

OCCUPATIONAL LICENSE FEE

COUNTY OF WAYNE

ORDINANCE NO. 430.12

AN AMENDMENT TO THE ORDINANCE RELATING TO THE IMPOSITION AND ADMINISTRATION OF AN OCCUPATIONAL LICENSE REQUIREMENT, AND PAYMENT OF AN OCCUPATIONAL LICENSE FEE BY PERSONS WHO ARE EMPLOYED IN ANY TRADE, OCCUPATION AND PROFESSIONS WITHIN WAYNE COUNTY, KENTUCKY.

WHEREAS, the Wayne County Fiscal Court desires to comply with the requirements of KRS68.197 and 67.750 to 67.795 and deems it necessary and desirable that certain changes be made to existing ordinances imposing occupational license fees on persons EMPLOYED IN TRADES, occupations, and professions within Wayne County, so that the assessment and payment of Occupational License Fees can be administered more efficiently.

COUNTY OF WAYNE

SUMMARY OF OCCUPATIONAL LICENSE FEE ORDINANCE 430.12

This ordinance amends Wayne County Kentucky Ordinance No. 430.11 which originally adopted a tax upon persons employed in trade, occupation and professions to comply with the requirements of KRS 68.197 and 67.750 to 67.795 regarding occupational payroll taxes and by reducing the tax imposed from 1% of gross income to 9/10 of 1% of gross income. The employers are required to deduct and pay said sums, if the employer does not, then the employee has the duty to pay the occupational tax quarterly and there are penalties assessable upon both employer and employee for failure to comply with the terms of this ordinance. This Ordinance of Amendment shall take effect October 1, 2007.

Now, therefore, be it ordained by the Wayne County Fiscal Court of Wayne County, Kentucky that Ordinance No. 430.11 is hereby amended and re-adopted in full to read as follows:

Ordinance No. 430.12 is hereby enacted and shall read in full as follows:

Sections:

1. Definitions
2. License Application Required
3. Occupational License Fee Payment Required
4. Apportionment
5. Employers to Withhold
6. Returns Required

7. Extensions
8. Refunds
9. Federal Audit Provisions
10. Administrative Provisions
11. Information to Remain Confidential
12. Penalties
13. Use-of Occupational License Fee
14. Severability
15. Adoption

§ 1 – Definitions

As used in this ordinance, the following terms and their derivatives shall have the following meanings unless the context clearly indicates that a different meaning is intended:

(1) “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.

(2) “Business” means any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit.

(3) “County” means the County of Wayne County, Kentucky;

(4) “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;

(5) “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.

(6) “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.

(7) “Fiscal year” means fiscal year as defined in Section 7701 (a) (24) of the Internal Revenue Code

(8) “Employee” means any person who renders services to another person or any organization 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 of 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

(9) “Employer” means any person for whom the 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;

(10) “Internal Revenue code” means the Internal Revenue Code in effect on December 31, of the year in which the tax is due, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, of the year in which the tax is due that would otherwise terminate

(11) “Person” shall mean 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 corporation, shall mean the officers and directors thereof;

(12) “Return” or “Report” 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) “Tax District” means any county with the authority to levy net profits or occupational license taxes

(14) “Taxable year” means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed

§ 2 – Occupational License Application Required

(1) Every person or business entity engaged in any trade, occupation, or profession, or other activity for profit or anyone required to file a return under this ordinance in Wayne County shall be required to complete and execute the questionnaire prescribed by the Occupational Tax Office. Each person shall be required to complete a separate questionnaire for each separate business before the commencement of business or in the event of a status change, other than change of address. Licensees are required to notify the Occupational Tax Office of changes of address, or the cessation of business activity, and of other changes which render inaccurate the information supplied in the completed questionnaire.

§ 3 – Occupational License Fee Payment Required

(1) 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 non resident who is an employee shall be required to 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 .9 % of the gross receipts paid for such service.

(2) If any business entity dissolves, ceases to operate, 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, cessation of business, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of any occupational license tax for the period of that taxable year during which the business entity had business activity in the county.

(3) The occupational license tax imposed in this section shall not apply to the following person or business entities

(a) Any compensation received by members of the Kentucky national guard for active duty training, unit training assemblies and annual field training;

(b) Any compensation received by precinct workers for election training or work at election booths in state, county, and local primary, regular or special elections;

(c) Any profits, earnings, distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor:

§ 4 – Apportionment

(1) For the purposes of payroll apportionment, 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 the compensation for work performed or services rendered within the county bears to the total wages and compensation paid or payable. In order for the county to verify the accuracy of a taxpayers reported percentages under this subsection, the tax payer shall maintain adequate records to establish apportionment, for the purposes of this section, the employer or employee as specified in this ordinance, shall file a payroll apportionment form as supplied by the Occupations Tax Office.

§ 5 – Employers to Withhold

(1) 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 Section (3) and section (4) of this ordinance.

(2) Every employer required to deduct and withhold tax under this section 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 and pay to the county, the tax required to be withheld under this section, unless the employer is permitted or required to report within a reasonable time after some other period as determined by the county.

(3) Every employer who fails to withhold or pay to the county any sums required by this ordinance 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 this section.

(4) 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 this section. If the employer withholds, but fails to pay the amounts withheld were required to be paid to the county. If the employer fails to withhold, the lien shall commence at the time of the liability of the employer is assessed by the county.

(5) Every employer required to deduct and withhold tax under this section 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 occupational license tax withheld where compensation is paid or payable to employees. 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.

(6) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and occupational license tax deducted by the employer from the compensation paid to the employee for payment to the county during the preceding calendar year.

(7) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.

(8) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this ordinance shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid 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 this ordinance at the time that the taxes imposed by this ordinance become or became due.

(9) Notwithstanding subsections (7) and (8) of this section, every employee receiving compensation in the county subject to the tax imposed under Section (3) of this ordinance shall be personally liable for any amount due. In all cases where the employer fails to or is not required to withhold the report, or pay the License Fee it shall become the duty of the employee to file with the county. The only employer that is not required to withhold, report, and pay the occupational license tax is the Federal Government including the United States Postal Service. The payment required to be made by an employee, can be made quarterly, for the periods ending March 31st, June 30th, September 30, and December 31st of each year, or at any time the employee wishes to make an estimated payment for the year in which wages are earned. All license fees must be received by February 28th for the preceding calendar year, together with a copy of the employee's W-2 form. Employers not required to withhold, report, or pay the license fee must annually during the month of January of each year, make a return to the Occupational Tax Administrator in which is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions or their compensation earned during such preceding year by each such employee. This list shall include all current full time employees, part time employees, temporary employees and terminated employees whether it be voluntary or involuntary.

§ 6 – Returns Required

(1) All business entity returns for the preceding taxable year shall be made by April 15th of each year, except returns made on the basis of a fiscal year. Blank Forms for returns which shall be made by the 15th day of the 4th month following the close of the fiscal year shall be supplied by the county.

§ 7 – Extensions

(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 by the business entity on or before the date prescribed for payment of the occupational license tax requests the extension and pays the amount properly estimated as its tax.

(2) 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 been 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.

§ 8 – Refunds

(1) Where there has been an overpayment of tax under Section (5) of this ordinance, a 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 Section (5) 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 over payment 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 with held and remitted to this county, the occupational license tax on the compensation attributable to activities performed outside the county, may file for a refund within two (2) years of the date prescribed by law for the filing of the 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.

(4) In the case where the tax computed under this ordinance 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.

(5) (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 of the next succeeding taxable year or for any deficiency or non payment 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 this ordinance.

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

§ 9 – Federal Audit Provisions

(1) 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 a 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 tax due or omits an amount properly includable or both, which understatement or omission, or both, is in excess of twenty-five percent (25%) of the amount of tax due 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.

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.

(2) 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.

(3) The county may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (1) of this section.

§ 10 – Administrative Provisions

(1) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this ordinance.

(2) Any tax collected pursuant to the provisions of this ordinance 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 the later, except that;

(a) In any case where the assessment period contained in Section (9) of this ordinance 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 adjustment resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for 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) The authority to refund or credit overpayments of taxes collected pursuant to this ordinance is vested exclusively in the county.

§ 11 – Information to Remain Confidential

(1) No present or former employee of the county shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or report required to be filed with the county or the proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the county from testifying in any court, or from introducing as evidence returns or reports filed with the county, in an action for violation of the county tax laws or in any action challenging the county laws.

(2) The county reserves the right to disclose to the Commissioner of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent all such information and rights to inspect any of the books and records of the county if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the county the reciprocal right to obtain information from the files and records of the Kentucky Department of Revenue

and maintains the privileged character of the information so furnished. Provided, further, that the county may publish statistics based on such information in such a manner as not to reveal data respecting net profits or compensation of any person or business entity.

(3) In addition, the county is empowered to execute similar reciprocity agreements as described in subsection (2) of this section with any other taxing entity, should there be a need for exchange of information in order to effect diligent enforcement of this ordinance. Said agreement shall require all other taxing entities to keep all information exchanged confidential.

§ 12 – Penalties

(1) Every employer who fails to file a return or pay the tax on or before the date prescribed under Section (5) of this ordinance may be subject to a penalty in an amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

(2) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the county. A fraction of a month is counted as an entire month.

(3) Every tax imposed by this ordinance, and all increases, interest, and penalties thereon, shall become from the time the tax is due and payable, a personal debt of the taxpayer to the county.

(4) The county may enforce the collection of the occupational tax due under section (2) of this ordinance and any fees, penalties, and interest as provided in subsections (1), (2) and (3) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the county shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this ordinance.

(5) In addition to the penalties prescribed in this section, any person, business entity or employer who willfully fails to make a return, willfully makes a false return, or who willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A Misdemeanor.

(6) Any person who willfully aids or assists in or procures, counsels or advises the preparation or presentation under or in connection with any matter arising under this ordinance of a return, affidavit, claim, or other document which is fraudulent or as false as to any material whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document shall be guilty of a Class A Misdemeanor.

(7) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the county and required to be filed with the county by the provisions of this ordinance, or by the rules of the county or by written request for information to the business entity by the county.

(8) Any person violating the provisions of section (11) of this ordinance by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred (\$500) or imprisoned for not longer than (6) months fine and imprisonment or both.

(9) Any person violating the provision of section (11) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand (\$1000) or imprisoned for not more than one (1) year, or both.

§ 13 – Use of Occupational License Tax

It shall be the duty of the Occupational Tax Administrator to collect and account for all Occupational License Fees imposed by this chapter and deposit the same in the Occupational Tax Fund of Wayne County. These monies and all interest earned on these monies being held on deposit by the County are to be disbursed as follows.

(1) All expenses, including salaries, incurred in the operation of the Occupational Tax Administrators office;

(2) After the aforementioned disbursements have been made the remaining funds shall be disbursed to the General Fund of Wayne County for disbursement by the Fiscal Court of Wayne county as deemed necessary for payment of the necessary and reasonable expenses of Wayne County, Kentucky.

(3) The administration of the Occupational Tax Administrators office shall be based upon a calendar year.

(4) That this amendment of Wayne County, Kentucky Ordinance No. 430.11 shall take affect and be enforceable the 1st day of October 2007.

§ 14 – Severability

Each section and each provision of each section of this ordinance are severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any person licensee, class or group, is held by a court of law to be unconstitutional or invalid for any reason, such holding shall not affect or impair the reminder of this paragraph, sentence and part thereof, separately and independently of the rest.

§ 15 – Adoption

Introduced for first reading on the 14th day of June 2007, second reading and final adoption by a majority vote of the Wayne County Fiscal court, in a duly assembled session on the 19th day of July, 2007 and finally adopted after due advertisement, on a motion by vote of 3 yeas and 0 nays.

GREG RANKIN
COUNTY JUDGE EXECUTIVE

ATTEST:

MELISSA TURPIN
WAYNE COUNTY COURT CLERK