

#2010-02

AN ORDINANCE AMENDING AN ORDINANCE RELATING TO THE IMPOSITION AND ADMINISTRATION OF AN OCCUPATIONAL LICENSE REQUIREMENT, AND PAYMENT OF AN OCCUPATIONAL LICENSE TAX BY PERSONS AND BUSINESS ENTITIES CONDUCTING BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN THE CITY OF LEITCHFIELD, KENTUCKY

WHEREAS, the City of Leitchfield, Kentucky is a municipal corporation of the fourth class with the statutory power to impose license fees on trades, occupations and professions and may provide for the collection of such fees pursuant to KRS 67.750 to KRS 67.795; and

WHEREAS, the City of Leitchfield, Kentucky has previously adopted an ordinance imposing such fees;

WHEREAS, it is necessary to amend the said ordinance with provisions being added indicated by a solid line beneath them and any provisions being deleted indicated by a line drawn through them and encompassed by brackets enclosing them.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEITCHFIELD, KENTUCKY AS FOLLOWS:

SECTION I: Definitions

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

1. "Business Entity" means each separate corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or any other legal entity through which business is conducted.
2. "Business" means any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. "Business" shall not include the usual activities of board trade, chambers of commerce, 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 benefit of any private shareholder or other person.
3. "City" means the city of Leitchfield, Kentucky.
4. "Compensation" means wages, salaries, commissions or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:

- a. Include any amounts contributed by an employee to any retirement, profit sharing or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h) or 457 of the Internal Revenue Code.
 - 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 employees elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code.
5. "Conclusion of the federal audit" means the date that the adjustments made by the Internal Revenue Service to net income as reported on the business entity's federal income tax return become final and un-appealable.
6. "Final determination of the federal audit" means the revenue agent's report or other documents reflecting the final and un-appealable adjustments made by the Internal Revenue Service.
7. "Fiscal Year" means an accounting period of 12 months ending on the last day of any month other than December.
8. "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 or instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.
9. "Employer" means 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 payment of such wages, and
 - b. In the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" means such person.
10. "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2006, exclusive of any amendments made subsequent to that date, other than amendments that extend the provisions in effect on December 31, 2006, that would otherwise terminate.

11. "Net Profit" means gross income as defined in Section 61 of the Internal Revenue Code minus all 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 carry back or carry forward 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 that is exempt from state taxation by the Kentucky Constitution or the Constitution and statutory laws of the United States.
12. "Person" shall mean every natural person, whether a resident or non-resident 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.
13. "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 City.
14. "Sales Revenue" means receipts from the sale, lease, or rental of goods, services or property.
15. "Tax District" means 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.
16. "Taxable net profit" in case of a business entity having a payroll or sales revenue only within the city means net profit as defined in subsection eleven (11) of this section.
17. "Taxable net profit" in case of a business entity having a payroll or sales revenue within and without the city means net profit as defined in subsection eleven (11) of this section, and as apportioned under Section four (IV) of this Ordinance.

18. "Taxable Year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed.

Section II: Occupational License Application Required

Every person and business entity engaged in any business of the City of Leitchfield, Kentucky shall be required to apply for and obtain an occupational license from the City of Leitchfield, Kentucky 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, cessation of business, or any other changes which render the information supplied to the city in the license application inaccurate.

Section III: Occupational License Tax Payment Required

1. Except as provided in subsection II 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 1.2% of:
 - a. 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 net profits from business conducted in the city by a resident or nonresident business entity.
2. The occupational license tax imposed in this section shall not apply to:
 - a. Banks, or title insurance companies organized and doing business in this state or any savings and loan association nor to compensation received by members of the Kentucky National Guard for duty training or unit training nor to precinct workers for election training or work at election booths.
 - b. 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 predominately non-public service who are also engaged in public service activity are required to pay a license fee on their net profits derived from the non-public service activities apportioned to the city.
 - c. Life Insurance Companies incorporated under the laws of and doing business in the Commonwealth of Kentucky nor any profits, earnings, or 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.

3. If not employed by another, the minimum sum of fifty dollars (\$50.00) shall be paid in advance as a license fee, the said sum to be credited against any additional license fee due under the provisions of this ordinance, said minimum fee to be paid no later than April 15th of each year.

Section IV: Apportionment

1. Except as provided in subsection four (4) of this section, net profits shall be apportioned as follows:
 - a. For business entities with both payroll and sales revenue in more than one (1) tax district, by multiplying the net profits by a fraction, the numerator of which is the payroll factor, described in subsection two (2) of this section, plus the sales tax factor, described in subsection three (3) of this section, and the denominator of which is two (2); and
 - b. For businesses with sales revenue in more than one (1) tax district, by multiplying the net profits by the sales factor as set forth in subsection three (3) of this section.
2. The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the city during the tax period by the business entity for compensation, and the denominator of which is the total compensation paid or payable by the business entity everywhere during the tax period. Compensation is paid or payable in the city based on the time the individual's service is performed within the city.
3. The sales factor is a fraction, the numerator of which is the total sale revenue of the business entity in the city during the tax period, and the denominator of which is the total sales revenue of the business entity everywhere during the tax period.
 - a. The sales, lease, or rental of tangible personal property is in the city if:
 - i. The property is delivered or shipped to a purchaser, other than the United States Government, or to the designee of the purchaser within the city regardless of the f.o.b. point or other conditions of the sale; or
 - ii. The property is shipped from an office, store, warehouse, factory, or other place of storage in the city and the purchaser is the United States Government.
 - b. Sales revenues, other than revenues from the sale, lease or rental of tangible personal property or the lease or rental of real property, are apportioned to the city based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the city and the denominator of which is the total time spent performing that income-producing activity.
 - c. Sales revenues from the sale, lease, or rental of real property are allocated to the tax district where the property is located.
4. If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the city, the business entity may petition the city or the city

may require, in respect to all or any part of the business entity's business activity, if reasonable a separate accounting and/or the exclusion of any one (1) or more of the factors and/or the inclusion of one (1) or more additional factors which will fairly represent the business entity's activity in the city and/or the employment of any other method to effectuate an equitable allocation and apportionment of gross receipts.

5. When compensation is paid for work done or services performed or rendered by an employee, both within and without the city, the license tax shall be measured by that part of the compensation paid or payable as a result of work done or service performed or rendered within the city. The license tax shall be computed by obtaining the percentage which the compensation for work performed or services rendered within the city bear to the total wages and compensation paid for work performed or services rendered within the city bears to the total wages and compensation paid or payable. In order for the city to verify the accuracy of a taxpayer's reported percentages under this subsection, the taxpayer shall maintain adequate records.
6. All partnerships, S corporations, and all other entities where income is "passed 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.
7. If any business entity dissolves, ceases to operate, or withdraws from the city during any taxable year, or if any business entity in any manner surrenders or loses its charter during any taxable year, the dissolution, cessation of business, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of any occupational license tax for the period of that taxable year during which the business entity had business activity in the city.
8. If any business entity makes, or is required to make, a federal income tax return, the occupational license tax shall be computed for purposes of this ordinance on the basis of the same calendar or fiscal year required by the federal government and shall employ the same methods of accounting required for federal income tax purposes.

Section V: Employers to Withhold

1. Every employer making payment of compensation to an employee shall deduct and withhold from the compensation an occupational license tax calculated under section three (III) of this ordinance. Amounts withheld shall be paid to the city in accordance with this section.
2. Every employer required to deduct and withhold tax under this section shall, for the quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter, make a return and report to the 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 is determined by the city.

3. Every employer who fails to withhold or pay to the city any sums required by this ordinance to be withheld and aid 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.
4. 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.
5. Every employer required to deduct and withhold tax under this section shall annually on or before February 28 of each year complete and file on a form furnished or approved by the 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.
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 city 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 section shall be personally and individually liable, 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 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 subsection unless such person had authority to collect, truthfully account for, or pay over the tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due.
9. Notwithstanding subsections seven (7) and eight (8) of this section, every employee receiving compensation in the city subject to the tax imposed under section three (III) of this ordinance shall be personally liable for any amount due. 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 city each quarter in the same manner as if they were the employer.

Section VI: Returns Required

1. 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.
2. 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.
3. Every business entity subject to an occupational license tax governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply with rules 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.
4. The city may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or any other person having knowledge in the premises.
5. 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.

Section VII: Extensions

1. The city may grant any business entity an extension of not more than six (6) months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the city and the business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the occupational tax, requests the extension and pays the amount properly estimated as tax.
2. If the time for filing a return is extended, the business shall pay, as part of the tax, an amount equal to twelve (12) percent per annum simple interest on the tax shown due on the return, but not previously paid, from the time the tax was due until the return is actually filed and the tax paid to the city.

Section VIII: Refunds

1. Where there has been an overpayment of tax under section five (V) of this ordinance, a refund or credit shall be made to the employer to the extent of overpayment only if a written application for refund or credit is received by the city from the employer within two (2) years from the date the overpayment was made.
2. 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 the city, the occupational license tax on the compensation attributable to activities performed outside the city, may file for a refund within two (2) years of the date prescribed by law for the filing of the return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the 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 the refund.
3. Where there has been an overpayment of net profits tax upon business levied under section three (III) of this ordinance, a refund or credit shall be made to any person or business entity to the extent of overpayment only upon a written application for refund or credit to the city within two (2) years from the date that overpayment was made.

Section IX: Federal and City Audit Provisions

1. 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 (5) years from the date the return was filed, except as otherwise provided in this section.
 - a. In the case of a failure to file a return or of a fraudulent return, the additional tax may be assessed at any time.
 - b. In the case of a return where a business entity understates net profit, or omits an amount properly includable in net profits, or both, which understatement or omission, or both, is in excess of twenty-five (25) percent of the amount of net profit stated in the return, the additional tax may be assessed at any time within six (6) years after the return was filed.
 - c. In the case of an assessment of additional tax relating directly to adjustment resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this section, or six (6) months from the date the city receives the final determination of the federal audit from the business entity, whichever is later.
2. Every business entity shall submit a copy of the final determination of the federal audit within thirty (30) days of the conclusion of the federal audit.

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

Section X: Information to Remain Confidential

1. No present or former employee of the city shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding tax schedules, returns, or reports required to be filed with the city, 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 city from testifying in any court, or from introducing as evidence returns or reports filed with the city, in any action for violation of the city's tax laws or in any action challenging the city's tax laws.
2. The city reserves the right to disclose to the Commission of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent and to the Internal Revenue Service all such information and rights to inspect any of the books and records of the city if the Commissioner of Revenue or the Internal Revenue Service grants the city reciprocal rights to obtain similar information. 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.
3. In addition the city is empowered to execute similar reciprocity agreements as described in subsection two (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.
4. Further, the city may divulge all information and rights to inspect books and records of this city upon proper service of process by state or federal authorities.

Section XI: Penalties

1. A business entity or person subject to tax under this ordinance is subject to a penalty equal to five (5) percent of the tax due for each calendar month or fraction thereof if the business entity or person fails to file any return or report on or before the due date prescribed for filing or as extended by the city or 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 subsection shall not exceed twenty-five (25) percent of the total tax due; however, the penalty shall not be less than twenty-five (\$25.00) dollars.
2. Every employer who fails to file a return or pay the tax on or before the time prescribed under section five (V) of this ordinance will 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 exceed twenty-five (25) percent of the total tax due; however, the penalty shall be no less than twenty-five (\$25.00) dollars.

3. 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 (12) percent 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.
4. 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 city and every person shall become jointly and severally therefore.
5. The city may enforce the collection of the occupational tax due under section three (III) of this ordinance and any fees, penalties, and interest as provided in subsections one (1), two (2), three (3) and four (4) 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 provisions of this ordinance.
6. 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 intent to evade payment of the tax or amount collected or any part thereof shall be guilty of a Class A misdemeanor.
7. Any person violating the provision of section ten (X) of this ordinance by intentionally inspecting or divulging confidential taxpayer information without authorization, shall be fined not more than five hundred (\$500.00) dollars.

Section XII: Use of Occupational License Tax

All money derived from the license taxes under the provisions of this ordinance shall be paid to the city and placed to the credit of the city's general revenue fund.

Section XIII: Severability

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


This ordinance shall become effective after first having been published according to law.

Duly adopted, after first being read on the 19th day of January, 2010, on this the 1st day of February, 2010.

Those voting in favor of the amended ordinance were Steven Elder, Jerry Schlosser, Leon Shaw, Kelly Stevenson, Wales Montgomery and William Dallas. Those voting nay were none.

CLERK ATTEST


ERIN EMBRY


WILLIAM H. THOMASON,
MAYOR