

**OCCUPATIONAL LICENSE TAX  
COUNTY OF LESLIE**

**ORDINANCE NO. 11-28-07**

**AN ORDINANCE RELATING TO THE IMPOSITION AND ADMINISTRATION OF A OCCUPATIONAL LICENSE REQUIREMENT, AND PAYMENT OF AN OCCUPATIONAL LICENSE TAX BY PERSONS AND BUSINESS ENTITIES CONDUCTING BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN LESLIE COUNTY, KENTUCKY.**

**WHEREAS, the Leslie County Fiscal Court desires to comply with the requirements of KRS 67.750 to 67.795 and deems it necessary and desirable that certain changes be made to existing ordinances imposing occupational license taxes on persons and business entities conducting businesses, occupations, and professions within Leslie County, so that the assessment and payment of Occupational License Taxes can be administered more efficiently.**

**Now, therefore, be it ordained by the Leslie County Fiscal Court of Leslie County, Kentucky that Ordinance No. 11-28-07 is hereby amended and re-adopted in full to read as follows:**

**Ordinance No. 11-28-07 is hereby enacted and shall read in full as follows:**

**Sections:**

- |           |                                                  |
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## 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:

KRS 67.750

- (1) "Administrator" means the employee of the court designated by the County Judge/Executive to administer this ordinance with approval of the Fiscal Court.
- (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) "Business" means any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. "Business" shall not include a board of trade, chambers of commerce, trade associations, or unions, or other associations performing services usually performed by trade associations or unions as recognized by the Internal Revenue Service. "Business" shall not include funds, foundations, corporation, 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.
- (4) "Leslie County" means the County of Leslie, State of Kentucky including the City of Hyden and any other community whether incorporated or not.

KRS 67.750

- (5) "Compensation" means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for service 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 or similar arrangement, including but not limited to salary reduction arrangements under Section 401 (a), 401(k), 402(e), 403(b), 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 or the Internal Revenue Code;

**KRS 67.775**

- (6) "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;

**KRS 67.775**

- (7) "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;

**KRS 67.750**

- (8) "Fiscal year" means fiscal year as defined in Section 7701(a)(24) of the Internal Revenue Code;

**KRS 67.750**

- (9) "Employee" means any person who renders services to another person or any 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.

**KRS 67.750**

- (10) "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;

**KRS 67.750**

(11) “Internal Revenue Code” means the Internal Revenue Code as defined in KRS 67.750.

**KRS 67.750**

(12) “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;
- (13) “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 corporations, shall mean the officers and directors thereof;

**(14) "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.**

**KRS 67.750**

**(15) "Sales Revenue" means receipts from the sale, lease, or rental of goods, services, or property;**

**KRS 67.750**

**(16) "Tax district" means any county or city with the authority to levy net profits or occupational license taxes;**

**KRS 67.750**

**(17) "Taxable net profit" in case of a business entity having payroll or sales revenue only within the county means net profit as defined in subsection (11) of this section;**

**KRS 67.750**

**(18) "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 (11) of this section, and as apportioned under Section (4) of this Ordinance; and**

**KRS 67.750**

**(19) "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 Leslie 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 TAX PAYMENT REQUIRED

#### KRS 67.083

- (1) Except as provided in section 5 of this section, every person or business entity engaged in any business for profit and any person or business that is required to make a filing and pay 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 1% of:
  - (a) All wages and compensation paid or payable in Leslie County for work done or services performed or rendered in the county by every resident or nonresident who is an employee.
- (2) The Occupational License Tax return shall be filed and paid on the 15<sup>th</sup> day of each month.
- (3) All partnerships, S corporations, and all other entities where income is "pass 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.

#### KRS 67.763

- (4) 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 any occupational license tax for the period of that taxable year during which the business entity had business activity in the county.

#### KRS 67.083

- (5) The occupational license tax imposed in this ordinance shall not apply to the following persons or business entities:
  - (a) Any bank, trust company, combined bank and trust company, combined trust, banking and title business organized and doing business in this state, any savings and loan association whether state or federally chartered;
  - (b) Any compensation received by members of the Kentucky national guard for active duty training, unit training assemblies and annual field training;

- (c) Any compensation received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections;
- (d) 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 their net profit derived from the non-public service activities apportioned to the county.
- (e) Insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky except as provided in KRS 91A.080;
- (f) 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;
- (g) Domestic workers employed in private homes or temporary or casual farm labor.
- (h) Exempt the first seven thousand five hundred dollars (\$7,500.00) of farm net income.
- (i) Any other business or occupation that is exempted by Kentucky Law.
- (j) Any "net profit" income.

#### 4-APPORTIONMENT

##### KRS 67.753

- (1) 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 in the county based on the time the individual's service is performed within the county.
- (2) 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 or 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 taxpayer's reported percentages under this subsection, the taxpayer shall maintain adequate records.

## 5-EMPLOYERS TO WITHHOLD

### KRS 67.780

- (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) of this ordinance.

### KRS 67.783

- (2) Every employer required to deduct and withhold tax under this section shall, for the month ending after January 1 and for each month ending thereafter, on or before the end of the month following the close of each month, 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.

### KRS 67.783

- (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.

### KRS 67.783

- (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 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.

### KRS 67.783

- (5) Every employer required to deduct and withhold tax under this section shall annually on or before February 28 of each year file copies of federal forms W-2 and W-3, transmittal of wage and tax statements.

### KRS 67.783



- (6) Every employer shall furnish each employee a statement on or before January 31 or 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.

**KRS 67.785**

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

**KRS 67.785**

- (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.

**KRS 67.785**

- (9) Every employee receiving compensation in the county subject to the tax imposed under Section (3) of this ordinance shall be personally liable for the tax notwithstanding the provisions of subsections (1) of this section. In all cases where the employer does not withhold the tax levied 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. If any employer fails to or is not required to withhold, 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 31, June 30, September 30, and December 31, or 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 28<sup>th</sup> 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 other 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-REFUNDS

##### KRS 67.788

- (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.

##### KRS 67.788

- (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;

##### KRS 67.788

- (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 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 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.

#### 7-INFORMATION TO REMAIN CONFIDENTIAL

##### KRS 67.790

- (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 reports required to be filed with the county or other 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.

## **8-PENALTIES**

### **KRS 67.790**

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 percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

**KRS 67.790**

- (1) 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.**

**KRS 67.790**

- (2) 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.**

**KRS 67.790**

- (3) The county may enforce the collection of the occupational tax due under section (3) of this ordinance and any fees, penalties, and interest as provided in subsection (1), (2), (3), and (4) 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.**

**KRS 67.790**

- (4) 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.**

**KRS 67.790**

- (5) 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 is false as to any material matter, 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.**

**KRS 67.790**

- (6) 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 provision of this ordinance, or be the rules of the county or by written request for information to the business entity by the county.

**KRS 67.790**

- (7) Any person violating the provision of section (7) of this ordinance by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not longer than six (6) months, or both.

**KRS 67.790**

- (8) Any person violating the provisions of section (7) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand (\$1000.00) or imprisoned for not more than one (1) year, or both.

**9-USE OF OCCUPATIONAL LICENSE TAX**

- (1) The total license fee collected under this ordinance shall be deposited into the Debt Service Fund of Leslie County and shall apply to serving any existing debt.
- (2) Any excess revenue shall be utilized to defray the general expense of government including but not limited to the following categories:

- (a) Law Enforcement
- (b) Jails
- (c) Economic Development
- (d) Roads and Bridges
- (e) Health Services
- (f) Agriculture
- (g) Senior Citizens
- (h) Emergency Services

- (3) Should additional revenue remain, the Judge/Executive and the Fiscal Court shall determine how such revenue is to be used in order to best serve the needs of the citizens of Leslie County

#### 10-SEVERABILITY

- (1) 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 remainder of this ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of the rest.

#### 11-SUPERSEDING CLAUSE

- (1) This ordinance shall apply to all persons within the corporate limits of the City of Hyden.
- (2) In the event the City of Hyden enacts an occupational license fee, this ordinance shall remain in full force and effect until repealed or modified by the Leslie County Fiscal Court.

#### 12-COMMENCEMENT DATE AND DURATION

- (1) The license fee imposed by this ordinance shall be effective beginning August 1, 2007, and shall remain in force and effect as long as the Fiscal Court deems is appropriate and necessary or until repealed or modified by law. However, if the Kentucky General Assembly votes to allow County government alternative forms of taxation, Leslie Fiscal Court will consider repealing this tax in favor of a more equitable form of taxation.

#### 13-PUBLICATION

- (1) A summary of this ordinance shall be published in full in the Leslie County News, Hyden, Kentucky. This ordinance shall become effective on its passing and approval.

#### 14-MUTUAL ASSISTANCE AGREEMENT

- (1) The administrator may, with the approval of the Court, enter into a mutual collection and administrative agreement with any governmental unit in Leslie County that is assessing a similar business and occupation license fee.

(2) The administrator may, with the approval of the Court, enter into a mutual exchange of information agreement with the Commonwealth of Kentucky or the United States of America or other governmental unit for the purpose of obtaining information about individual compensation in an effort to verify the correctness of returns filed with the administrator or to identify persons who are filing improper returns, or are not filing returns where license fees are due the Court. The agent of any such agency must be sworn to confidentiality no less stringent than required by this ordinance.

FIRST READING GIVEN: NOVEMBER 28, 2007

MOTION BY: JOHNNY RAY CALDWELL

SECOND BY: BILL VALENTINE

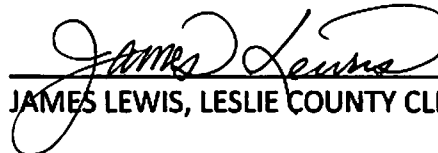
SECOND READING GIVEN AND ORDINANCE ENACTED WITH VOTE TAKEN AS FOLLOWS:

4-1, WITH MAGISTRATE COOTS

VOTING NO

  
\_\_\_\_\_  
JIMMY SIZEMORE  
LESLIE COUNTY JUDGE/EXECUTIVE

ATTEST:

  
\_\_\_\_\_  
JAMES LEWIS, LESLIE COUNTY CLERK