) Employers who qualify for a rate buy down shall pay in certified funds which are postmarked no later than 30 days from the issue date of the Voluntary Contribution notice.

(b) Employers ineligible for the buy down are those who have the lowest tax rate, or have delinquent report(s) or have insufficient experience history for a rate computation.

(c) Voluntary contributions when accepted from an employer will not be refunded in whole or part.

Authority O.C.G.A. Secs. 34-8-70, 34-8-178.