

OCCUPATIONAL LICENSE TAX

COUNTY OF GRANT

ORDINANCE NO. 02-2017-705

AN ORDINANCE RELATING TO THE IMPOSITION AND ADMINISTRATION OF AN OCCUPATIONAL LICENSE REQUIREMENT, AND PAYMENT OF AN OCCUPATIONAL LICENSE TAX BY PERSONS ENGAGED IN OCCUPATIONS AND PROFESSIONS WITHIN GRANT COUNTY, KENTUCKY.

WHEREAS, Grant County Fiscal Court desires to comply with the requirements of KRS 67.750 to 67.795 and deems it necessary and desirable to impose occupational license taxes on persons engaged in occupations and professions within Grant County, so that the assessment and payment of Occupational License Taxes can be administered most efficiently.

Ordinance No. 02-2017-705 is hereby enacted and shall read in full as follows:

Sections:

- 1 Definitions
- 2 License Application Required
- 3 Occupational license tax payment required
- 4 Apportionment
- 5 Employers to withhold
- 6 Extensions
- 7 Refunds
- 8 Administrative provisions
- 9 Information to remain confidential
- 10 Penalties
- 11 Use of occupational license tax
- 12 Severability
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Section 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) "County" means the county of Grant, Kentucky
- (2) "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 arrangements, 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;
- (3) "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;
- (4) "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;
- (5) "fiscal year" means fiscal year as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (6) "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 anyone (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered as an employee.
- (7) "employer" means employer as defined in Section 3401(d) of the Internal Revenue Code;
- (8) "Internal Revenue Code" means the Internal Revenue Code as defined in KRS 67.750(7);

- (9) "person" shall mean every natural person, whether resident or non-resident of the county of Grant. 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;
- (10) "return" or "report" means any properly completed and if required, signed form, statement, certification, declaration, or any other documents permitted or required to be submitted or filed with the County.
- (11) "tax districts" means any county, or city with the authority to levy net profits or occupations license taxes
- (12) "taxable year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed.

Section 2 – Occupational License Application required

Every person engaged in any trade, occupation or profession or anyone required to file a return under this ordinance in Grant County shall be required to complete and execute the questionnaire prescribed by the Occupational Tax Office. Licensees are required to notify the Occupational Tax Office of changes of address and of other changes which render inaccurate the information supplied in the completed questionnaire.

Section 3 – Occupations License Tax Payment Required

- (1) Except as provided in subsection (2) of this subsection, every person who is required to make a filing with the Internal Revenue Service of the Kentucky Revenue Cabinet 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 2% of:
 - (a) All wages and compensation paid or payable for work done or services performed or rendered in the county by every employee.

Section 4- Apportionment

- (1) 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 services 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 the subsection, the taxpayer shall maintain adequate records.

Section 5 – Employers to Withhold

- (1) Every employer making payments 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.
- (2) Every employer required to deduct and withhold tax under the 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 the 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 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 of 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.
- (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 and 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 statement or a detailed employee listed 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 personal 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 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 and 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 that 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) 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 (7) and (8) 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 an 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 payments required to be made shall be made quarterly, for the periods ending March 31, June 30, September 30, and December 31 of each year. Employers who are 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 the termination was voluntary or involuntary.

Section 6 – Extensions

- (1) The county may grant an extension of not more than six (6) months unless a longer extension has been granted by the Internal Revenue Services or is

agreed to by the county for filing its return if the employee, 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 employee 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 one month is counted as an entire month.

Section 7 – Refunds

- (1) Where there has been an overpayment of the tax under Section (5) of the ordinance, a refund or credit shall be made to the employee 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 employee 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 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.

Section 8- 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 has been extended by an agreement, 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 employee shall file a claim for refund or credit within the time provided for in this subsection of 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 overpayment of taxes collected pursuant to this ordinance is vested exclusively in the county.

Section 9 – 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 or 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 return 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 taxpayers 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 any 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 rights 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.

Section 10 – 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 (5%) percent of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not be less than 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, employers 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 (3) of this ordinance and any fee, 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 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.

- (7) A return for the purposes 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 divulging confidential taxpayer information shall be fined not more than one thousand (\$1000) or imprisoned for not more than one (1) year or both, for each occurrence.
- (9) 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 dollars (\$500.00) or imprisoned not longer than six (6) months, or both, for each occurrence.

Section 11- Use of Occupational License Tax

The proceeds from the Occupational License Tax shall be part of the General Funds of the County.

Section 12 – Severability

Each section and each provision of each section of this ordinance are severable and if any provision, section, paragraph, sentence or art 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.

Section 13 – Reviewability

The provisions of this Ordinance shall be reviewed annually on the anniversary of the date upon which this ordinance is enacted, or on the date of the regular fiscal court meeting closest in time to that date. The percentage by which the occupational license tax shall be measured shall be subject to the following automatic scheduled reductions: (1) When the anticipated \$2.5 million in loans, and all associated interest, to carry the County through to November, 2017, have been paid in full, the percentage shall be reduced from 2% to 1.5%; (2) When the County accumulates a surplus of \$1.0 million, as measured by its having placed a total of \$1.0 million in certificates of deposit, the percentage shall be reduced from 1.5% to 1.0%; (3) After having been reduced to 1%, the percentage shall remain at 1% unless and until further action by the Fiscal Court.

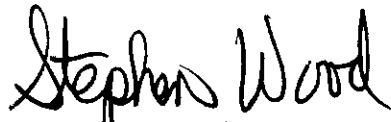
Section 14- Effective Date

The provisions of this Ordinance shall go into effect on April 1, 2017.

First reading: February 27, 2017

Second Reading: March 9, 2017

On Motion made and duly seconded, the ordinance was adopted by a vote of 3 ayes and 1 nays on this 9th day of March, 2017.



Stephen Wood
Grant County Judge Executive

Attest:



Fiscal court clerk