

CHAPTER 119: OCCUPATIONAL AND PAYROLL TAXES

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§ 119.01 DEFINITIONS.

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

BUSINESS. 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 direct benefit of any member, private shareholder or other person.

BUSINESS ENTITY. 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.

CITY. The City of Benton, Kentucky.

COMPENSATION. 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:

(1) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan that are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including, but not limited to, salary reduction arrangements under §§ 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and

(2) 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, §§ 125 and 132 of the Internal Revenue Code.

CONCLUSION OF THE FEDERAL AUDIT. 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.

EMPLOYEE. 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 or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an **EMPLOYEE**.

EMPLOYER. The person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:

(1) 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

(2) 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.

FINAL DETERMINATION OF THE FEDERAL AUDIT. The revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

FISCAL YEAR. An accounting period of 12 months ending on the last day of any month other than December.

INTERNAL REVENUE CODE. The Internal Revenue Code in effect on December 31, 2007, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2007, that would otherwise terminate.

PERSON. Every natural person, whether a resident or nonresident of the city. 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.

RETURN or REPORT. 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 city.

TAX DISTRICT. Any city of the first to fifth class, county, urban county, charter county, consolidated local government, school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license taxes.

TAXABLE YEAR. The calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed.
(Ord. 09-07-01, passed 7-15-19)

§ 119.02 OCCUPATIONAL LICENSE APPLICATION REQUIRED.

Every person and business entity engaged in any business in the city shall be required to apply for and obtain an occupational license from the city before the commencement of business or in the event of a change of business status. Licensees are required to notify the city of any changes in address, the cessation of business, or any other changes that render the information supplied to the city in the license application inaccurate.
(Ord. 09-07-01, passed 7-15-19)

§ 119.03 OCCUPATIONAL LICENSE TAX PAYMENT REQUIRED.

(A) Except as provided in division (B) of this section, every person or business entity engaged in any business for profit, and any person or business entity that is required to make a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to the city an occupational license tax for the privilege of engaging in such activities within the city. The occupational license tax shall be measured by six-tenths of one percent (0.6%) of all wages and compensation paid or payable in the city for work done or services performed or rendered in the city by every resident and nonresident who is an employee.

(B) The occupational license tax imposed in this section shall not apply to the following persons or business entities:

(1) 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;

(2) Any compensation received by members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training;

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

(4) 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.

(5) Life insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky;

(6) Any profits, earnings, or distributions of an investment fund that 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.

(7) Any company providing multichannel video programming services or communications services as defined in KRS 136.602. If only a portion of an entity's business is providing multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communication services, including products or services that are related to and provided in support of the multichannel video programming services or communications services.

(Ord. 09-07-01, passed 7-15-19) Penalty, see § 119.99

§ 119.04 EMPLOYERS TO WITHHOLD.

(A) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation an occupational license tax calculated under § 119.03. Amounts withheld shall be paid to the city in accordance with this section.

(B) 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 city, and pay to the city, 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 city.

(C) Every employer who fails to withhold or pay to the city any sums required by this chapter to be withheld and paid shall be personally and individually liable to the city for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.

(D) The city shall have a lien upon all the property of any employer who fails to withhold or pay over to the city sums required to be withheld under this section. If the employer withholds, but fails to pay the amounts withheld to the city, the lien shall commence as of the date the amounts withheld were required to be paid to the city. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the city.

(E) Every employer required to deduct and withhold tax under this section shall annually, on or before the last day of February of each year, complete and file on a form furnished or approved by the city 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 city, shall be submitted.

(F) 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 city during the preceding calendar year.

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

(H) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this section shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid or payable to one or more employees of the business entity, and neither the corporate dissolution or withdrawal of the business entity from the city, nor the cessation of holding any corporate office, shall discharge that liability; 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 division unless such person had authority to collect, truthfully account for, or pay over the tax imposed by this chapter at the time that the taxes imposed by this chapter become or became due.

(I) Notwithstanding divisions (G) and (H) of this section, every employee receiving compensation in the city subject to the tax imposed under § 119.03 shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this chapter from the employee, such

employee or employees shall be responsible for filing with the city each quarter in the same manner as if they were the employer.

(Ord. 09-07-01, passed 7-15-19) Penalty, see § 119.99

§ 119.05 RETURNS REQUIRED.

(A) All business entity returns for the preceding taxable year shall be made by April 15 of 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 city.

(B) Every business entity shall submit a copy of its federal income tax return, and all supporting statements and schedules, at the time of filing its occupational license tax return with the city. Whenever, in the opinion of the city, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the city may compel the business entity to produce for inspection a copy of any statements and schedules in support thereof that have not been previously filed. The city may also require copies of reports of adjustments made by the federal government.

(C) Every business entity subject to an occupational license tax governed by the provisions of this chapter shall keep records, render under oath statements, make returns, and comply with rules as the city from time to time may prescribe. Whenever the city deems it necessary, the city 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 city deems sufficient to determine the tax liability of the business entity.

(D) The city may require, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or of any other person having knowledge in the premises.

(E) 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 city at the time prescribed for filing the occupational license tax return, determined without regard to any extension of time for filing the return.

(Ord. 09-07-01, passed 7-15-19)

§ 119.06 EXTENSIONS.

(A) The city may grant any business entity an extension of not more than six months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the city and the business entity, for filing its return, if 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.

(B) If the time for filing a return is extended, the business shall pay, as part of the tax, an amount equal to 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 city. A fraction of a month is counted as an entire month.

(Ord. 09-07-01, passed 7-15-19)

§ 119.07 REFUNDS.

(A) Where there has been an overpayment of tax under § 119.04 of this chapter, a refund or credit may be made to the employer to the extent of overpayment if a written application for refund or credit is received by the city from the employer within two years from the date the overpayment was made.

(B) An employee who has compensation attributable to activities performed outside the city, based on time spent outside the city, whose employer has withheld and remitted to this city, the occupational license tax on the compensation attributable to activities performed outside the city, may file for a refund within two 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. The city may confirm with the employer the percentage of time spent outside the city, and the amount of compensation attributable to activities performed outside the city, prior to approval of any refund.

(Ord. 09-07-01, passed 7-15-19)

§ 119.08 FEDERAL AUDIT PROVISIONS.

(A) As soon as practicable after each return is received, the city may examine and audit the return. If the amount of tax computed by the city 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 city within five years from the date the return was filed, except as otherwise provided in this division.

(1) In the case of a failure to file a return or of a fraudulent return, the additional tax may be assessed at any time.

(2) 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 division, or six months from the date the city receives the final determination of the federal audit from the business entity, whichever is later.

The times provided in this division may be extended by agreement between the business entity and the city. For the purposes of this division, 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.

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

(C) The city may initiate a civil action for the collection of any additional tax within the times prescribed in division (A) of this section.
(Ord. 09-07-01, passed 7-15-19)

§ 119.09 ADMINISTRATIVE PROVISIONS.

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

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

(1) In any case where the assessment period contained in § 119.08 has been extended by an agreement between the business entity and the city, the limitation contained in this division shall be extended accordingly;

(2) 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 division or six months from the conclusion of the federal audit, whichever is later.

For the purposes of this division and division (A) 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.

(C) The authority to refund or credit overpayments of taxes collected pursuant to this chapter is vested exclusively in the city.
(Ord. 09-07-01, passed 7-15-19)

§ 119.10 INFORMATION TO REMAIN CONFIDENTIAL.

(A) No present or former employee of any tax district 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 tax district 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 tax district from testifying in any court, or from introducing as evidence returns or reports filed with the tax district, in an action for violation of a tax district tax laws or in any action challenging a tax district tax laws.

(B) The city 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 city, if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the city 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 city may publish statistics based on such information in such a manner as not to reveal data respecting net profits or compensation of any person.

(C) In addition, the city is empowered to execute similar reciprocity agreements as described in division (B) 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 chapter.
(Ord. 09-07-01, passed 7-15-19) Penalty, see § 119.99

§ 119.11 USE OF OCCUPATIONAL LICENSE TAX.

All money derived from the license taxes under the provisions of this chapter shall be paid to the city and placed to the credit of the city's general revenue fund.
(Ord. 09-07-01, passed 7-15-19)

§ 119.99 PENALTY.

(A) A business entity subject to tax on gross receipts may be subject to a penalty equal to 5% of the tax due for each calendar month or fraction thereof if the business entity:

- (1) Fails to file any return or report on or before the due date prescribed for filing or as extended by the city; or
- (2) Fails to pay the tax computed on the return or report on or before the due date prescribed for payment.

The total penalty levied pursuant to this division shall not exceed 25% of the total tax due; however, the penalty shall not be less than \$25.

(B) Every employer who fails to file a return or pay the tax on or before the time prescribed under § 119.04 may be subject to a penalty in amount equal to 5% of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this division shall not exceed 25% of the total tax due; however, the penalty shall not be less than \$25.

(C) 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 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 city. A fraction of a month is counted as an entire month.

(D) Every tax imposed by this chapter, 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 city.

(E) The city may enforce the collection of the occupational tax due under § 119.03 of this chapter and any fees, penalties, and interest as provided in divisions (A), (B), (C), (D) of this section, by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the city shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this chapter.

(F) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return or 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.

(G) 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 chapter 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.

(H) A **RETURN** for the purpose of this section shall mean and include any return, declaration, or form prescribed by the city and required to be filed with the city by the provisions of this chapter, by the rules of the city, or by a written request for information to the business entity by the city.

(I) Any person violating the provisions of § 119.10 by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than \$500, or imprisoned for not longer than six months, or both

(J) Any person violating the provisions of § 119.10 of this chapter by divulging confidential taxpayer information shall be fined not more than \$1,000, or imprisoned for not more than one year, or both.

(Ord. 09-07-01, passed 7-15-19)