



FISCAL COURT OF COUNTY OF OHIO, KENTUCKY ORDINANCE 95-4

AN ORDINANCE RELATING TO LICENSE FEES UPON ALL PERSONS WHO ARE ENGAGED OR EMPLOYED IN ANY TRADE, OCCUPATION OR PROFESSION WITHIN THE COUNTY OF OHIO, KENTUCKY.

BE IT ORDAINED BY THE FISCAL COURT OF COUNTY OF OHIO, COMMONWEALTH OF KENTUCKY:

SECTION I

DEFINITION: WORDS AND PHRASES USED IN THIS ORDINANCE SHALL HAVE THE ORDINARY AND ACCEPTED MEANING ASCRIBED TO THEM AND THE SPECIAL MEANINGS ASCRIBED TO THEM BELOW:

(a) 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 Ohio County, Kentucky.

(b) The word "person" shall mean and include all natural persons, partnerships, fiduciaries, firms, associations, joint ventures, governmental bodies and agencies, corporations, and other forms of business organizations.

(c) "Administrator" means the person or persons designated by the Ohio County Fiscal Court as being responsible for the administration of this Ordinance, the collection of the Occupational License Fee, and the accounting thereof to the Ohio County Fiscal Court.

(d) The words "County" or "Ohio County", means County of Ohio, Kentucky, including all areas of the county whether incorporated or not.

(e) "Tax Year" or "taxable year" means a calendar year from January 1 to December 31, inclusive, or the licensee's tax year approved by the Administrator.

SECTION II

EFFECTIVE DATES AND DURATION:

This Ordinance is to take effect immediately upon passage by the Ohio County Fiscal Court on second reading and publication in the Ohio County Times-News. The Occupational License Tax herein enacted and levied shall be effective commencing November 1, 1994.

SECTION III

LICENSE FEES REQUIRED:

(a) On and after November 1, 1994, all persons engaged in any trade, occupation or profession within Ohio County, Kentucky, when employed by another, shall pay a license fee measured by and equal to one percent (1%) of the gross receipts paid for such service.

(b) On and after November 1, 1994, all persons engaged in any trade, occupation or profession, within Ohio County, for themselves, for profit or gain, shall pay a license fee measured by and equal to one percent (1%) of the net profit realized from such activity, "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 on November 1, 1994, in computing income tax liability, but without deductions for taxes based on income.

It shall be unlawful for any person to engage in any trade, occupation, or profession within Ohio County without withholding, reporting and paying the license fees herein provided and required. Portions of this Ordinance prescribing 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 or agency, or corporation.

(c) 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 be a resident of Ohio County or not.

(d) 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, without deduction for withholding taxes, social security benefits, any form of insurance or retirement benefits, or other deductions made by an employer in calculating "take-home-pay" provided, however, that any traveling expenses actually incurred and paid by the employer, gratuities such as "tips" paid by someone other than the employer, and wages, salaries or other compensation received by domestic servants employed in a private home, shall be exempt from the operation of this Ordinance.

(e) 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.

SECTION IV

REGULATION, ADMINISTRATION, ENFORCEMENT, AND COLLECTION OF LICENSE FEES AND THE PURPOSE THEREOF:

It shall be the duty of the Administrator to collect all license fees required to be paid under this Ordinance. He shall pay over quarterly, and not later than May 30, August 31, November 30 and February 28, to the County Treasurer all taxes collected during the preceding quarter. The County Treasurer shall deposit all such taxes collected into an Occupational License Fee Trust Account from which expenditures shall be made only upon proper motion, vote and order of the Ohio County Fiscal Court. The Administrator shall have the power and it shall be his duty to make and publish such rules and regulations as may be necessary to administer this Ordinance and to provide such printed forms as may be required for reporting, paying, and receipting for all such license fees and for all other requirements in the proper and efficient administration of this Ordinance. The Administrator shall, with the consent of the Fiscal Court, employ such auditors as may be required to insure full and strict compliance with this Ordinance.

From time to time, and no more than every three (3) years, an independent audit shall be conducted by a certified public accountant to ensure full and strict compliance with this Ordinance and the accountant's report shall be a public document.

Willful failure to file any tax return required by this Ordinance shall constitute a Class "A" Misdemeanor punishable by a fine of Five Hundred Dollars (\$500.00), one year in jail, or both.

Should the tax required by this Ordinance not be paid when due or within ninety (90) days thereafter, or if an audit occurs, within ninety (90) days of a final audit adjustment, then it shall be considered delinquent. A notice of delinquency shall be filed in the Office of the Ohio County Clerk showing the delinquent tax, penalty and interest to date.

The Administrator shall have the further duty, in instances where the taxpayer has willfully failed to file any tax return required by this Ordinance, to make a reasonable estimate of the tax, penalty and interest due, and cause a notice of delinquency to be filed in the Ohio County Clerk's Office.

Ten (10) days after a notice of delinquency is filed, if the tax, penalty and interest are not paid, suit may be filed in the Ohio Circuit Court to collect such tax, penalty, interest, and costs to include reasonable attorney's fees.

SECTION V

DUTY OF EMPLOYER TO WITHHOLD, REPORT AND PAY LICENSE FEES OF EMPLOYEES:

(a) It shall be the duty of every person engaged in any trade, occupation or profession, within Ohio County who employs or engages the services of others in connection therewith, to withhold from the compensation of such employee, 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 within thirty (30) days from the end of each quarter of the employer's tax year all license fees thus withheld during such quarter, except as provided in subsections (b) and (c). Failure on the part of the employer to withhold, report, and pay the license fees shall not relieve the employees from liability herefor.

(b) A person engaged in agriculture business, (raising crops and livestock who employs less than five (5) employees on a regular basis, (four hundred fifty (450) hours during a quarter), may file a return and pay the withholding tax at the end of the taxable year.

(c) Any person may elect to estimate and pay in advance, the withholding tax that may become due from compensation to be paid employees for a taxable year. This procedure will exempt the person from filing quarterly returns. The penalty for under-payment will be as provided in subsection (d) below.

(d) All license fees not paid when due shall bear interest at the rate of eight percent (8%) per annum from due date until paid, and upon failure to pay all license fees when due, a penalty of ten percent (10%) of the amount then due is hereby imposed which penalty shall draw interest from due date.

SECTION VI

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

It shall be the duty of every person engaged in any trade, occupation, or profession for

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themselves, for gain or profit, within the County, to file with the Administrator a return showing the net profit or gain from such activity realized during the preceding tax year as determined by the licensee's method of accounting or keeping books, and shall pay the license herein provided, calculated on the net profit for such preceding tax year. Within one hundred five (105) days after the end of the Licensee's Tax Year following November 1, 1994, such persons shall file a report with the Administrator showing the net profits or gain for the preceding tax year.

The first tax year shall extend from November 1, 1994, until the end of the Licensee's Tax Year. The licensee shall be permitted to adopt any tax year which corresponds with his system of accounting or bookkeeping, or the period adopted for income tax purposes, as approved by the Administrator.

SECTION VII

DUTY OF EMPLOYEE WHEN EMPLOYER FAILS TO WITHHOLD, REPORT OR PAY:

In the event an employer fails to withhold, report or pay license fees for which any employee is liable, then it shall be the duty of the employee to report and pay the same and to file report showing total gross receipts for the period from November 1, 1994, to December 31, 1994, and thereafter annually for the period January 1st thru December 31st. 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, Ohio County shall make prompt refund.

SECTION VIII

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

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

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 license fee required under this Ordinance shall be computed and paid upon the proportion of net profit or gain derived from activity within the County.

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, which 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 IX

RECORDS REQUIRED:

The reports required by this Ordinance shall be in the form prescribed by the Administrator and shall contain all essential information, dates and figures, upon which the license fees required by this Ordinance are computed. Every person required to pay any license fee provided by this Ordinance shall be required to make all books, records and accounts upon which information required by this

Ordinance 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 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 in any case where the Administrator is furnished with a certificate of an attorney at law, a licensed public accountant, or the sworn statement of any other accountant or bookkeeper of the licensee stating that the amount of tax reported conforms to the income tax filed by the licensee for the applicable period.

Nothing herein contained shall prevent or preclude the Administrator from conducting an examination and audit of the books, records, and accounts, as herein provided at anytime 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.

All information obtained by the Administrator or any of his agents or employees, or any other official or employee of Ohio County, for any reports, examination or audit of books, records, accounts, income tax returns, or any other source, in the administration of this Ordinance, 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 open to inspection by the public.

Any official, agent, or employee of Ohio County who divulges any information obtained under the provision of this Ordinance, except for the purposes of administering this Ordinance as herein provided, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) or punished by confinement for not more than twelve months, or both.

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

SECTION X

MINIMUM AND MAXIMUM AMOUNTS OF LICENSE FEES:

Anything to the contrary herein notwithstanding the following exemptions shall apply to all taxes herein levied, excluding from such exemption all penalties and interest owing:

(a) Any person engaged in any trade, business or profession in Ohio County, Kentucky, whose net profits therefrom are less than One Thousand Dollars (\$1,000.00) in any taxable year shall be exempt from paying the license fee imposed by this Ordinance for such year, but shall not be exempt from filing a return.

(b) Any person whose combined gross income from wages, commissions, salaries, net profits, and remunerations in Ohio County is less than One Thousand Dollars (\$1,000.00) in any taxable year may apply to the Administrator for a refund of all taxes withheld under this Ordinance during such year. The Administrator shall certify the amount of such refund to the

County Treasurer for payment.

(c) No person shall be required to pay more than Ten Thousand Dollars (\$10,000.00) in taxes (excluding penalties and interest) under the terms of this Ordinance in any one taxable year.

SECTION XI

PENALTIES FOR VIOLATIONS:

Any person who violates any of the provisions of this Ordinance, 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 to submit to any examination required by this Ordinance, or in any other manner fails or refuses to comply with any of the terms or provisions of this Ordinance, shall be guilty of a misdemeanor and upon conviction shall be fined not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or imprisoned for not more than twelve (12) months, or both. Such penalties shall be in addition to other penalties imposed by this Ordinance. Each failure or refusal to comply with any of the provisions of this Ordinance shall constitute a separate offense, and each day that such failure or refusal continues without compliance shall constitute a separate offense.

SECTION XII

SEVERABILITY:

Each section and each provision of each section of this Ordinance is severable, and if any provision, section, paragraph, sentence, or part thereof, or the application thereof to any person, licensee, class, or group, be held 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 every other.

SECTION XIII

REPEALING CLAUSE:

Ordinance No. 94-11 enacted by the Ohio County Fiscal Court on July 14, 1994, is repealed and declared null and void and all other ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict. Any person having paid and remitted to the County taxes under Ordinance 94-11 may, on application to the Administrator, apply the amounts thus paid as a credit on taxes owing under this Ordinance 95-4, or may secure a refund of such taxes from the County Treasurer upon certification from the Administrator.

INTRODUCED AND FIRST READ ON THE
29TH DAY OF SEPTEMBER, 1994, AND
PASSED BY VOTE OF 4 YEAS(S) AND 1
NAY(S):

SECOND READING AND FINAL
ADOPTION ON THE 13TH DAY OF
OCTOBER, 1994, VOTE OF 5 YEAS(S) AND
1 NAY(S).


LESLIE R. JOHNSON
OHIO COUNTY JUDGE/EXECUTIVE

ATTEST:


LESLIE R. JOHNSON
OHIO COUNTY COURT CLERK