

AN ORDINANCE/ORDER RELATING TO LICENSE FEES UPON ALL PERSONS WHO ARE ENGAGED OR EMPLOYED IN ANY TRADE, OCCUPATION OR PROFESSION WITHIN THE COUNTY OF NELSON, FOR THE HEALTH, EDUCATION, SAFETY, WELFARE, AND CONVENIENCE OF THE INHABITANTS OF NELSON COUNTY.

NOW THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF NELSON COUNTY, COMMONWEALTH OF KENTUCKY:

SECTION 1 - DEFINITIONS

Words and phrases used in this Ordinance/Order shall have the ordinary and accepted meaning ascribed to them and the special meanings ascribed to them below:

1.0101 The phrase "license fee" shall mean a tax imposed for the privilege of exercising the right to engage in trade, occupation or profession for compensation paid by others or the right to engage in trade, occupation or profession, for oneself, for profit or gain, within Nelson County, Kentucky.

1.0102 The word "person" shall mean and include all natural persons, partnerships, firms, associations, governmental bodies and agencies, fiduciaries, and corporations, and whenever used in any interpretation.

1.0103 "Administrator" means an official administrator of the occupational tax, to be appointed by the Nelson County fiscal court.

1.0104 "Administrative Regulations" mean such rules and regulations and amendments thereto which the Administrator or Fiscal Court may adopt from time to time for the administration of this ordinance/order.

1.0105 The words and phrases "trade, occupation or profession" shall include any and all activities and the rendering of any and all services of all kinds or other remuneration, or net profit or gain of any kind when applied to persons so engaged for themselves whether the person to be a resident of Nelson County or not.

1.0106 The word "County" means the territorial limits of Nelson County, Kentucky, including all municipalities.

1.0107 The phrase "gross receipts" and the word "compensation" when applied to a person employed by others shall have the same meaning and shall include the gross amount of all salaries, wages, commissions, bonuses or other money payments of any kind, or other considerations having a monetary value, which a person receives or becomes entitled to, or is given credit for by an employer, and which would be subject to FICA taxes were the employee required to pay FICA taxes; provided, however, that employer reimbursement of employee business expenses, gratuities such as "tips" paid by someone other than the employer, shall be excepted from the operation of this Ordinance/Order.

1.0108 The singular shall include the plural, the plural shall include the singular, the masculine or feminine shall include both and the neuter genders wherever susceptible to such.

1.0109 "Temporary Employee" means an employee hired for an anticipated and actual duration of less than ten (10 working days).

1.0110 "Occasional Employee" means a "natural person" hired strictly for occasional duties; such as, a baby sitter, lawn mower, attendant to a discharged hospital or nursing home patient, or similar employees providing service at a natural person's private home/living quarters, or any similar natural person providing very similar services to any person, as defined in Section 1.002.

1.0111 "Net Profit" as used herein shall mean gross receipts less ordinary business deductions, recognized as such, and allowed by the laws of the Commonwealth of Kentucky in computing income tax liability, but without deductions for taxes based on income.

SECTION 2 - EFFECTIVE DATES AND DURATION

1.0101 This ordinance/Order shall apply and be effective from and after January 1, 1991, and shall remain in full force and effect until repealed or modified in a lawful manner.

SECTION 3 - LICENSE FEES REQUIRED

1.0201 All persons engaged in any trade, occupation or profession, within Nelson County, when employed by another, shall pay a license fee measured by and equal to one-half of one percent (.5%) of gross receipts paid for such service, but not to exceed the sum of \$75.00 per year.

1.0202 All persons engage in any trade, occupation, or profession, within Nelson County, for themselves for profit or gain, shall pay a license fee measured by and equal to one-half of one percent (.5%), of the net profit realized from such activity, but not to exceed \$75.00 per year.

1.0203 Exceptions: Excepted from the operation of the Ordinance/Order shall be the following gross receipts:

A) Those gross receipts paid by a natural person for a domestic servant employed within the natural person's private home/living quarters.

B) Those gross receipts paid directly by any person, as defined in Section 1.002, to a temporary or occasional "natural person" employee, as defined in Sections 1.009 and 1.010 respectively, for services rendered directly to the paying "person" as opposed to services rendered to a third party.

C) That any firm, partnership, association, fiduciary and subchapter S corporation that passes through the net profit to the individual owners or stockholders who are otherwise individually subject to this license fee shall be exempt from payment of the license fee.

D) No natural person shall be required to pay more than the one maximum license fee established by this Ordinance/Order.

1.0204 It shall be unlawful for any person to engage in any trade, occupation or profession within Nelson County without withholding, reporting and paying the license fees herein provided and required. Portions of this Ordinance/Order providing a penalty in the form of fine or imprisonment shall mean and include the individual members of a firm, partnership or association and the officers of any governmental body of agency, or any corporation.

SECTION 4 - REGULATION, ADMINISTRATION, ENFORCEMENT AND COLLECTION OF LICENSE FEES AND THE PURPOSE THEREOF

- 1.0301** On recommendation of the County Judge/Executive with approval of the Fiscal Court, an Administrator shall be appointed or employed to perform the necessary duties to administer this Ordinance/Order. The salary shall be fixed by the Fiscal Court.
- 1.0302** The duties and function of the Administrator shall include those set out in this Ordinance/Order and shall include those defined and/or further assigned by the Fiscal Court and/or County Judge/Executive.
- 1.0303** It shall be the duties of the Administrator to collect all License fees and pay the same over to the County Treasurer for deposit in general fund of Nelson County.
- 1.0304** The administrator is hereby empowered and shall have the duty to adopt such "Administrative Regulations" as may be necessary to administer this Ordinance/Order and to draft and provide such printed forms as may be required for reporting, payment and receipting all such license fees and for all other requirements in the proper and efficient administration of this Ordinance/Order.
- 1.0305** The Administrator is hereby empowered to apply such reasonable interpretations of the various sections of this Ordinance/Order so as to affect a reasonable meaning, application and enforcement thereof; which interpretation shall be applicable and enforceable pending any appeal to the Nelson Fiscal Court and/or the judicial system of the Commonwealth of Kentucky.

SECTION 5 - DUTY OF EMPLOYER TO WITHHOLD, REPORT AND PAY LICENSE FEES OF EMPLOYEES

- 1.0401** Every person engaged in any trade, occupation or profession, within Nelson County who employs or engages the services of others in connection therewith, shall withhold from the compensation of such employee, who is not otherwise required to file and/or withhold under provisions of this Ordinance/Order, the license fees herein provided, at the time such compensation is paid or credited; said person shall report and pay the same to the Administrator at least quarterly of each year unless otherwise provided by the "Administrative Regulations". Failure on the part of the employer to withhold, report and pay the license fees shall not relieve employees from liability therefore.
- 1.0402** Unless otherwise provided by the Administrative Regulations, a person who employs less than three (3) employees on a regular time basis, (four hundred and fifty (450) hours during a quarter), may file a return and pay the withholding annually.
- 1.0403** Any person may elect to estimate and pay in advance the withholding tax that may become due from compensation to be paid employees annually. This procedure shall exempt persons from filing quarterly returns. The penalty for underpayment shall be as provided in Section 10.002.

SECTION 6 - DUTY OF PERSON ENGAGED IN TRADE, OCCUPATION OR PROFESSION FOR ONESELF TO REPORT AND PAY LICENSE FEES

1.0501 Every person engaged in any trade, occupation or profession for themselves, for gain or profit, within the County, shall file with the Administrator a return showing the net profit or gain from such activity realized during the preceding year as determined by the Licensee's method of accounting or bookkeeping, and shall pay the license fee herein provided, calculated on the net profit for such preceding fiscal year following January 1, 1991, such person shall file a report with the Administrator showing the net profit or gain for the preceding license period; the return and payment hereunder shall be due on/or before the due date of the personal Kentucky Income Tax return for that period.

1.0502 Any person may elect to estimate and pay in advance the withholding tax that may become due from compensation to be paid employees annually. This procedure shall exempt persons from filing quarterly returns. The penalty for underpayment shall be as provided in Section 10.002.

1.0503 The first license period shall extend from January 1, 1991, until the end of the Licensee's fiscal year and the license fee for that period shall be calculated on a pro-rated basis as of the end of the Licensee's fiscal year. The Licensee shall be permitted to adopt any fiscal period which corresponds with his system of accounting or bookkeeping, or the period adopted for income tax purposes.

SECTION 7 - DUTY OF EMPLOYEE WHEN EMPLOYER FAILS TO WITHHOLD, REPORT OR PAY

1.0504 In the event any employer shall fail to withhold, report or pay license fees for which any employee is liable, then the employee shall report and pay the same when due and to file reports showing total gross receipts for the period from January 1, 1991, to December 31, 1991, and thereafter annually. Said reports shall be made upon forms furnished by the Administrator and shall be filed not later than April 15th of each year. In the event the Licensee has not paid the full amount of license fees due for any period, the deficit together with interest and penalties, must be paid when the reports above provided for are filed or the amount legally determined by the Administrator. In the event of overpayment, Nelson County shall make prompt refund.

SECTION 8 - APPORTIONMENT OF LICENSE FEES WHERE COMPENSATION OR NET PROFIT IS DERIVED FROM ACTIVITY BOTH WITHIN AND WITHOUT THE COUNTY

1.0701 Whenever an employee receives compensation for services or activity performed both within and without the County, the license fee required under this Ordinance/Order shall be computed and paid upon the basis of the proportion of compensation earned for services performed within the County.

1.0702 Whenever the net profit or gain from any trade, occupation or profession is derived from activity or business done both within and without the County, the licensee fee required under this Ordinance/Order shall be computed and paid upon the proportion of net profit or gain derived from activity within the County.

1.0703 In all cases of license fees computed upon the basis of apportionment of compensation or net profit or gain, as herein provided, the apportionment may be shown by the sworn statements of the Licensee or employer, but shall not be binding upon the County. Said apportionment shall be subject to verification and determination by the Administrator or his agents or employees through examination and audit of the books and records of the licensee or employer, or both, as required by the Administrator.

SECTION 9 - RECORDS REQUIRED

1.0801 The reports required by this Ordinance/Order shall be in form prescribed by the Administrator and shall contain all essential information, dates and figures upon which the license fees required by the Ordinance/Order are computed. Every person required to pay any license fee provided by this Ordinance/Order shall be required to make all books, records and accounts upon which information required by this Ordinance/Order is based, available to the Administrator, his agents or employees, for the purpose of examination, audit or verification; provided however, that if any licensee or employer subject to the provisions of this Ordinance/Order shall voluntarily submit copies of income tax returns for examination, then in such case no further examination or audit will be required until and unless there is re-examination or audit made by the taxing authority to whom the return was made; and provided further, the Administrator may dispense with examination of the books, records, accounts, or tax returns of the licensee stating that the amount of tax reported conforms to the income tax return filed by the licensee for the applicable period. If any person pays the maximum tax provided herein then no further records shall be required of the payor.

1.0802 Nothing herein shall prevent or preclude the Administrator from conducting an examination and audit of the books, records, and accounts, as herein provided at any time he may have reasonable grounds to believe that the Licensee has not correctly reported and paid the license fees due under the provisions of this Ordinance/Order.

1.0803 All information obtained by the Administrator or any of his agents or employees, or any other official or employee of Nelson county, from any reports, examination or audit of books, records, accounts, income tax returns, or any other source, in the administration of this Ordinance/Order, shall be treated and considered as confidential and privileged except for official purposes, unless otherwise treated by judicial decree or specific provision of law, and shall not be opened to inspection by the public.

1.0804 Any official, agent or employee of Nelson county who divulges any information obtained under the provision of this Ordinance/Order, except for the purposes of administering this Ordinance/Order as herein provided, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than \$50.00 nor more than \$500.00 or imprisoned for a period of not more than thirty days, or both.

1.0805 It is further provided that the Administrator or any County official or employee shall have the right to disclose to the Revenue Cabinet Secretary of the State of Kentucky, or his duly authorized agent or employee, any of the information protected by Section 9 of this Ordinance/Order provided reciprocal right to information concerning any person liable for license fees under the provisions of this Ordinance/Order is made available to the County by such State Authorities; and provided further, that the County may publish statistics based upon information obtained in the administration of this Ordinance/Order so long as such published statistics do not reveal the identity of any Licensee.

SECTION 10 - PENALTIES FOR VIOLATION

1.0901 Any person who violates any of the provisions of this Ordinance/Order, by failing to pay any license fee when due, or failing to withhold and pay any license fee when due, or failing to file any report or submit to any examination required by this Ordinance/Order, or in any other manner fails or refuses to comply with any of the terms or provisions of this Ordinance/Order, shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$50.00, nor more than \$500.00, or imprisoned for not more than thirty days, or both. Such penalties shall be in addition to any other penalties imposed by this Ordinance/Order. Each failure or refusal to comply with any of the provisions of this Ordinance/Order shall constitute a separate offense, and each day that such failure or refusal continues without compliance shall constitute a separate offense.

1.0902 All license fees not paid when due shall bear interest at the rate of six percent (6%) per annum from due date until paid, and upon failure to pay any license fee when due, a penalty of ten percent (10%) is hereby imposed which penalty shall bear interest at the rate of six (6%) per annum from due date.

SECTION 11 - SEVERABILITY

1.1001 Each section and each provision of each section of this Ordinance/Order are severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any person, licensee, class or group, shall be held unconstitutional or invalid for any reason, such holding shall not affect or impair the remainder of this Ordinance/Order, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of every other.

SECTION 12 - REPEALING CLAUSE

1.1101 All ordinance/orders of fiscal court in conflict with the provisions of this Ordinance/Order are hereby repealed.

SECTION 13 - EFFECTIVE DATE

1.1201 This Ordinance/Order shall become effective upon passage and publication.

PASSED BY THE FISCAL COURT OF NELSON COUNTY ON June 5, 1990.

APPROVED

CLERK