

ORDINANCE #04-05

AN ORDINANCE RELATING TO LICENSE TAXES UPON ALL PERSONS AND BUSINESS ENTITIES WHO ARE ENGAGED OR EMPLOYED IN ANY BUSINESS WITHIN THE COUNTY OF SCOTT, FOR THE HEALTH, EDUCATION, SAFETY, WELFARE AND CONVENIENCE OF THE INHABITANTS OF SCOTT COUNTY, KENTUCKY.

WHEREAS, the Scott County Fiscal Court and staff have reviewed the existing ordinances related to the imposition of occupational and net profit license taxes for the purpose of modernizing the County's tax structure to the end that its tax provisions conform to KRS 67.750 to 67.790 and House Bill 458 enacted by the Kentucky General Assembly in 2004 and will be generally consistent with the license tax structure of City of Georgetown and the Scott County Public School District so that the County's occupational and net profits taxes may be more efficiently administered.

BE IT ORDAINS BY THE FISCAL COURT OF THE COUNTY OF SCOTT, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:

ARTICLE I

DEFINITIONS.

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

(1) "Business" means any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. "Business" shall not include the usual activities of boards of trade, chambers of commerce, trade associations, or unions, or other associations performing services usually performed by trade associations or unions. "Business" shall not include funds, foundations, corporations, or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic or fraternal purposes, where no part of the earnings, incomes, or receipts of such unit, group or association, inures to the benefit of any private shareholder or other person;

(2) "Business entity" means each separate corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;

(3) "Compensation" means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:

(a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income

tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and

(b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code;

(4) "County" means Scott County, Kentucky, including the cities of Georgetown, Stamping Ground, Sadieville and any other community whether incorporated or not;

(5) "Domestic servant" means an individual employed to drive his employer in the capacity of a chauffeur or employed on the grounds or in the home of his employer in activities to care for or wait upon the employer, the employer's family or guests, or to care for the home, grounds, and/or vehicle of the employer or the employer's family or guests, not including such individuals who are employed by a cleaning service, personal nursing service, chauffeuring service or other entity which offers the services of its employees to the public;

(6) "Employee" means any person who renders services to another person or business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency or instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee;

(7) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:

(a) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" means the person having control of the payment of such wages, and

(b) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" means such person;

(8) "Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December;

(9) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2003, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2003, that would otherwise terminate;

(10) "Net profit" means gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by Chapter 1 of the Internal Revenue Code, and adjusted as follows:

- (a) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;
- (b) Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;
- (c) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;
- (d) Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes; and
- (e) Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution, or the Constitution and statutory laws of the United States;

(11) "Person" means every natural person, whether a resident or non-resident of the County. Whenever the word "person" is used in a clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to a corporations, shall mean the officers and directors thereof;

(12) "Return" means any properly completed and, if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with the County;

(13) "Revenue Commission" means the Georgetown/Scott County Revenue Commission.

(14) "Sales revenue" means receipts from the sale, lease, or rental of goods, services, or property;

(15) "Taxable net profit" in case of a business entity having payroll or sales revenue only in the County means net profit as defined in subsection (10) of this section;

(16) "Taxable net profit" in case of a business entity having payroll or sales revenue both within and without the County means net profit as defined in subsection (10) of this section, and as apportioned under Article II; and

(17) "Taxable year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed.

ARTICLE II

(1) Except as provided under Article III of this ordinance, every person or business entity engaged in any business for profit and any person or business entity that is Revenue shall be required to file and pay to the County an occupational license tax for the privilege of engaging in such activities within the County. The occupational license tax shall be measured by one percent (1%) of:

- (a) all wages and compensation paid or payable in the County for work done or services performed or rendered in the County by every resident and nonresident who is an employee;
- (b) the net profit from business conducted in the County by a resident or nonresident business entity, excluding therefrom the first ten thousand dollars (\$10,000) of such net profit.

(2) Every business entity engaged in any business in the County shall be required to apply for and obtain an occupational license from the Count before the commencement of business or in the event of a change of business status. Licensees are required to notify the County of any changes in address, the cessation of business, or any other changes which render the information supplied to the County in the license application inaccurate.

(3) Except as provided for in subsection (6) of this section, net profit shall be apportioned to the County as follows:

(a) For business entities with both payroll and sales revenue within and without the County, by multiplying the net profit by a fraction, the numerator of which is the payroll factor, as described in subsection (4) of this section, plus the sales factor, described in subsection (5) of this section, and the denominator of which is two (2); and

(b) For business entities with sales revenues within and without the County, by multiplying the net profit by the sales factor as set forth in subsection (5) of this section.

(4) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the County during the tax period by the business entity for compensation, and the denominator of which is the total compensation paid or payable by the business

entity everywhere during the tax period. Compensation is paid or payable in the County based on the time the individual's service is performed within the County.

(5) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in the County during the tax period, and the denominator of which is the total sales revenue of the business entity everywhere during the tax period.

a. The sale, lease, or rental of tangible personal property is in the County if:

1. The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within the County regardless of the f.o.b. point or other conditions of the sale; or

2. The property is shipped from an office, store, warehouse, factory, or other place of storage in the County and the purchaser is the United States government. B. Sales revenue, other than revenue from the sale, lease, or rental of tangible personal property or the lease or rental of real property, are apportioned to the County based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the County and the denominator of which is the total time spent performing that income-producing activity.

C. Sales revenue from the lease or rental of real property is allocated to the County if the real property is located within the County.

(6) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the County, the business entity may petition the County of the County may require, in respect to all or any part of the business entity's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one (1) or more of the factors;

(c) The inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in the County; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of net profit.

(7) When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without the County, the license tax shall be measured by that part of the compensation paid or payable as a result of work done or service performed or rendered within the County. The license tax shall be computed by obtaining the percentage which compensation for work performed or services rendered

within the County bears to the total wages or compensation paid or payable. In order for the County to verify the accuracy of a taxpayer's reported percentages under this subsection, the taxpayer shall maintain adequate records.

(8) All partnerships, S corporations, and all other entities where income is "passed through" to the owners are subject to this ordinance. The occupational license tax imposed in this ordinance is assessed against income before it is "passed through" these entities to the owners.

ARTICLE III

EXEMPT ACTIVITIES.

(1) Because of the undue burden of administration, no license tax imposed under Article II of this ordinance shall be required of domestic servants employed in private homes, or for temporary or casual farm labor.

(2) No license tax imposed under Article II of this ordinance shall be required of a minister of religion who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect or religious organization, to teach and preach its religious doctrines or to administer its rites in public worship, in the performance of one (1) or more of those duties; however, it is not intended to exempt such ordained minister of religion from the necessity of paying a license tax for work done or services performed in the County in activities not connected with his regular duties as a minister of religion.

(3) No license tax imposed under Article II(1)(b) of this ordinance shall be required of nonresidents who sell farm products, other than trees, shrubs or ornamental plants, in the County, or nonresident owners who sell livestock in the County or who board their livestock in the County for breeding purposes.

(4) No license tax imposed under Article II (1)(a) of this ordinance is required of natural persons of the age of sixty-five (65) and older as to the first ten thousand dollars (\$10,000.00) of compensation earned by such persons in the County for work done or services performed or rendered in the County.

(5) No license tax imposed under Article II (1)(b) of this ordinance shall be required of any person or business entity authorized by the City of Georgetown, City of Stamping Ground, City of Sadieville, City of Oxford or the Scott County Fiscal Court to demonstrate, sell or offer for sale any goods, wares or merchandise at an annual, semi-annual or other festival or arts and crafts show.

(6) No license tax imposed under Article II of this ordinance is required of any compensation received by a member of the Kentucky National Guard for active duty training, unit training, assemblies and annual field training.

(7) No license tax imposed under Article II (1)(b) of this ordinance is required of any bank, trust company, combined bank and trust company, or trust, banking and title insurance company organized and doing business in this state, any savings and loan association whether state or federally chartered.

(8) No license tax imposed under Article II of this ordinance is required of any compensation received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.

(9) No license tax imposed under Article II (1)(b) of this ordinance is required of Public Service Corporations that pay an ad valorem tax on property valued and assessed by the Kentucky Department of Revenue pursuant to the provisions of KRS 136.120. Licensees whose businesses are predominantly non-public service who are also engaged in public service activity are required to pay a license tax on their net profit derived from the non-public service activities apportioned to the County.

(10) No license tax imposed under Article II (1)(b) of this ordinance is required of persons or business entities that have been issued a license under KRS Chapter 243 to engage in manufacturing or trafficking in alcoholic beverages. Persons engaged in the business of manufacturing or trafficking in alcoholic beverages are required to file a return, but may exclude the portion of their net profit derived from the manufacturing or trafficking in alcoholic beverages.

(11) No license tax imposed under Article II (1)(b) of this ordinance is required of life insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky.

ARTICLE IV

(1) Every business entity, other than a sole proprietorship, subject to a net profit tax imposed by the County shall make quarterly estimated tax payments on or before the fifteenth day of the fourth, sixth, ninth and twelfth month of each taxable year if the tax liability for the taxable year exceeds five thousand dollars (\$5,000).

(2) The quarterly estimated tax payments required under subsection (1) of this section shall be based on the lesser of:

- (a) Twenty-two and one-half percent (22.5%) of the current taxable year tax liability; tax liability; or
- (b) Twenty-five percent (25%) of the preceding full year taxable year
- (c) Twenty-five percent (25%) of the average tax liability for the three

(3) preceding full year taxable year's tax liabilities if the tax liability for any of the three

(3) preceding full taxable years exceeded twenty thousand dollars (\$20,000).

(3) Any business entity that fails to submit the minimum quarterly payment required under subsection (2) of this section by the due date for the quarterly payment shall pay an amount equal to twelve percent (12%) per annum simple interest on the amount of the quarterly payment required under subsection (2) of this section from the earlier of:

(a) The due date for the quarterly payment until the time when the aggregate quarterly payments submitted for the taxable year equal the minimum aggregate payments due under subsection (2) of this section: or

(b) The due date of the annual return. A fraction of month is counted as an entire month.

(4) The provisions of this section shall not apply to any business entity's first full or partial taxable year of doing business in the County or any first taxable year in which a business entity's tax liability exceeds five thousand dollars (\$5,000).

ARTICLE V

(1) In the case where the tax computed under Articles I to XXII is less than the amount which has been declared and paid as estimated tax for the same taxable year, a refund shall be made upon the filing of a return.

(2) (a) Overpayment resulting from the payment of estimated tax in excess of the amount determined to be due upon the filing of a return for the same taxable year may be credited against the amount of estimated tax determined to be due on any declaration filed for the next succeeding taxable year or for any deficiency or nonpayment of tax for any previous taxable year;

(b) No refund shall be made of any estimated tax paid unless a complete return is filed as required by Articles I to XXII.

(3) At the election of the business entity, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

ARTICLE VI

(1) For purposes of Articles I to XXII computations of gross income and deductions therefrom, accounting methods, and accounting procedures shall be as nearly as practicable identical with those required for federal income tax purposes.

- (2) Every business entity subject to an occupational license tax governed by the provisions of Articles I to XXII shall keep records, render statements under oath, make returns, and comply with rules as the County from time to time may prescribe. Whenever the County deems it necessary, it may require a business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as the County deems sufficient to determine the tax liability of the business entity.
- (3) The County may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or any other person having knowledge in the premises.
- (4) Every business entity required to file IRS Form 1099-MISC with the Internal Revenue Service shall provide a copy of those Forms 1099-MISC to the County for work done or services performed or rendered within the County. The Forms 1099-MISC required to be filed with the County under this subsection shall be due on or before February 28 of the year following the close of the calendar year in which such payments were paid or payable.

ARTICLE VII

If any business entity dissolves or withdraws from the County during any taxable year, or if any business entity in any manner surrenders or loses its charter during any taxable year, the dissolution, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of net profit taxes or tax withheld for the period of that taxable year during which the business entity had net profit or tax withheld in the County.

ARTICLE VIII

If any business entity makes, or is required to make, a federal income tax return, the net profit shall be computed for the purposes of Articles I to XXII on the basis of the same calendar or fiscal year required by the federal government, and shall employ the same methods of accounting required for federal income tax purposes.

ARTICLE IX

(1) For purposes of the tax imposed under Article II(1)(b) of this ordinance, all business entities' returns for the preceding taxable year shall be made by April 15 in each year, except returns made on the basis of a fiscal year, which shall be made by the fifteenth day of the fourth month following the close of the fiscal year. Blank forms for returns shall be supplied by the County or its agent the Revenue Commission.

(2) Every business entity shall submit a copy of its federal income tax return at the time of filing its return with the County. Whenever, in the opinion of the County, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the County may compel the business entity to produce for inspection a copy of all statements and schedules in support thereof. The County may also require copies of reports of adjustments made by the federal government.

ARTICLE X

- (1) The County may grant any business entity an extension of not more than six (6) months unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the County and the business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the tax, requests the extension and pays the amount properly estimated as its tax.
- (2)
- (3) If the time for filing a return is extended, the business entity shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due on the return, but not previously paid, from the time the tax was due until the return is actually filed and the tax paid to the County. A fraction of a month is counted as an entire month.

ARTICLE XI

- (1) As used in this Article and Article XIII, unless the context requires otherwise:
 - (a) "Conclusion of the federal audit" means the date that the adjustments made by the Internal Revenue Service to net income as reported on the business entity's federal income tax return become final and unappealable; and
 - (b)
 - (c) "Final determination of the federal audit" means the revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.
 - (d)
- (2) As soon as practicable after each return is received, the County may examine and audit the return. If the amount of tax computed by the County is greater than the amount returned by the business entity, the additional tax shall be assessed and a notice of assessment mailed to the business entity by the County within five (5) years from the date the return was filed, except as otherwise provided in this subsection.
 - (a) In the case of failure to file a return or of a fraudulent return the additional tax may be assessed at any time
 - (b) In the case of a return where a business entity understates net profit or omits an amount properly includable in net profit, or both, which understatement or omission or both is in

excess of twenty-five percent (25%) of the amount of net profit stated in the return, the additional tax may be assessed at any time within six (6) years after the return was filed.

- (c) In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this subsection, or six (6) months from the date the County receives the final determination of the federal audit from the business entity, whichever is later.
- (d) The times provided in this subsection may be extended by agreement between the business entity and the County. For the purposes of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day. Any extension granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.

(3) Every business entity shall submit a copy of the final determination of the federal audit within thirty (30) days of the conclusion of the federal audit.

(4) The County may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (2) of this section.

ARTICLE XII

The full amount of the unpaid tax payable by any business entity, as appears from the face of the return, shall be paid to the County at the time prescribed for filing the tax return, determined without regard to any extension of time for filing the return.

ARTICLE XIII

(1) No suit shall be maintained in any court to restrain or delay the collection or payment of any tax subject to the provisions of Articles I to XXII.

(2) Any tax collected pursuant to the provisions of Articles I to XXII may be refunded or credited within two (2) years of the date prescribed by law for the filing of a return or the date the money was paid to the County, whichever is later, except that:

(a) In any case where the assessment period contained in Article XI has been extended by an agreement between the business entity and the County, the limitation contained in this subsection shall be extended accordingly.

(b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

For the purposes of this subsection and subsection (3) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

(3) Exclusive authority to refund or credit overpayments of taxes collected pursuant to this ordinance is vested in the County.

ARTICLE XIV

Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation any tax imposed against the compensation by the County. Amounts withheld shall be paid to the County in accordance with Article XV.

ARTICLE XV

- (1) Every employer required to deduct and withhold tax under Article XIV shall, for the quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter make a return and report to the County the tax required to be withheld under Article XIV, unless the employer is permitted or required to report within a reasonable time after some other period as determined by the County. Any employer withholding three hundred dollars (\$300.00) or more license tax during any quarter shall file a return and pay the license tax withheld monthly.
- (2) Every employer who fails to withhold or pay to the County any sums required by Articles I to XXII to be withheld and paid shall be personally and individually liable to the County for any sum or sums withheld or required to be withheld in accordance with the provisions of Article XIV.
- (3) The County shall have a lien upon all the property of any employer who fails to withhold or pay over to the County sums required to be withheld under Article XIV. If the employer withholds but fails to pay the amounts withheld to the County, the lien shall commence as of the date the amounts withheld were required to be paid to the County. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the County.
- (4) Every employer required to deduct and withhold tax under Article XIV shall annually on or before February 28 of each year complete and file on a form furnished or approved by the County a reconciliation of the tax required to be deducted and withheld under Article XIV. Either copies of federal forms W-2 and W-3, transmittal of wage and tax statements, or a detailed employee listing with the required equivalent information as determined by the County shall be submitted.
- (5) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and license tax deducted by the employer from the compensation paid to the employee for payment to the County during the preceding calendar year.

ARTICLE XVI

(1) An employer shall be liable for the payment of the tax required to be deducted and withheld under Article XIV.

(2) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to Article XIV shall be personally and individually liable, both jointly and severally, for any tax required to be withheld under Articles I to XXII from compensation paid or payable to one or more employees of any business entity, and neither the corporate dissolution or withdrawal of the business entity from the County nor the cessation of holding any corporate office shall discharge that liability of any person; provided that the personal and individual liability shall apply to each or every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by Articles I to XXII at the time that the taxes imposed by Articles I to XXII become or became due.

(3) Notwithstanding the provision of subsections (1) and (2) of this article, every employee receiving compensation in the County subject to the tax imposed under Article II shall be liable for the tax. In all cases where the employer does not withhold the tax imposed under this ordinance from the employee, such employee or employees shall be responsible for filing with the County each quarter in the same manner as if they were the employer.

ARTICLE XVII

(1) Where there has been an overpayment of tax under Article XIV, refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under Article XIV by the employer.

(2) Unless written application for refund or credit is received by the County from the employer within two (2) years from the date the overpayment was made, no refund or credit shall be allowed.

(3) An employee who has compensation attributable to activities performed outside the County, based on time spent outside the County, whose employer has withheld and remitted the occupational license tax on the compensation attributable to activities performed outside the County to the County, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the County may confirm with the employer the percentage of time spent outside the County and the amount of compensation attributable to activities performed outside the County prior to approval of the refund.

ARTICLE XVI

(1) A business entity subject to tax on net profit may be subject to a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof if the business entity;

- (a) Fails to file any return or report on or before the due date prescribed for filing or as extended by the County; or