

# Lexington Fayette Urban County Government

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## Division of Revenue

# License Fee Regulations

## Fifth Edition

(Issued November 1, 2000 and except for Regulation 13-8, Section 2.1(C) regarding Net Profits License Fee Return Quarterly Estimated Payments effective for all returns due on or after January 1, 2001)

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Office hours: Monday – Friday 8:00am - 6:00pm

**YOUR RIGHTS AS A LEXINGTON-FAYETTE COUNTY LICENSEE**

*Paid for with Lexington-Fayette Urban County Government Funds  
Revised 10-2000*

## **MISSION**

The mission of the Lexington-Fayette Urban County Government (LFUCG) Division of Revenue (DOR) is to provide courteous, accurate and efficient services for the benefit of Lexington-Fayette County and its citizens, and administer the occupational license fee laws of the LFUCG in a fair and impartial manner.

## **RIGHTS OF LICENSEE**

**Privacy**--You have the right to privacy of information provided to the DOR. The DOR is not authorized to discuss your tax matters with anyone unless you authorize the DOR to do so.

**Assistance**--You have the right to advice and assistance from the DOR in complying with LFUCG license fee laws.

**Explanation**--You have the right to a clear and concise explanation of:

- basis of assessment of additional license fees, interest and penalties, or the denial or reduction of any refund or credit claim;
- procedure for an appeal of a determination of the DOR; and
- license fee laws and changes in license fee laws so that you can comply with the law.

**Appeal**--You have the right to appeal a determination of the DOR, such as an assessment of license fee or penalty, reduction or a denial of a refund, or a revocation of a license or permit.

**Conference**--You have the right to a conference to discuss a license fee matter.

**Representation**--You have the right to representation by an attorney, accountant or other person in any hearing or conference with the DOR. If you intend for your representative to come in your place, you must notify the DOR prior to any hearing or conference.

**Recordings**--You have the right to make an audio recording of any meeting, conference or hearing with the DOR, or to be notified in advance if the DOR plans to record the proceedings and to receive a copy of any recording.

**Consideration**--You have the right to consideration of:

- waiver of penalties or collection fees if “reasonable cause” for reduction or waiver is given (“reasonable cause” is defined as: “an event, happening or circumstance entirely beyond the knowledge or control of a licensee who has exercised due care and prudence in the filing of a return or report or the payment of monies due the LFUCG pursuant to law or administrative regulation”);
- installment payments of delinquent license fees, interest and penalties

# TABLE OF CONTENTS

		PAGE
<b>INTRODUCTION</b>	.....	7
<b>REGULATION 13-1</b>	<b>DEFINITIONS</b> .....	<b>8</b>
Section 1.1	Definitions .....	8
<b>REGULATION 13-2</b>	<b>ENFORCING OFFICERS, POWERS AND DUTIES</b> .....	<b>10</b>
Section 1.1	Authority.....	10
Section 1.2	Amendments and supplements .....	11
Section 2.1	Auditor identification .....	11
Section 2.2	Power to examine books, papers and records.....	11
Section 2.3	Licensee to furnish opportunity for examinations.....	11
Section 2.4	Power to examine under oath/compel production of records.....	11
Section 2.5	Commissioner authorized to assess and collect underpayment; credit or refund for overpayment.....	12
Section 2.6	Information obtained during audits to be kept confidential.....	12
Section 3.1	Effective date .....	12
Section 4.1	Applicability .....	12
Section 5.1	Inspection and copies of regulations.....	12
<b>REGULATION 13-3</b>	<b>RESERVED</b>	
<b>REGULATION 13-4</b>	<b>WHO MUST OBTAIN; BASIS OF COMPUTATION</b> .....	<b>13</b>
Section 1.1	License fee on wages and net profits distinguished.....	13
Section 2.1	Occupational license fee on wages .....	14
Section 2.2	Compensation subject to the occupational	

	license fee – General.....	14
Section 2.2.1	Compensation subject to the occupational license fee – Specific.....	15
Section 2.3	Compensation not subject to the occupational license fee.....	17
Section 2.4	Tip income .....	19
Section 2.5	Stock options .....	19
Section 2.6	Apportionment of wages for activities both inside and outside the Urban County .....	19
Section 3.1	Occupational license fee on net profits.....	21
Section 3.2	Sufficient nexus test.....	21
Section 3.3	Unitary business considerations .....	22
Section 3.4	Exemptions to license fee on net profits .....	24
Section 3.5	Common carriers and others engaged in interstate commerce are subject to net profits license fee.....	25
Section 3.6	Unincorporated business .....	25
Section 3.7	Determination of net profits in general.....	25
Section 3.8	Determination of net profits for corporations other than S corporations .....	27
Section 3.9	Determination of net profits for partnerships and S corporations.....	28
Section 3.10	Determination of net profits for sole proprietors .....	30
Section 3.11	Determination of net profits for fiduciaries.....	31
Section 3.11.1	Determination of net profits for limited liability companies ....	31
Section 3.12	Net profits apportionment.....	32
Section 3.13	Special cases .....	41

**REGULATION 13-5**

**RESERVED**

<b>REGULATION 13-6</b>	<b>EXEMPT ACTIVITIES .....</b>	<b>44</b>
Section 1.1	Exemption for senior citizens .....	44
<b>REGULATION 13-7</b>	<b>DEDUCTIONS FROM EMPLOYEE COMPENSATION, PAYMENT; RECORDS REQUIRED.....</b>	<b>44</b>
Section 1.1	Liability of employers who fail to comply with Urban County Government requirements.....	44
Section 1.2	Responsibility of employers to withhold and report employee license fee.....	45
Section 1.3	Annual information returns.....	46
<b>REGULATION 13-7.1</b>	<b>HOUSEHOLD WORKERS, WITHHOLDING REQUIREMENTS; RETURNS REQUIRED.....</b>	<b>47</b>
Section 1.1	Withholding requirements on employers of household workers .....	47
Section 1.2	Net profit license fee return requirements for household workers .....	47
<b>REGULATION 13-8</b>	<b>SEPARATE RETURNS; PAYMENTS .....</b>	<b>47</b>
Section 1.1	Fiscal period .....	47
Section 2.1	Filing requirements .....	48
Section 3.1	Employee returns .....	50
Section 4.1	Extension of time for filing .....	50
<b>REGULATION 13-9</b>	<b>INITIAL FEE .....</b>	<b>51</b>
Section 1.1	Initial licensing.....	51
<b>REGULATION 13-10</b>	<b>DUTY TO COLLECT, RECORDS OF COLLECTION .....</b>	<b>51</b>
Section 1.1	Administrative provisions .....	51
Section 2.1	Refunds .....	53
<b>REGULATION 13-11</b>	<b>RESERVED</b>	
<b>REGULATION 13-12</b>	<b>PAYMENT IN ARREARS; FAILURE TO WITHHOLD.....</b>	<b>54</b>

Section 1.1	Interest and penalties .....	54
<b>REGULATION 13-13</b>	<b>RESERVED</b>	
<b>REGULATION 13-14</b>	<b>RESERVED</b>	
<b>REGULATION 13-15</b>	<b>RESERVED</b>	

## **INTRODUCTION**

The subject of municipal taxation in Kentucky is complicated by the number of jurisdictions and types of taxes and license fees to which an individual or a business may be subject and by the number of agencies which have been authorized to collect the various classes of taxes and license fees.

The Constitution provides at Section 181 that the General Assembly may “by general laws, delegate the power to counties, towns, cities and other municipal corporations, to impose and collect license fees on stock used for breeding purposes, on franchises, trades, occupations and professions.” The license fee on “franchises, trades, occupations and professions” has emerged as the primary mechanism of producing revenues for local governments, surpassing, though by no means supplanting, the property tax.

Chapter 13 of the Code of Ordinances (hereafter referred to as the “Ordinance”), adopted by the Urban County Council, requires that for the purpose of the general fund, an annual license fee shall be imposed upon businesses, trades, occupations, professions and other activities in the Urban County.

The occupational license fee on wages and net profits attributable to the Urban County are imposed solely for revenue purposes. There is no “license” in the literal sense that a right is conferred on a person to do something which otherwise the person would not have a right to do. In addition, except as provided under Article II, Section 13-13 of the Ordinance, no physical license is issued and no certificate is required to be displayed.

Thus, occupational license fees on wages and net profits are imposed on persons who work and/or are engaged in any business, profession, trade, occupation or other activity in the Urban County. Occupational license fees are imposed only on income associated with a business, profession, trade, or occupation. Thus, for example, the interest earned on an individual’s personal bank savings account is not subject to the license fee. For business entities, however, most income is deemed to be occupational, and “passive” income of corporations, partnerships, businesses, and other associations is subject to the license fee.

Under authority of Section 13-2, the Commissioner of Finance of the Lexington-Fayette Urban County Government is charged with the enforcement of the provisions of the Ordinance and is empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of the Ordinance. This edition of the occupational license fee regulations is issued pursuant to the authority prescribed in Section 13-2. These occupational license fee regulations are intended to document the policies and procedures of the Division of Revenue for the administration and enforcement of the Ordinance. In addition, these occupational license fee regulations should provide licensees with guidance for compliance with the Ordinance.

It should be noted that while these regulations follow the Internal Revenue Code (IRC) in certain areas, the Urban County is not required to conform to the IRC. In several court cases it has been established that definitions and opinions by the IRS or the U.S. Treasury are merely persuasive and are not binding with respect to local license fee issues.

These occupational license fee regulations, together with all amendments, supplements, and changes thereto, shall be on file with the Commissioner of Finance and shall be open to public inspection. Copies, so far as possible, will be available upon request to all licensees and their representatives for a reasonable charge. Written inquiries regarding the Ordinance or the occupational license fee regulations should be

directed to the Commissioner of Finance or the Director, Division of Revenue, at 200 East Main Street, Lexington, KY 40507. Telephone inquiries may be directed to the Commissioner of Finance at (859) 258-3300 or to the Division of Revenue at (859) 258-3340.

These occupational license fee regulations were issued on November 1, 2000 and shall be effective for all returns due on or after January 1, 2001.

Occupational license fee regulations are indexed to coincide with corresponding sections of the Ordinance. For example, readers with questions about Section 13-4 of the Ordinance would refer to Regulation 13-4 of the occupational license fee regulations for additional guidance. Regulations have not been issued for all sections of the Ordinance; therefore, these sections have been reserved for future use.

## **REGULATION 13-1 DEFINITIONS**

### **Section 1.1 Definitions**

- (A) In addition to the words and terms defined in the Ordinance, as amended, and elsewhere herein, the following words and terms, when used in these occupational license fee regulations (hereinafter referred to as the "Regulations") and where not otherwise distinctly expressed or manifestly incompatible with the intent, have the meanings given. Throughout these Regulations, unless the context shall clearly indicate otherwise, the singular shall include the plural, and the masculine shall include the feminine and the neuter.
- (B) The definitions of the following words and terms are in addition to those in the Ordinance, as amended.
- (1) **"AGENT"** shall mean a person who acts for or in place of another by authority from him. This relationship may exist between businesses, individuals, corporations, partnerships, employers, or any combination thereof.
  - (2) **"BUSINESS ALLOCATION OR APPORTIONMENT PERCENTAGE"** shall mean the portion of net profits subject to the Urban County as having been made in the Urban County, under the two-factor formula of business receipts and payroll provided for in Regulation 13-4, Sections 3.12.
  - (3) **"CAPITAL ASSETS"** shall mean property which is held by the licensee but not offered for sale to customers in the regular course of business.
  - (4) **"CAPITAL GAIN OR LOSS"** shall mean the gain or loss which is realized from the sale or exchange of a capital asset.
  - (5) **"CODE OF ORDINANCES"** shall mean the codification of all ordinances of a general and permanent nature passed in final form by the Lexington-



Fayette Urban County Council, as amended, and published by the Clerk of the Lexington-Fayette Urban County Council.

- (6) **“COMMISSIONER”** shall mean the Commissioner of Finance of the Lexington-Fayette Urban County Government.
- (7) **“CONSTRUCTIVE RECEIPT”** shall mean the recognition of the legal right to property, even though actual, physical transfer may be delayed, deferred, or transferred by other means.
- (8) **“DESIGNEE”** shall mean any person that is duly authorized to act on behalf of the Commissioner.
- (9) **“FAYETTE COUNTY”** shall mean Fayette County, Kentucky, which includes the City of Lexington, Kentucky.
- (10) **“GOVERNMENTAL AGENCY”** shall mean any administration, agency, arm, authority, board, body, branch, bureau, department, division, section, unit of any government (federal, state or local) or political subdivision thereof, or any corporation created and owned or controlled by any government or political subdivision thereof.
- (11) **“INDEPENDENT CONTRACTOR”** shall mean a person who provides services who is not subject to the control and direction of another except as to the final result of his work, and not as to means, and who is therefore not an employee, as further defined by Official Treasury Regulation (Federal) 31.3401(c)-1, as amended.
- (12) **“INDIVIDUAL”** shall mean a natural person.
- (13) **“NEXUS”**, as defined in applicable case law, shall mean a minimum connection between a person/business entity and the Urban County brought about when the person/business entity purposefully avails itself of the privileges and protection of the Urban County Government while doing business or practicing a trade, occupation or profession.
- (14) **“OCCUPATIONAL LICENSE FEE” or “LICENSE FEE”** shall mean the employee license fee on wages and/or the net profits license fee as the context shall indicate.
- (15) **“OFFICER”** shall mean a person who holds a position of trust or authority, appointed or elected, for a business, corporation, partnership or employer organization.
- (16) **“OTHER ACTIVITY”** shall mean any undertaking not otherwise specifically defined herein which is normally entered into for profit.

- (17) **“SUBJECT RECEIPTS”** shall mean, for the purposes of calculating the numerator of the business receipts factor of Regulation 13-4, Section 3.12, income from the sales of merchandise, services, or both, rendered within or attributable to activities within the Urban County.
- (18) **“TRADE OR BUSINESS ASSET”** shall mean the tangible property used in a trade or business which is subject to the allowance for depreciation as provided in the Internal Revenue Code.
- (19) **“WAGES”** shall include all salaries, wages, commissions and other compensation, as defined in Section 13-1(34) of the Code of Ordinances as more precisely defined by the provisions of Regulation 13-4, Section 2.2 through 2.5.

## **REGULATION 13-2 ENFORCING OFFICERS, POWERS AND DUTIES**

### **Section 1.1 Authority**

The Commissioner is charged with the enforcement of the provisions of the Ordinance under the authority of Section 13-2, and is empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of the Ordinance. This edition of the Regulations is issued pursuant to the authority prescribed in Section 13-2. The Regulations are intended to document the policies and procedures of the Division of Revenue for the administration and enforcement of Chapter 13. In addition, the Regulations should provide licensees with guidance for compliance with Chapter 13.

### **Section 1.2 Amendments and supplements**

From time to time amendments and supplements to these Regulations may be issued by the Commissioner.

### **Section 2.1 Auditor identification**

Agents and employees authorized by the Commissioner to inspect or audit records of businesses, trades, occupations, professions, enterprises and other activities shall carry proper identification, which shall be subject to examination by any person whose records are sought to be examined. A licensee may confirm audit authorization directly with the Director of the Division of Revenue by telephone at (859) 258-3340 or in person at the Division of Revenue, Second Floor, Switow Building, with access through the Government Center, 200 East Main Street, Lexington, Kentucky. The licensee may not use this Regulation to unreasonably delay audits or examinations where the agent or employee is carrying proper identification.

**Section 2.2 Power to examine books, papers and records**

The Commissioner or his designee is authorized and empowered to examine the relevant books, papers, records and copies of federal tax returns of any licensee, or supposed licensee, in order to verify the accuracy of any return made or, if no return was made, to ascertain the license fee due, if any.

**Section 2.3 Licensee to furnish opportunity for examinations**

Every licensee or supposed licensee is required after notice of not less than ten (10) days to furnish to the Commissioner, or his designee, the means, facilities and opportunity to conduct the examinations, investigations and audits authorized in Section 2.2 above.

**Section 2.4 Power to examine under oath/compel production of records**

To the extent that any officers empowered to administer oaths in this Commonwealth are permitted to so order, the Commissioner or his designee is empowered to

- (1) Order any person presumed to have knowledge of the facts to appear before him.
- (2) Examine such person, under oath, concerning all returns and transactions relating to alleged wages and/or net profits.
- (3) Compel the production of books, papers, records and copies of federal tax returns reasonably related to such wages or net profits.

**Section 2.5 Commissioner authorized to assess and collect underpayment; credit or refund for overpayment**

If as a result of an investigation conducted by the Commissioner or his designee a return is found to be incorrect, the Commissioner or his designee is authorized to assess and collect any underpayment of license fee withheld at the source or any underpayment of license fee owing by any licensee payer, with respect to employee wages or net profits, or both. In the event such an investigation reveals an overpayment, such amount may be used to offset future license fee liabilities of the licensee or refunded. If no return has been filed, and a license fee is found to be owing, the fee actually owing may be assessed and collected with or without the formality of obtaining a delinquent return from the licensee. See Regulation 13-10, Section 1.1(A) regarding the period of limitation for assessments of additional license fee, credits and refunds.

**Section 2.6 Information obtained during audits to be kept confidential**

Occupational license fee returns, and all audits connected therewith, are confidential. Any information gained by the Commissioner or his designee, or by any other official or agent of the Urban County Government as a result of any returns, investigations, hearings or verifications required or authorized shall be held confidential, except for (1) in accordance with proper judicial order, (2) in the exchange of occupational license fee information with other government units with whom the Urban County Government has exchange of information agreements for purposes of license fee compliance, or (3) as otherwise provided by law.

**Section 3.1 Effective date**

These Regulations are effective for returns due on and after January 1, 2001 except as otherwise expressly provided.

**Section 4.1 Applicability**

Except as otherwise provided by law, these Regulations shall be generally applicable to all persons required by law to pay any license fee or tax which the Urban County Government is duly designated to collect, whether said license fee is required to be paid on his own wages or net profits, on his employee's wages, or pursuant to one or more of the special licenses established in Article II, Section 13-13 of the Ordinance.

**Section 5.1 Inspection and copies of regulations**

These Regulations, together with all amendments and supplements thereto and all changes therein, shall be on file with the Commissioner and shall be open to public inspection. Copies thereof, so far as possible, will be available upon request to all licensees and their representatives at reasonable cost. Written inquiries regarding the

Ordinance, the Regulations, or license fee liability should be directed to the Commissioner or the Director, Division of Revenue, at 200 East Main Street, Lexington, KY 40507. Telephone inquiries may be directed to the Commissioner at (859) 258-3300 or to the Division of Revenue at (859) 258-3340.

**REGULATION 13-4 WHO MUST OBTAIN; BASIS OF COMPUTATION**

**Section 1.1 License fee on wages and net profits distinguished**

The occupational license fee is measured by 2.25% of all wages of a resident or nonresident who is an employee. The occupational license fee is measured by 2.25% of the net profits of a resident or nonresident business, partnership, fiduciary, corporation, other association, sole proprietor, or natural person performing activities as an independent contractor.

In summary, the license fee is measured as indicated in the table below.

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<b>CLASS OF LICENSEE</b>	<b>LICENSE FEE IMPOSED</b>
<b>Employees regardless of residency status</b>	<b>2.25% of wages</b>
<b>Corporations, partnerships, fiduciaries or other associations regardless of residency status</b>	<b>2.25% of net profits</b>
<b>Sole proprietors or independent contractors regardless of residency status</b>	<b>2.25% of net profits</b>

Although this wage/net profits license fee is authorized by KRS 67A.060, KRS 92.280 and KRS 92.281 as a single fee, there are important distinctions between the license fee on wages and the license fee on net profits. A clear understanding of these distinctions is important to every licensee and every accountant or attorney who has dealings with the Urban County Government. The reader who bears in mind the following points will be greatly aided in understanding these Regulations.

- (A) The license fee on wages is imposed on employees only. All others pay the license fee on net profits.
- (B) There is no license fee on wages which are not attributable to activities within the Urban County, or on net profits which are not attributable to the Urban County. However, to determine the sum attributable to the Urban County for purposes of imposition of license fee, the licensee's total wages as defined in Regulation 13-4, Section 2 or net profits as defined in Regulation 13-4, Section 3 are subjected to an apportionment formula. For a discussion of apportionment of wages when an employee's activities are performed both inside and outside the Urban County, see Regulation 13-4, Section 2.6. For a discussion of the apportionment formula applicable to the net profits of businesses, trades, occupations, professions, enterprises and other activities which operate both inside and outside the Urban County see Regulation 13-4, Section 3.12.
- (C) The burden of obtaining the Urban County Government occupational license account number is on all persons engaged in a business, trade, occupation, profession, enterprise or other activity in any capacity other than that of an employee (whether or not such persons actually have net profits). Employers are required to file with the Urban County Government on behalf of their employees. The employee is not required to file with the Urban County Government unless (1) the employer fails to properly withhold the license fee from the employee's wages or (2) the employee has occupational income other than wages.
- (D) No person shall be exempt from the application of the occupational license fee except if
  - (1) Specifically excluded or exempted by state or federal law, or

- (2) Specifically excluded by the Ordinance or by these Regulations.
- (E) Provisions for license fees on wages are considered in Regulation 13-4, Section 2, and provisions for license fees on net profits are considered in Regulation 13-4, Section 3.

### **Section 2.1 Occupational license fee on wages**

Pursuant to the authority vested in it by Section 181 of the Kentucky Constitution, KRS 67A.060, KRS 92.280 and KRS 92.281, the Urban County Government has imposed an occupational license fee measured by 2.25% of all wages of a resident or nonresident employee from businesses, trades, occupations, professions and other activities in the Urban County.

### **Section 2.2 Compensation subject to the occupational license fee - General**

As set forth in Section 13-1(34) of the Code of Ordinances the license fee required to be withheld on an employee's wages by the employer and remitted to the Urban County Government includes a license fee on, "All amounts paid to an employee, whether paid in cash or otherwise, and whether received directly or constructively, which are required to be reported as wages, tips, or other compensation for federal income tax purposes adjusted as follows:

- (A) plus all amounts contributed to any retirement, profit sharing, or deferred compensation plan, which are tax deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including, but not limited to salary reduction arrangements under Sections 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h) or 457 of the Internal Revenue Code, including mandatory and/or one time irrevocable elections described in IRC Section 403(b)(12),
- (B) plus all amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction and/or any other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code including, but not limited to Section 125 and 132 arrangements."

### **Section 2.2.1 Compensation subject to the occupational license fee - Specific**

Compensation subject to the occupational license fee as set forth under Section 2.2 of this Regulation includes, but is not limited to, the following:

- (A) **Salaries, bonuses or incentive payments** - Salaries, bonuses or incentive payments paid to an individual:
  - (1) As an officer, employee or agent of a corporation (including a non-profit corporation);

- (2) As an officer, employee or agent (as distinguished from a partner or member) of a partnership, limited partnership, or any other form of unincorporated enterprise owned by more than one person;
  - (3) As an officer, employee or agent (as distinguished from the proprietor) of a business, trade or profession conducted by an individual owner;
  - (4) As an officer, employee or agent (whether elected or appointed) of a governmental entity, agency, arm, authority, board, body, branch, bureau, department, division or section or of a corporation created and owned or controlled by the government entity or any of its agencies, or those of any foreign country or dependency except those enlisted or commissioned in the military service;
  - (5) As an officer, employee or agent of any other business or entity.
- (B) **Wages, bonuses or incentive payments** - Wages, bonuses or incentive payments paid to an individual:
- (1) Whether based upon hourly, daily, weekly, semi-monthly, monthly, quarterly, annual, unit of production, piece-meal, or other rates; and
  - (2) Whether paid by an individual, corporation, partnership, non-profit entity, other association, fiduciary, governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit, or any business or other entity.
- (C) **Commissions** - Commissions paid to an employee by his employer for services rendered, including any amounts received as a drawing account exceeding the commission amount.
- (D) **Fees** - Fees paid to an employee for services rendered, including fees paid to a director or officer of a corporation.
- (E) **Vacation leave, sick and accident leave, and holiday leave payments** - Vacation, sick and accident, and holiday leave payments to an employee pursuant to an employer's wage or salary continuation plan during periods of absence by an employee from work, unless exempted under Section 2.3 of this Regulation.

For purposes of this Section the term "sick and accident leave" shall mean any amount which:

- (1) is paid to an employee pursuant to a plan
  - (a) to which the employer is a party, and

- (b) does not adequately shift the insurance risk to an unaffiliated third party, as determined by IRS Regulation Section 31.3401(a)-1(b), and
- (2) constitutes remuneration or a payment in lieu of remuneration for any period during which an employee is temporarily absent from work on account of sickness or personal injuries.

Note: If the payments are considered to be made to an unaffiliated third party see Section 2.3(A) of this Regulation.

- (F) **Contributions to “flexible benefit plans” or “cafeteria plans”** - Payments made by salary reduction or any other payment method to arrangements, sometimes referred to as cafeteria plans, flexible benefit plans or mini-flex plans, or any other benefit plans, which provide for employees to elect to reduce their federal taxable compensation to pay for benefits such as hospitalization, group term life insurance, group disability insurance, etc., not otherwise paid for by the employer.
- (G) **Expense accounts** - Sums allowed and paid by employers to employees for expenses, which sums are required to be recognized as wages for federal income tax purposes.
- (H) **Moving expense allowances and reimbursements** - Amounts paid employees for moving expense allowances and reimbursements in connection with a work-related move **into** Fayette County. See Regulation 13-10, Section 2.1 regarding refunds of license fee withheld on certain moving expenses.
- (I) **Life insurance premiums for coverage in excess of \$50,000** - Life insurance premiums for coverage in excess of \$50,000, where premiums are paid by the employer.
- (J) **Non-cash fringe benefits** - Non-cash fringe benefits received by an employee to the extent that such benefits are taxable for federal income tax purposes.
- (K) **Property and services received as compensation** - The fair market value of property or services received as compensation by an employee and paid by the employer, including board and lodging and similar items where such board and lodging is considered part of the compensation paid and is not afforded for the convenience of the employer per IRC Section 119.
- (L) **Separation payments** - Payments and other inducements made to an employee by an employer at the time of a voluntary or an involuntary separation, including dismissal, of the employee from the service of the employer.
- (M) **Payments for services rendered by students** - Stipends, honorariums, grants and other payments made to students to the extent that such payments are made for services rendered by the student and an employer/employee relationship exists between the payor and the student.



- (N) **Other income** - All other income paid by an employer to an employee for the performance of any activity subject to the license fee which is not expressly exempt (see Section 2.3 below), unless such income is to be reported and a net profits license fee paid thereon under the provisions of Section 3 of this Regulation.

### **Section 2.3 Compensation not subject to the occupational license fee**

- (A) **Disability payments** - Payments made to an employee under a disability insurance plan which meet one or more of the following criteria:
- (1) The payments are made by a third-party payor, which bears an insurance risk as determined by IRS Regulation Section 31.3401(a)-1(b) .
  - (2) The payments are for “permanent and total disability” as defined by IRC Section 22(e)(3).
  - (3) The payments are for the loss of limb or disfigurement of an employee as set forth in IRC Section 105(c)(1) and the payments are made without regard to the amount of time an employee is absent from work.
- (B) **Unemployment compensation** - Unemployment compensation payments made by any governmental agency.
- (C) **Worker’s compensation** - Amounts received by employees under the Worker’s Compensation Act as a compensation for disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability.
- (D) **Allowances and reimbursement for expenses** - Sums allowed and paid by an employer to an employee for expenses necessarily and actually incurred by the employee in the direct performance of his activities, including meal and lodging allowances, if the employee is not required to include such receipts as income on his federal income tax return.
- (E) **Strike benefits** - Strike pay benefits paid from a fund which is established and/or replenished, in whole or in part, from an employee’s wages.
- (F) **Kentucky National Guard** - Compensation paid members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training (because such income is expressly exempted from the imposition of license fee by KRS 92.300).
- (G) **Student grants** - Stipends, honorariums, grants and other payments made to students to the extent that such payments are conditioned only upon the recipient’s pursuit of studies and/or participation in athletic or other intercollegiate competition, and scholarships and other non-cash fringe benefits received by

duly registered students from the school, college or university in which they are enrolled.

- (H) **Exemptions afforded by treaty** - Any wages paid to a foreign national to the extent that such payments are exempt from state and local taxation by a treaty of the United States.
- (I) **Payments to non-resident military personnel** - Payments to non-resident military personnel exempt from state and local taxation under the Soldiers and Sailors Federal Relief Act (50 USCA 574).
- (J) **Occasional entry** - Wages paid an employee who performs the duties for which he is employed entirely outside the Urban County, but who spends two (2) hours or less per week or one (1) week or less per year within the Urban County for purposes of reporting, receiving instructions, etc., incidental to his duties outside the Urban County.
- (K) **Precinct workers** – Compensation paid to employees for election training or work at election booths in state, county, and local primary, regular, or special elections within the Urban County.
- (L) **Additional information** - See Regulation 13-6 for additional information on exemptions.

#### **Section 2.4 Tip income**

See Section 3.13(D) of this Regulation 13-4.

#### **Section 2.5 Stock options**

- (A) **Qualified/Non-qualified** - Stock options will be evaluated and classified as qualified or non-qualified pursuant to Internal Revenue Code Section 421, and proceeds shall be deemed wages subject to the occupational license fee at the time the income is includable on the federal Form W-2 for federal income tax purposes. A capital gain resulting from a stock option transaction is not subject to occupational license fee.
- (B) **Apportionment** - Stock options received for activities within the Urban County shall be apportioned pursuant to Section 2.6 of this Regulation. The apportionment shall be made using the percentage for the year in which the option is includable on the federal Form W-2.

#### **Section 2.6 Apportionment of wages for activities both inside and outside the Urban County**

- (A) Wages are deemed to be allocable to the Urban County when the activities to which they are attributable were performed or rendered in the Urban County regardless of where the payment was made or received.

- (B) Wages attributable to activities both inside and outside the Urban County shall be subject to the occupational license fee on wages in the same proportion that the activities within the Urban County bear to total employment time.
- (C) The duties imposed on employers pursuant to Section 13-7 of the Ordinance shall apply with respect to wages paid employees who work both inside and outside the Urban County. Urban County wages shall be computed by multiplying the total wages paid each said employee by a fraction whose numerator is the time spent on the job in the Urban County and whose denominator is the total time spent on the job by the employee inside and outside the Urban County and shall treat the result as the wages subject to the occupational license fee imposed by the Urban County Government. Time spent "on the job" includes any time an employee is actually performing activities on behalf of his employer. Time spent "on the job" shall not include time for which an employee is compensated for sick and accident leave pay, vacation leave pay, holiday leave pay, compensatory pay or other similar compensation.
- (D) Every employer with one or more employees employed both inside and outside the Urban County shall require each said employee to keep accurate records of time spent inside and outside the Urban County. These records must be available for inspection by the Commissioner or his designee.
- (E) Pursuant to Section 13-7 of the Ordinance, every employer with one or more employees employed both inside and outside the Urban County shall remit quarterly or, if applicable, monthly the amount of license fee withheld. For purposes of the required withholding of occupational license fee and of the required quarterly (or monthly) remittances of license fee withheld, employers are permitted to estimate the portion of an employee's time spent inside and outside the Urban County on the basis of an employee's prior year experience. Provided, however, that if there is a substantial and continuing change in assignment respecting the place of an employee's job performance, the employer shall revise the estimate of the portion of the employee's time spent within the Urban County to conform with the employee's current performance. Provided, further, that the employer shall annually reconcile the license fee actually due on each said employee's wages based upon the employee's actual time spent on the job inside and outside the Urban County.
- (F) **Apportionment of sick and accident leave pay, vacation leave pay, holiday leave pay, compensatory pay and other pay**

Compensation received by an employee for accrued unused vacation leave, unused holiday leave, unused sick and accident leave, compensatory time or other payment made under an employer's wage or salary continuation plan during any period of absence from work shall be multiplied by the fraction determined pursuant to Paragraphs (A) through (C) of this Section applicable for the year the compensation is includable in wages subject to occupational license fee.

**(G) Apportionment of separation pay**

Compensation received by an employee for separation pay shall be multiplied by the fraction determined pursuant to Paragraphs (A) through (C) of this Section applicable for :

- (1) the year the compensation is includable in wages subject to occupational license fee if the year in which the payment is received is a full calendar year, or
- (2) if the year in which the payment is received is less than a full calendar year the portion of the year that the compensation is includable in wages subject to occupational license fee plus the entire previous calendar year.

**(H) Exception to apportionment method**

If it is impossible to apportion the compensation as provided above because of the peculiar nature of the activities of an employee, or of the unusual basis of compensation, apportionment shall be made in accordance with the facts. Each employer or employee seeking an exception under this paragraph shall furnish the Commissioner a detailed statement of facts prior to the due date of the return covering the first period for which an exception to the apportionment method is sought.

**Section 3.1 Occupational license fee on net profits**

Pursuant to the authority vested in it by Section 181 of the Kentucky Constitution, KRS 67A.060, KRS 92.280 and KRS 92.281, the Urban County Government has imposed an occupational license fee measured by 2.25% of the net profits of resident and nonresident corporations, partnerships, fiduciaries, sole proprietors (including natural persons performing activities as independent contractors) and other enterprises engaged in any business, trade, occupation, profession or other activity in the Urban County. The net profits of an enterprise which conducts activities both inside and outside the Urban County shall be apportioned as provided in Section 3.12 of this Regulation .

**Section 3.2 Sufficient nexus test**

- (A) A person practicing a business, profession, trade, occupation, enterprise or other activity shall be deemed to be subject to the net profits license fee if the person has a nexus with the Urban County sufficient to justify the imposition of the license fee in a manner consistent with the commerce clause and the due process clause of the Fourteenth Amendment to the Constitution of the United

States and other applicable federal law.<sup>1</sup> If the person has a sufficient nexus with the Urban County, but also has a sufficient nexus with other counties of Kentucky, other states of the United States, and/or other nations, then the net profits derived from activities conducted within the Urban County shall be determined by the apportionment formula set out in Section 3.12 of this Regulation.

- (B) The term nexus shall be defined in the context of applicable case law<sup>2</sup>. In general, a nexus shall be defined as a minimum connection between a person/business entity and the Urban County brought about when the person/business entity purposefully avails itself of the privileges and protections of the Urban County while doing business or practicing a trade, occupation, profession, enterprise or other activity.
- (C) Without excluding by implication other activities which may create a nexus, any of the following connections between a person/business entity and the Urban County shall normally establish a sufficient nexus:
  - (1) Location of a place of business in the Urban County;
  - (2) Frequent and continuing entry into the Urban County in the course of business by an officer or employee of a business;
  - (3) Delivery of goods to residents in the Urban County other than through the mails or by common carrier;
  - (4) Contracting to sell goods or services in the Urban County; or
  - (5) Conducting substantial business activity in the Urban County leading to a contract to buy or sell goods or services.
- (D) The absence of a branch, office, store, warehouse or other permanent place of business within the Urban County shall not exempt or render non-licensable the net profits of any business, trade, profession, occupation, enterprise or other activity on which a license fee is imposed by the Ordinance.
- (E) Any person engaged in the business of transporting people, stock, goods or documents both inside and outside the Urban County will be deemed to be subject to the occupational license fee imposed on net profits if the person has a nexus with the Urban County sufficient to justify the imposition of the license fee.

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<sup>1</sup> See for example, *Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 272-273, 98 S. Ct. 2340, 2344, 57 L.Ed.2d 197 (1978); *National Bellas Hess, Inc., v. Department of Revenue*, 386 U.S. 753, 756, 87 S. Ct. 1389, 1391, 18 L.Ed.2d 505 (1967); *Norfolk & Western R. Co. v. Missouri Tax Comm'n*, 390 U.S. 317, 325, 88 S. Ct. 995, 1000, 19 L.Ed.2d 1201 (1968).

<sup>2</sup> *Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 272-273, 98 S. Ct. 2340, 2344, 57 L.Ed.2d 197 (1978); *National Bellas Hess, Inc., v. Department of Revenue*, 386 U.S. 753, 756, 87 S. Ct. 1389, 1391, 18 L.Ed.2d 505 (1967); *Exxon Corporation v. Wisconsin Department of Revenue*, 100 S. Ct. 2109; 447 U.S. 207; 65 L. Ed. 2d 66 (1980).

- (F) All corporations, partnerships, fiduciaries and associations with a nexus in the Urban County pay the full 2.25% net profits license fee regardless of whether individual officers, directors, partners or associates have a nexus with the Urban County.

### **Section 3.3 Unitary business considerations**

- (A) If the licensee has a sufficient nexus with the Urban County to justify the imposition of the net profits license fee, the entire net profits shall be apportioned in accordance with the provisions of Section 3.12 of this Regulation. It shall not be necessary that there be an independently established nexus between the Urban County and each activity from which the licensee has derived income subject to apportionment.
- (B) The net profits of a sole proprietorship, corporation, fiduciary, partnership or other association shall be subject to apportionment and license fee based on unitary business principles.<sup>3</sup> Those principles dictate that the income of a sole proprietorship, corporation, partnership or other association arising from the licensee's investments in another legal entity be included in the Net Profits License Fee Return unless the separate legal entity is not part of a "unitary business" with the licensee. Those principles also prohibit segregation of the net profits reported for federal income tax purposes into two or more "divisions" or "profit centers" in an attempt to pay a license fee only on the division and/or profit center with the Urban County nexus.
- (C) The Commissioner or his designee may require such information, in addition to the return provided for in Regulation 13-8, as may be deemed necessary to ascertain whether or not net profits are properly allocated to the Urban County Government pursuant to this Section. If the Commissioner or his designee finds net profits are not properly allocated to the Urban County Government, the Commissioner may require the filing of either a consolidated or separate return or require adjustment of transactions so as to produce a fair and proper allocation of net profits to the Urban County Government.

If a licensee believes the requirements of this Section do not result in a fair and proper allocation of the net profits due to the peculiar or unusual nature of the business involved, he shall submit a statement seeking an exception to this Section, furnishing a detailed statement of facts explaining the basis of the exception sought. In each case, allocation and apportionment shall be made in accordance with the facts. The Commissioner or his designee may adjust the

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<sup>3</sup> *Exxon Corporation v. Wisconsin Department of Revenue*, 100 S. Ct. 2109; 447 U.S. 207; 65 L. Ed. 2d 66 (1980); *Mobil Oil Corporation v. Commissioner of Taxes of Vermont*, 100 S. Ct. 1223; 445 U.S. 425; 63 L. Ed. 2d 510 (1980); and *Container Corp. of America v. Franchise Tax Board*, 103 S. Ct. 2933; 463 U.S. 159; 77 L. Ed. 2d. 545 (1983).

apportionment percentage of any licensee to fairly and accurately reflect business activity within the Urban County. Once permission to use a different method in calculating the net profits license fee has been granted, a licensee must continue to use the alternate method until given permission to change by the Commissioner or his designee.

### **Section 3.4 Exemptions to license fee on net profits**

The following classes of businesses are exempt from payment of the net profits license fee:

- (A) No net profits license fee is imposed upon or collected from and no filing is required of any bank, trust company, combined bank and trust company or combined trust, banking and title business in Kentucky, or upon any state or federally chartered savings and loan association because these entities are expressly exempted from the license fee by KRS 92.300.
- (B) No net profits license fee is imposed by the Urban County Government on insurance companies. The license fee on insurance premiums is authorized by KRS 91A.080 and is imposed in lieu of, and not in addition to, the Urban County Government's net profits license fee.
- (C) No net profits license fee is imposed on and no filing is required of persons engaged in the business of conducting a race track because this business is exempted by KRS 137.190.
- (D) No net profits license fee is imposed on and no filing is required of the usual activities of boards of trade, chambers of commerce, trade associations or unions, community chest funds or foundations; corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes, or for the prevention of cruelty to children or animals; or clubs or fraternal organizations operated exclusively for social, literary, educational, or fraternal purposes where no part of the income or receipts of such units, groups, or associations inures to the benefit of any private shareholder or individual. To qualify for this exemption, the organization must submit satisfactory proof of their exempt status for federal income tax purposes.
- (E) No net profits license fee is imposed on and no filing is required of companies doing business in the Urban County "that pay an ad valorem tax and a franchise tax" as stipulated by KRS 91.300. The exemption from the Urban County Government license fee for companies that "pay an ad valorem tax and a franchise tax" refers only to companies that are subject to the public service corporation property tax as set forth at KRS 136.120. This tax is applied only to utility companies and to certain common carrier companies.

To be entitled to this exemption, companies are required to show that they are actually assessed as public service companies by the Kentucky Revenue

Cabinet and that they in fact pay an ad valorem tax based on this assessment. Licensees whose businesses are predominantly 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 Urban County.

**Section 3.5 Common carriers and others engaged in interstate commerce are subject to net profits license fee**

Common carriers and others who have a sufficient nexus with the Urban County are subject to net profits license fee on a fairly apportioned share of their net profits even though engaged in interstate commerce. See Section 3.2 of this Regulation for a discussion of nexus.

**Section 3.6 Unincorporated business**

The license fee imposed on the net profits of a partnership, association, joint venture, or other unincorporated business entity owned by two or more persons shall generally be upon said entity rather than the individual members or owners thereof, but the license fee imposed on the net profits imposed on an unincorporated entity owned by one person is upon the individual owner.

**Section 3.7 Determination of net profits in general**

- (A) The provisions in the definitions of net profits discussed in this Section have general application to all types of licensees.
  - (1) **Net Profit** – As set forth in Section 13-1(25) of the Code of Ordinances means, “the net profit from the operation of a business or enterprise after provision for all costs and expenses incurred in the conduct thereof and shall be computed in accordance with the Internal Revenue Code except as specified” in Sections 3.7 through 3.11.1 of this Regulation and subject to such other adjustments as may be required by this chapter or otherwise by law.
  - (2) **Expenses associated with income not subject to license fee are not deductible** - Any expenses attributable to income not subject to the occupational license fee shall not be allowed as deductions from the remaining net profits. In the absence of records showing the actual expenses attributable to income not subject to the license fee, the minimum shall be all expenses up to the amount of income not subject to the license fee.
  - (3) **Federal tax credit in lieu of deduction** - Business expenses for which a licensee has, for federal income tax purposes, elected a credit in lieu of a deduction may be deducted from net profits. Some current examples of federal credits are the investment tax credit, foreign tax credit, jobs credit, and the rehabilitation expenses credit. The deduction for the expenses is



allowable in the year(s) the expenses would have been deductible for federal income tax purposes had the credit not been taken.

- (4) **State and local taxes based on income** - Corporations, partnerships and sole proprietors may not deduct state or local taxes or license fees based on income. State or local franchise, license or gross receipts taxes or other taxes not based on income, but are costs of doing business, are allowed as a deduction in determining net profits.
- (5) **Net operating losses** - Net operating loss carrybacks and carryforwards allowed under IRC Section 172(a) are not deductible in determining net profits.
- (6) **Capital gain income** – Except as provided in Section 3.13(B)(5), capital gain income related to business activity shall be subject to the license fee and be reported in the same manner as for federal income tax purposes.
- (7) **Capital gains arising from sale of business** - Except as provided in Section 3.13(B)(5), gains realized from the sale of a business are subject to the license fee if the person receiving the gain has been engaged in the business within the Urban County at any time. The license fee on the gain shall be included in the net profits of the person receiving the gain for the year in which the gain is recognized.
- (8) **Deduction for profits from Kentucky sale of alcoholic beverages** - Net profits from the sale of alcoholic beverages in Kentucky are exempt from occupational license fee. To the extent that a licensee's net profit is from the sale of alcoholic beverages within Kentucky, a deduction may be taken from the licensee's total net profits derived from all sources. This deduction shall be calculated by dividing receipts from Kentucky alcoholic beverage sales by receipts from total sales (whether of alcoholic beverage products or otherwise). This percentage is then multiplied by the licensee's net profits to determine the deduction available to the licensee for sale of alcoholic beverages in Kentucky. A licensee shall attach a schedule detailing these calculations to the Net Profits License Fee Return.

In the case of sole proprietors with more than one distinct business activity, the alcoholic beverage deduction shall apply only to those businesses which sell alcoholic beverages.

- (9) **Deduction for non-business interest and dividend income** – Non-business interest and dividend income is allowed as a deduction in determining net profits. Whether income is classified as passive income by the IRS does not determine business or non-business income for occupational license fee purposes. Business interest and dividends are subject to the occupational license fee and are therefore not deductible in determining net profits. Examples of business income include, but are not

limited to, income in the form of interest from accounts receivable, interest from leasing or financing arrangements or dividends from subsidiaries.

- (10) **Deduction for Tobacco Settlement Funds** - As set forth in Section 13-4(d) of the Code of Ordinances, "Funds received from the state as a share of the tobacco settlement funds to be paid to farmers is exempt from inclusion in net profits for the purpose of calculating the net profits which are subject to this occupational license fee as follows:
- (1) Any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;
  - (2) Any amount received from the secondary settlement fund, referred to as "Phase II, " established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement; and
  - (3) Any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction of the tobacco quota allotted from the 1998 to the 1999 calendar year as provided under Public Law 106-78, Title 8, Section 803."

**Section 3.8 Determination of net profits for corporations other than S corporations**

- (A) As set forth in Section 13-1(25) of the Code of Ordinances, "For corporations other than S corporations net profits shall mean a licensee's "taxable income" for federal income tax purposes adjusted as follows:
- (1) plus any sum deducted for federal income tax purposes as net operating loss carryforwards or carrybacks,
  - (2) plus any deductions for federal income tax purposes for state or local taxes or license fees based on income,
  - (3) plus any expense attributable to income not subject to the occupational license fee,
  - (4) plus the total deduction for dividends paid and the Section 857(b)(2)(E) deduction used in the determination of real estate investment trust taxable income,
  - (5) less interest on U.S. obligations,
  - (6) less non-business interest and dividend income,

- (7) less the amount of foreign dividend gross-up under IRC Section 78,
  - (8) less the amount of Subpart F income included under IRC Section 951 but not actually received,
  - (9) less business expenses for which a licensee has, for federal income tax purposes, elected a credit in lieu of expenses.
- (B) Net profits are subject to such other adjustments as may be required by Urban County Government ordinance or otherwise by law.
- (C) Corporations may not attribute income to one or more sources within the Urban County and one or more sources outside the Urban County, but must apportion all net profits as required by Section 3.12 of this Regulation.
- (D) The corporation's annual Net Profits License Fee Return (Form 228) must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or other authorized officer. The name and title of said officer must be printed legibly or typed underneath the signature.
- (E) Copies of applicable federal schedules or their equivalent must be attached as evidence supporting a licensee's statement of income and expenses.
- (F) Corporations with business activity in the Urban County must file an annual net profits license fee return whether or not they have net profits from the business, trade, occupation, profession, enterprise or other activity in which they are engaged during the year.

### **Section 3.9 Determination of net profits for partnerships and S corporations**

- (A) As set forth in Section 13-1(25) of the Code of Ordinances, "For partnerships and S corporations net profits shall mean a licensee's "ordinary income" for federal income tax purposes adjusted as follows:
- (1) plus income passed through separately on the federal income tax return from a partnership to the partners or from an S corporation to the shareholders, including, but not limited to, guaranteed payments to partners, dividends qualifying for exclusion, net capital gains, gains from casualty or theft, IRC Section 1231 gains,
  - (2) plus any deductions for federal income tax purposes for state or local taxes or license fees based on income,
  - (3) plus any expense attributable to income not subject to the occupational license fee,
  - (4) less interest on U.S. obligations,
  - (5) less non-business interest and dividend income,

- (6) less the amount of foreign dividend gross-up under IRC Section 78,
  - (7) less the amount of Subpart F income included under IRC Section 951 but not actually received,
  - (8) less business expenses for which a licensee has, for federal income tax purposes, elected a credit in lieu of expenses,
  - (9) less business expenses passed through separately on the federal tax return from a partnership to the partners or from an S corporation to the shareholders including, but not limited to charitable contributions, expense deduction from recovery property pursuant to IRC Section 179, and special allocations passed through separately by the partnership to the partners or by the S corporation to the shareholders.
  - (10) and for purposes of this ordinance the following items when passed through separately to the partner or shareholder, when paid on behalf of the partners, or when paid on behalf of the shareholders: health and life insurance premiums, amounts contributed to a Keogh (HR-10) retirement plan, amounts contributed to a SEP as defined in Section 408(k) of the Internal Revenue Code, amounts contributed to any other self-employment retirement plan, amounts paid for self-employment taxes of a partner, shall not be deductible for purposes of determining net profit for partnerships and S corporations,
  - (11) and for purposes of this ordinance, the license fee is imposed on the partnership or S corporation, not the partner or shareholder.”
- (B) Net profits are subject to such other adjustments as may be required by Urban County Government ordinance or otherwise by law.
- (C) Partnerships and S corporations are considered separate entities for purposes of filing Net Profits License Fee Returns. No licensee is required or permitted to include in its income subject to the occupational license fee its share of any item of income or deduction from partnerships or S corporations with business activity in the Urban County (for partnerships or S corporations without business activity within Fayette County see Section 3.3 of this Regulation). Thus, for example, a corporation which owns an interest in a partnership which conducts business in the Urban County must exclude the net profits or loss of the partnership from its net profits or loss since the partnership would have separately filed a return and paid a license fee on its net profits.
- (D) A partnership’s annual Net Profits License Fee Return (Form 228) must be signed by a general partner, and the name of the general partner must be printed legibly underneath the signature. An S corporation’s annual Net Profits License Fee Return (Form 228) must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or other authorized officer.

The name and title of said officer must be printed legibly or typed underneath the signature.

- (E) Copies of applicable federal schedules or their equivalent must be attached as evidence supporting a licensee's statement of income and expenses.
- (F) Partnerships and S corporations with business activity in the Urban County must file an annual Net Profits License Fee Return whether or not they have net profits from the business, trade, occupation, profession, enterprise or other activity in which they are engaged during the year. Partnerships are required to file one annual Net Profits License Fee Return on behalf of all individual partners, and S corporations are required to file one annual Net Profits License Fee Return on behalf of all shareholders.

### **Section 3.10 Determination of net profits for sole proprietors**

- (A) As set forth in Section 13-1(25) of the Code of Ordinances, "For sole proprietors net profits shall mean a licensee's gross receipts or sales from his business, trade, occupation, profession, enterprise or other activity including, but not limited to, royalties, rental income and nonemployee compensation, less ordinary and necessary expenses of the business, trade, occupation, profession, enterprise or other activity such as defined as deductions for federal income tax purposes adjusted as follows:
  - (1) plus ordinary gains and capital gains from the sale of property used in a licensee's business, trade, occupation, profession, enterprise or other activity including, but not limited to Section 1231, 1245, and 1250 of the Internal Revenue Code,
  - (2) plus any sum deducted for federal income tax purposes as a net operating loss carryforward or carryback ,
  - (3) plus any deductions for federal income tax purposes for state or local taxes or license fees based on income,
  - (4) plus any expense attributable to income not subject to the occupational license fee,
  - (5) less ordinary losses and capital losses from the sale of property used in the licensee's business, trade, occupation, profession, enterprise or other activity,
  - (6) less business expenses for which a licensee has, for federal income tax purposes, elected a credit in lieu of expenses,
  - (7) and for purposes of this ordinance, contributions on behalf of the licensee to a Keogh (HR-10) retirement plan, amounts contributed to a SEP, as defined in Section 408(k) of the Internal Revenue Code, amounts contributed to any other self-employment retirement plan, amounts paid

for self-employment taxes of an individual owner shall not be deductible for purposes of determining the sole proprietor's net profit."

- (B) Net profits are subject to such other adjustments as may be required by Urban County Government ordinance or otherwise by law.
- (C) **Single return for two or more businesses; exception** - Sole proprietors, including single owner LLC's filing as sole proprietors for federal income tax purposes, may combine on a single Net Profits License Fee Return the net profits from two or more distinct businesses with activities within the Urban County. Businesses without activity in the Urban County shall not be included.
- (D) A sole proprietor must personally sign the Urban County Government return reporting said net profits.
- (E) Copies of applicable federal schedules or their equivalent must be attached as evidence supporting a licensee's statement of income and expenses.
- (F) A sole proprietor conducting a business, trade, occupation, profession, enterprise or other activity in the Urban County must file an annual Net Profits License Fee Return (Form 228) whether or not they have net profits from the activity, business, trade, occupation or profession in which they are engaged during the year.

### **Section 3.11 Determination of net profits for fiduciaries**

As set forth in Section 13-1(25) of Code of Ordinances, "The net profits of a fiduciary (estate or trust) which is engaged in a business activity in the Urban County is subject to the net profits license fee as is the net profits of any other business, trade, occupation, profession, enterprise or other activity. Income distribution deductions arising from distributions to beneficiaries of a trust or estate shall not be included in the trust's or estate's costs and expenses deducted from its income in determining the taxable income of the trust or estate subject to the occupational license fee on net profits."

#### **Section 3.11.1 Determination of net profits for limited liability companies**

As set forth in Section 13-1(25) of the Code of Ordinances, "a limited liability company shall have the same entity classification as that elected for IRS federal income tax filings".

**Section 3.12 Net profits apportionment**

**(A) Determination of net profits apportionment percentage**

This Section describes the method by which a licensee engaged in business both inside and outside the Urban County is to apportion its net profits. As discussed in this Section, the apportionment percentage is determined by a two-part formula using a “business receipts factor” and a “payroll factor”. The determination of the “business receipts factor” is discussed in Section 3.12(A)(3) and the determination of the “payroll factor” is discussed in Section 3.12(A)(4). The following outline is provided for the convenience of the reader.

**Outline of Section 3.12**

- (1) Net profits apportionment - Introduction and overview
- (2) Apportionment factors
  - (a) Business receipts factor
  - (b) Payroll factor
- (3) Determination of business receipts factor
  - (a) Definition of “business receipts”
  - (b) Receipts from the sale of tangible personal property
  - (c) Other Urban County business receipts
    - (i) Gross business receipts from the sale, lease, rental or other use of real property
    - (ii) Gross business receipts from rental, lease, licensing or other use of tangible personal property
    - (iii) Gross business receipts from the performance of services
    - (iv) Gross business receipts from the sale of intangible personal property
  - (d) Determination of business receipts factor - Particular classes of persons
    - (i) Persons engaged in transportation of goods or documents
    - (ii) Persons engaged in transportation of people

- (iii) Persons furnishing advertising
  - (iv) Loan companies
- (4) Determination of payroll factor
  - (a) Definition of "payroll"
  - (b) What is included in Urban County payroll
- (5) Computation of apportionment percentage
  - (a) Apportionment percentage formula
  - (b) Effect of absent factor
  - (c) Remedy for distorted apportionment percentage
  - (d) Records required



(1) **Net profits apportionment - Introduction and overview**

If the operations of a licensee are conducted both inside and outside the Urban County, then the extent to which its total net profits from all sources shall be considered as having been derived from activities within the Urban County (and hence being subject to the occupational license fee imposed by the Urban County Government) shall be determined by application of the business apportionment percentage to be determined by averaging the percentage of gross receipts and percentage of wages within the Urban County.

(2) **Apportionment factors**

(a) **Business receipts factor** - The business receipts factor is the percentage computed by determining the licensee's business receipts attributable to activities within the Urban County and dividing by the licensee's total business receipts.

(b) **Payroll factor** - The payroll factor is the percentage computed by determining the licensee's payroll attributable to activities within the Urban County and dividing by the licensee's total payroll.

(3) **Determination of business receipts factor**

(a) **Definition of "business receipts"**

Business receipts shall include all cash payments, the fair market value of all property and services received and all receivables from transactions and activities of the licensee's trade or business operations. Business receipts shall be computed on the cash or accrual basis in accordance with the method of accounting used for federal income tax purposes. Business receipts shall not include any item of income which is excluded from the licensee's net profits.

(b) **Receipts from the sale of tangible personal property**

Receipts within the Urban County shall include the sales of tangible personal property delivered to a purchaser within the Urban County, regardless of F.O.B. point or other conditions of sale, unless otherwise specified by the Ordinance or these Regulations.

**Example 1**

### **Property ordered from outside the Urban County**

Sales are attributable to activities within the Urban County when property is delivered to a purchaser within the Urban County even though the property is ordered from outside the Urban County.

*K Corporation, with inventory in Frankfort, Kentucky, sold \$100,000 of its products to a purchaser with branch stores in several locations, including the Urban County. The purchase order was placed by the purchaser's central purchasing department located in Louisville, Kentucky. Twenty-five thousand dollars of the purchase order was shipped directly to purchaser's branch store in the Urban County. The branch store in the Urban County is the "purchaser within the Urban County" with respect to \$25,000 of K Corporation's sales. Therefore, K Corporation has \$25,000 of business receipts within the Urban County.*

### **Example 2**

#### **Shipment terminating in the Urban County later transferred**

Sales are attributable to activities within the Urban County when property is delivered or shipped to a purchaser in the Urban County even though the property is later transferred by the purchaser to another location.

*L Corporation makes a sale to a purchaser who maintains a central warehouse in the Urban County, where all merchandise purchases are received. The purchaser reships the goods to its branch stores in other localities for sale. All products shipped to the purchaser's warehouse in the Urban County are property "delivered or shipped to a purchaser within the Urban County". Therefore, these are business receipts within the Urban County for L Corporation.*

### **Example 3**

#### **When property is physically delivered to a purchaser outside the Urban County**

Sales are not attributable to activities within the Urban County when property is delivered or shipped to a purchaser outside the Urban County.

*A new car dealer located within the Urban County sells used vehicles taken in trade to a wholesaler located in Frankfort, Ky. The new car dealer physically delivers these vehicles to the*

*Frankfort location using a commercial carrier service. These sales are not "in the Urban County".*

(c) **Other Urban County business receipts**

Business receipts from sales, other than sales of tangible personal property, are attributed to the Urban County as follows:

(i) **Gross business receipts from the sale, lease, rental or other use of real property**

Gross business receipts from the sale, lease, rental or other use of real property are in the Urban County if the real property is located in the Urban County. See also Section 3.13(B) of this Regulation.

(ii) **Gross business receipts from rental, lease, licensing or other use of tangible personal property**

Gross business receipts from rental, lease, licensing or other use of tangible personal property shall be attributable to the Urban County if the property is delivered within the Urban County .

(iii) **Gross business receipts for the performance of services**

Gross business receipts for the performance of services are attributable to the Urban County based on the time spent in performing such services in the Urban County. Time spent in performing services includes time spent in performing contracts or other obligations which gave rise to such gross business receipts.

(iv) **Gross business receipts from the sale of intangible personal property**

For persons whose business includes the sale of intangible personal property, gross business receipts from the sale of such property shall be attributed to the Urban County based on the time spent in selling such intangible personal property in the Urban County. Time spent in selling includes time spent in performing contracts or other obligations which gave rise to such sales.

(d) **Determination of business receipts factor - Particular classes of persons**

The following classes of persons have presented particular questions and/or difficulties with respect to determining their Urban County business receipts. The provisions of this Subsection (d) are established to set forth clearly which business receipts are attributable to activities within the Urban County for those particular classes of persons.

(i) **Persons engaged in transportation of goods or documents**

Receipts from the service of transporting goods or documents are attributable to the Urban County if 1) the party contracting with the licensee for the provision of such services is located within the Urban County; and 2) such goods or documents are placed in the control of the licensee at such location or are delivered to such location. With respect to goods or documents transported "C.O.D.", the "party contracting with the licensee" shall be deemed to be the party who placed the goods or documents in the control of the licensee.

(ii) **Persons engaged in the transportation of people**

The receipts of any licensee which arise from the service of transporting people shall be deemed to have arisen in the Urban County if the fee for the provision of such service is received within the Urban County.

(iii) **Persons furnishing advertising**

The receipts of any licensee which arise from advertising services are attributable to the Urban County as follows:

(1) printed media, radio and television broadcast advertising, 100% of advertising revenues received from customers whose principal places of business are in the Urban County and a percentage of advertising revenues received from customers whose principal places of business are outside the Urban County equal to the proportion of the licensee's audience/circulation which is within the Urban County.

(2) Billboard advertising, if the billboard is located within the Urban County.

(iv) **Loan companies**

Business receipts of any licensee doing business as a loan company shall be receipts derived from loans negotiated through offices in the Urban County.

**(4) Determination of payroll factor**

**(a) Definition of “payroll”**

Payroll shall include all wages paid to or payable to employees. Payroll shall be computed on the cash or accrual basis in accordance with the method of accounting used for federal taxable income.

**(b) What is included in Urban County payroll**

Payroll within the Urban County shall include all wages attributable to activities within the Urban County as defined in Section 2 of this Regulation.

**(5) Computation of apportionment percentage**

**(a) Apportionment percentage formula**

The apportionment percentage is determined by adding together the receipts factor and the payroll factor then dividing the total by two (2). (However, see Paragraph (b) below in the event one factor is absent.) This apportionment percentage is applied to the entire net profits of the licensee to arrive at subject net profits. Occupational license fee is computed by multiplying subject net profits by 2.25%.

**Example 4**

**Apportionment calculation with both factors present**

*J Company reported a total of \$2,000,000 of receipts and \$1,000,000 of payroll for the year 1997. J Company’s net profits for 1997 were \$800,000. Receipts of \$500,000 were derived from operations in the Urban County. Payroll within the Urban County was \$100,000. The Urban County apportionment percentage is 17.5%, and J Company’s net profits upon which the Urban County Government net profits license fee is measured is \$140,000, calculated as follows.*

<b>Urban County Amount</b>	/	<b>Total Amount</b>	=	<b>Urban County Factor</b>

<b>Receipts</b>					
	\$500,000	/	\$2,000,000	=	25.0000%
<b>Payroll</b>					
	\$100,000	/	\$1,000,000	=	10.0000%
<b>Total of (2) factors</b>				=	35.0000%
<b>Divided by number of factors used</b>				/	<u>2</u>
<b>Urban County apportionment percentage</b>				=	17.5000%

<b>Total Net Profits</b>		<b>Apportionment Percentage</b>	=	<b>Subject Net Profits</b>
	\$800,000	x	17.5000%	= \$140,000

(b) **Effect of absent factor**

If either the business receipts factor or the payroll factor is missing the remaining factor is the apportionment percentage. A factor is not deemed to be absent merely because none of the licensee's receipts arose inside the Urban County or none of the wages paid by the licensee were attributable to activities inside the Urban County.

**Example 5**

**Apportionment absent one factor**

*Ms. C is a sole proprietor who has no employees and performs all the services. Ms. C reported \$1,000,000 of total receipts for 1997, \$500,000 of which were derived from operations in the Urban County. The payroll factor is deemed to be missing because Ms. C has no payroll. Ms. C's total net profits are \$400,000. The Urban County apportionment percentage is 50%, and Ms. C's net profits upon which the Urban County Government net profits license fee is measured is \$200,000, calculated as follows.*

<b>Urban County Amount</b>		/	<b>Total Amount</b>	=	<b>Urban County Factor</b>
<b>Receipts</b>					

\$500,000	/	\$1,000,000	=	50.0000%
<b>Divided by number of factors used</b>				/ <u>1</u>
<b>Urban County apportionment percentage</b>				= 50.0000%

<b>Total Net Profits</b>	<b>x</b>	<b>Apportionment Percentage</b>	<b>=</b>	<b>Subject Net Profits</b>
\$400,000	x	50.0000%	=	\$200,000

### Example 6

#### Apportionment with zero percent for one factor

G Company operates a factory within the Urban County which processes certain items which are shipped to another factory operated by the company outside the Urban County for completion of the finished product. There are no receipts from sales or services rendered within the Urban County. In 1997, the payroll at the Urban County plant was \$400,000. G Company's total 1997 payroll, including the Urban County plant's payroll, was \$4,000,000. Its sales for the year were \$5,000,000. The apportionment percentage is 5%, calculated as follows.

<b>Urban County Amount</b>	<b>/</b>	<b>Total Amount</b>	<b>=</b>	<b>Urban County Factor</b>
<b>Receipts</b> \$-0-	/	\$5,000,000	=	00.0000%
<b>Payroll</b> \$400,000	/	\$4,000,000	=	10.0000%
<b>Total of (2) factors</b>				= 10.0000%
<b>Divided by number of factors used</b>				/ <u>2</u>
<b>Urban County apportionment percentage</b>				= 5.0000%

*In this example, the mere fact that the receipts factor is zero (because receipts are found to be situated entirely outside the Urban County) does not exclude the factor from the formula.*

(c) **Remedy for distorted apportionment percentage**

If a licensee believes the requirements of this Section do not result in a fair and proper allocation of net profits due to the peculiar or unusual nature of the business involved, he shall submit a statement seeking an exception to this Section, furnishing a detailed statement of facts explaining the basis of the exception sought. In each case, allocation and apportionment shall be made in accordance with the facts. The Commissioner or his designee may adjust the apportionment percentage of any licensee to fairly and accurately reflect business activity within the Urban County. Once permission to use a different method in calculating the net profits has been granted, a licensee must continue to use the alternate method until given permission to change by the Commissioner or his designee.

(d) **Records required**

Every licensee subject to the apportionment percentage shall keep accurate records sufficient to support each apportionment factor. These records must be available for inspection by the Commissioner or his designee.

**Section 3.13 Special cases**

(A) **Introduction**

The following special cases have presented particular questions and/or difficulties with respect to liability for and/or collection of the occupational and net profits license fee. The provisions of this Section are established to set forth clearly the liability in these special cases and to outline the procedures by which the Urban County Government shall collect the license fees.

(B) **Income from the rental of real property**

- (1) The definition of real property, as the term is used in this Regulation, shall include commercial property, residential property, farm property, and any and all other types of real estate.
- (2) Rental income received by a licensee is subject to license fee only if and to the extent that the rental, ownership, management or operation of the real estate from which such rental income is derived (whether so rented,



managed or operated by the licensee individually or through agents or other representatives) constitutes a business activity of the licensee in whole or in part.

- (3) Corporations, partnerships and other associations who have business activity in the Urban County and receive income from the rental, ownership, management or operation of real property, wherever located, are presumed to be in the business of renting said property, regardless of the amount of gross annual rental income. The net profits from such rental, ownership, management or operation shall be included in the corporation, partnership or other association's Net Profits License Fee Return.
- (4) Individuals as well as fiduciaries acting on behalf of individuals or deceased individuals who receive income from the rental, ownership, management or operation of real property located in the Urban County are rebuttably presumed to be engaged in a "business activity" which requires a license fee to be paid and a return to be filed, unless the individual or fiduciary's annual gross receipts derived from the rental, ownership, management or operation of real property are less than Fifty Thousand Dollars (\$50,000). The \$50,000 test is based on aggregated gross rental receipts from properties located in the Urban County.

Single owner LLC's filing as sole proprietors for federal income tax purposes are considered to be individuals for purposes of the \$50,000 "business activity" test.

- (5) Licensees shall include in net profits any capital gain arising from the sale of any real property included in the licensee's business of renting real property.<sup>4</sup> An individual's or fiduciary's real property is presumed to be included in the licensee's business of renting property if the licensee met the "business activity" test of Section 3.13(B)(4) of this Regulation in the current or previous tax year.

**(C) Independent contractors**

An individual defined as an independent contractor under Regulation 13-1, Section 1.1(B)(11) is deemed to be engaged in a business activity which requires him to obtain his own Urban County Government identification number, to file an annual return as required and to remit the license fee due as shown on said return.

**(D) Waiters, waitresses, bellhops and others receiving tip income**

Waiters, waitresses, bellhops and others receiving tip income not reported by his employer is deemed to be engaged in a business activity. They are required to obtain their own Urban County Government identification number, to file an

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<sup>4</sup> *Commissioners of the Sinking Fund v. Estate of Doyle, et al.*, 573 S.W. 2d 932 (KY. App. 1978).

annual return as required and to remit the license fee due, with respect to the unreported tip income.

**(E) Employees of federal agencies**

Certain federal agencies do not withhold and remit to the Urban County Government the full amount of their employees' license fee. All federal agencies, whether or not they withhold license fees on behalf of their employees, shall submit W-2 forms on behalf of each employee, by January 31 of each year, reflecting the previous year's wages. The Urban County Government will collect any amounts not withheld by federal agencies on behalf of their employees directly from the employees. Such employees are required to file Urban County Government Form 245 by April 15 of the year following the calendar year in which the wages were paid.

**(F) Income deriving from a covenant not to compete**

Payments deriving from a covenant not to compete are excluded from a licensee's net profits subject to the license fee to the extent that the recipient does not perform services in consideration for such payments. Licensees are required to report income deriving from a covenant not to compete and to show that such income is entitled to the exclusion hereunder by attaching a copy of the covenant from which the income is derived.

**(G) Commissions or fees received by trustees, executors and administrators**

Monies received as commissions or fees by a person who holds in trust property or monies to which another has the beneficial title or interest or who receives and controls income for another person or persons are subject to the net profits license fee unless the person receiving such commissions or fees is a bank, trust company, or combined bank and trust company exempted from payment of the net profits license fee by statute.

**(H)** If a licensee believes the requirements of this Section do not result in a fair and proper determination of net profits due to the peculiar or unusual nature of the business involved, he shall submit a statement seeking an exception to this Section, furnishing a detailed statement of facts explaining the basis of the exception sought. In each case, a determination shall be made in accordance with the facts. The Commissioner or his designee may adjust the calculation of any licensee to fairly and accurately reflect business activity within the Urban County. Once permission to use a different method in calculating the net profits has been granted, a licensee must continue to use the alternate method until given permission to change by the Commissioner or his designee.

## **REGULATION 13-6 EXEMPT ACTIVITIES**

### **Section 1.1 Exemption for senior citizens**

- (A) Individuals age 65 or older may request refunds of license fees paid on the first \$3,000 of subject wages using Form 211-22, Application for Refund, available from the Division of Revenue.
- (B) Individuals age 65 or older may exempt the first \$3,000 of net profits from any business, trade, occupation, profession, enterprise or other activity conducted in the Urban County. The exemption may be claimed on the form used to report the net profits of the business, trade, occupation, profession, enterprise or other activity.

**REGULATION 13-7 DEDUCTIONS FROM EMPLOYEE COMPENSATION, PAYMENT; RECORDS REQUIRED**

**Section 1.1 Liability of employers who fail to comply with Urban County Government requirements**

- (A) Every employer is deemed to be a trustee of the Urban County Government who by employing persons within the Urban County undertakes an obligation to collect and hold the employee occupational license fee, and the funds so collected are deemed to be trust funds. Every such employer required to deduct and withhold the employee license fee shall file and remit the amount of license fee withheld to the Division of Revenue using Form 220-221, Employer's Return of License Fee Withheld, provided by or obtainable from the Division of Revenue, and indicating the account number maintained for filing purposes.
- (B) Every such employer required to deduct and withhold the employee license fee is liable jointly and severally with the employee directly to the Urban County Government for failure to file the Employer's Return of License Fee Withheld and for failure to make payment of such fees, whether actually withheld by such employer or not. If the funds are actually withheld by the employer and not remitted to the Urban County Government, the employer may be criminally prosecuted for theft by failure to make required disposition (KRS 514.070).
- (B) No employee shall be liable to the Urban County Government for any license fee actually withheld from the employee's wages by the employer. The Commissioner may initiate legal activities to collect license fee, and any interest and penalty thereon, whether or not employees are joined as codefendants.

**Section 1.2 Responsibility of employers to withhold and report employee license fee**

- (A) Each employer who employs one or more persons within the Urban County shall deduct at the time of payment of wages to any employee the occupational license fee, measured by 2.25 percent of such wages, in accordance with Section 2 of Regulation 13-4. The employer shall report for the quarterly periods ending March 31, June 30, September 30, and December 31 of each year the

wages from which license fees have been so withheld on or before the last day of the month following the end of each such quarter. If the amount of license fee withheld exceeds Three Hundred Dollars (\$300.00) in any one of the preceding four (4) quarters, see Paragraph (B) below. In addition, the employer shall make the payment required to be made on account of such employee withholding of occupational license fees on or before the time required for the filing of the quarterly returns.

- (B) Notwithstanding the provisions of Paragraph (A) hereof, monthly reporting is required of each employer who employs persons within the Urban County and whose occupational license fees required to be withheld from all employee wages for any one (1) of the preceding four (4) quarters shall exceed the sum of Three Hundred Dollars (\$300.00). Each employer shall remit the occupational license fees required to be withheld from employees monthly based upon the following schedule.

<b>SCHEDULE FOR FILING EMPLOYER'S RETURNS OF LICENSE FEE WITHHELD AND REMITTING LICENSE FEE WITHHELD</b>	
<b>LICENSE FEE REQUIRED TO BE WITHHELD IN:</b>	<b>REQUIRED TO BE PAID BY (POSTMARKED OR HAND DELIVERED BY):</b>
<b>January</b>	<b>February 15</b>
<b>February</b>	<b>March 15</b>
<b>March</b>	<b>April 30</b>
<b>April</b>	<b>May 15</b>
<b>May</b>	<b>June 15</b>
<b>June</b>	<b>July 31</b>
<b>July</b>	<b>August 15</b>
<b>August</b>	<b>September 15</b>
<b>September</b>	<b>October 31</b>
<b>October</b>	<b>November 15</b>
<b>November</b>	<b>December 15</b>
<b>December</b>	<b>January 31</b>

- (C) A nonresident employer, either maintaining in the Urban County an office, business address, or doing business therein, is subject to the withholding provisions of this Section.
- (D) Each employer within the Urban County will in every instance be required to pay the full license fee which should have been withheld, even though the employer may have failed to withhold from the employee's compensation. If too much has been withheld the excess shall be refunded by the employer to the employee within the same calendar year.

- (E) Where an employee receives compensation attributable to activities partly inside and partly outside the Urban County, the withholding agent shall deduct and withhold license fee only on that portion of the compensation which is attributable to the Urban County in accordance with Section 2 of Regulation 13-4.
- (F) No withholding is required on the compensation paid to an individual employee for activities within the Urban County for a period of less than four (4) weeks in a calendar year.

**Section 1.3 Annual information returns**

- (A) Each employer within the Urban County shall annually on or before January 31 of each year complete and file a return with the Urban County Government, Form 222A, Reconciliation of License Fee Withheld, provided by or obtainable from the Division of Revenue. Either copies of federal Forms W-2 and Form W-3, Transmittal of Wage and Tax Statements, or a detailed employee listing with equivalent information must be submitted.
- (B) Each employer within the Urban County shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and the license fee deducted and paid by said employer during the preceding calendar year.
- (C) Each employer within the Urban County who is notified of or discovers an underpayment by the employer of the employee license fee, shall correct the previously submitted returns which had shown the underwithholding and shall remit payment of the employee license fee not previously paid, together with any applicable penalty and interest.

**REGULATION 13-7.1 HOUSEHOLD WORKERS,  
WITHHOLDING REQUIREMENTS;  
RETURNS REQUIRED**

**Section 1.1 Withholding requirements for employers of household workers**

Withholding of occupational license fee is not required on compensation paid household workers that 1) are employed exclusively in or about a private residence and 2) do not live within the residence where employed.

**Section 1.2 Net profit license fee return requirements for household workers**

A household worker who is not required to be withheld upon under Section 1.1 of this Regulation and receives annual gross compensation of \$1,000 or less is not required to file the net profits license fee return.

However, if the annual gross compensation is \$1,000 or more the household worker shall be deemed to be engaged in an activity which requires him to obtain his own Urban County Government identification number, to file an annual return and to remit the license fee due as shown on said return if:

- (1) he is eighteen (18) years of age or older; or
- (2) he is under eighteen (18) years of age, is not a student, and his principal occupation is household work.

For purposes of this section individuals who are employed by a cleaning service, personal nursing service, chauffeuring service or other entity which offers the services of its employees to the public are not considered household workers.

## **REGULATION 13-8 SEPARATE RETURNS; PAYMENTS**

### **Section 1.1 Fiscal period**

Net profits of a business, trade, occupation, profession, enterprise or other activity shall be determined using the same fiscal period ending date as required for federal income tax purposes.

### **Section 2.1 Filing requirements**

#### **(A) Net Profits License Fee Return**

Every person who has income which is subject to the license fee on net profits, regardless of whether or not such income is sufficient to result in a license fee liability, is required to file a return each year with copies of applicable federal schedules supporting the licensee's statement of income and expenses. This return shall be filed on Form 228, Net Profits License Fee Return, or Form 245, Annual Individual License Fee Return, available from the Division of Revenue, by the 15th day of the 4th month following the close of the licensee's fiscal year as shown on the schedule below.

<b>SCHEDULE FOR FILING LICENSE FEE RETURNS ON NET PROFITS</b>	
<b>For Fiscal Years Ending</b>	<b>Due Date (Postmarked or Hand Delivered By)</b>
December 31	April 15
January 31	May 15
February 28	June 15
March 31	July 15
April 30	August 15

May 31	September 15
June 30	October 15
July 31	November 15
August 31	December 15
September 30	January 15
October 31	February 15
November 30	March 15

The person making the return shall, at the time of the filing, pay the amount of the license fee shown as due.

**(B) Amended Net Profits License Fee Return**

A licensee shall file an amended return to report and pay any additional license fee, penalty and interest amounts due within three months after a licensee files an amended federal income tax return. A licensee shall file an amended return and pay any additional license fee, penalty, and interest amounts due within three months after final determination of a federal income tax liability resulting from a federal audit.

**(C) Net Profits License Fee Return Quarterly Estimated Payments**

- (1) As set forth in Section 13-8 of the Code of Ordinances, “Any licensee which files returns as an association, corporation or partnership is required to make a quarterly estimated payment on or before the fifteenth day of the fourth, sixth, ninth, and twelfth month of each fiscal year if the licensee’s liability for occupational license fees, measured by net profits, due the urban county government (hereafter, licensee’s liability) for the current year exceeds \$5,000.00.
- (2) Any licensee which files returns as a sole proprietor is required to make a quarterly estimated payment on or before the fifteenth day of the fourth, sixth, and ninth month of each fiscal year, and on the fifteenth day after the end of the fiscal year if the licensee’s liability for occupational license fees for the current year exceeds \$5,000.00.
- (3) Any licensee whose licensee’s liability exceeds \$5,000.00 during the current year shall make quarterly estimated payments based on one of the following calculations:
  - (a) 22 ½% of the current year’s licensee’s liability;
  - (b) 25% of the immediately preceding whole (12 month) tax year licensee’s liability; or

- (c) 25% of the average of the licensee's liability as shown on the returns filed for the three immediately preceding whole tax years, whichever is less.
- (4) Any licensee who fails to submit the minimum quarterly estimated payment required hereunder shall pay by the due date of the annual return simple interest of 12% per annum calculated on a daily basis commencing on the date said payment was due and ending on the earlier of the time when the aggregate quarterly payments submitted for the current year shall equal the minimum aggregate payments then due under subsection (3) of this Regulation for the quarters then elapsed, or the due date of the annual net profits return as provided in Section A of this Regulation.
- (5) Licensees shall be exempt from making quarterly estimated payments as required under subsection (1) or (2) of the Regulation for the following fiscal years:
  - (a) Licensee's first full or partial fiscal year doing business in Fayette County, and
  - (b) Licensee's first fiscal year that the licensee's liability for occupational license fees due the urban county government exceeds \$5,000.00."
- (6) This provision is effective for tax years commencing on or after January 1, 2001.

### **Section 3.1 Employee returns**

An employee whose wages the occupational license fees have not been fully withheld upon by the employer is required to file Form 245, Annual Individual License Fee Return, and to pay the occupational license fee due.

### **Section 4.1 Extension of time for filing**

- (A) Upon written request, properly signed by the licensee or a duly authorized agent, and received on or before the due date for filing, the Commissioner may extend the time for filing the Net Profits License Fee Return for a period of time not to exceed that granted by the Internal Revenue Service for the filing of the federal income tax return for the same year. The extension request submitted by the licensee or his agent shall set out the licensee's name and account number maintained for filing purposes, the period for which the extension of time for filing is desired, the length of extension. Merely sending an estimated payment is not an acceptable request for an extension. **A copy of the federal Form 4868, 8736, or 7004 for the same year may be used for the written request, provided that the licensee's occupational license fee account number is plainly noted.**



- (B) An extension of time for filing the Net Profits License Fee Return does not extend the time for payment of the license fee. Full payment of the estimated license fee liability must accompany the request for extension. If when the extension request is made the license fee liability cannot be determined, an estimated liability shall be remitted based on the preceding year's license fee liability.
- (C) Interest at the rate of twelve percent (12%) per annum shall apply to any unpaid license fee during the period of extension and shall be included with the amount remitted in payment of the license fee at the time of filing the Net Profits License Fee Return. No penalty shall be assessed if all filing and payment requirements have in good faith been fulfilled and the final license fee and interest has been paid with the filing of the Net Profits License Fee Return within the period as extended.
- (D) The Commissioner reserves the right to deny any extension to an applicant who has failed to fulfill any prior filing and payment requirements. No extension shall affect the assessment of penalties or interest on any prior delinquencies.

## **REGULATION 13-9 INITIAL FEE**

### **Section 1.1 Initial licensing**

- (A) Corporations, partnerships, other associations, sole proprietorships, estates and trusts, and individuals subject to the occupational net profits license fee and all employers must apply for an occupational license fee reporting number (account number) and in such process shall complete and execute Form 200, Questionnaire and Initial Reporting. The applicant shall remit \$10 with the questionnaire, and this initial fee shall be a credit on the annual Net Profits License Fee Return. This is a minimum fee and will not be refunded if the licensee reports a loss on such return.
- (B) Each separate legal entity conducting business in the Urban County requires a separate questionnaire and a separate identifying number. When a corporation becomes a new legal entity, as when it dissolves and incorporates again, a new questionnaire must be completed and executed. However, an individual engaged in more than one business activity as a sole proprietor is permitted to use the same account number for the two or more activities in which the individual is engaged.
- (C) Identifying account numbers are assigned and licenses are processed on the basis of the information supplied by the completed questionnaire. Licensees are required to notify the Urban County Government of changes of address, of the cessation of business activity and of other significant changes which render inaccurate the information previously supplied in the completed questionnaire. Failure of the licensee to notify the Urban County Government of such changes may result in the initiation of legal action by the Urban County Government.

- (D) Licensees must complete the questionnaire and obtain their identifying account number prior to engaging in any business, trade, occupation, profession, enterprise or other activity.
- (E) The failure of any employer or licensee to receive or procure forms or documents is not an excuse for failure to make any return or to pay the occupational license fee.

## **REGULATION 13-10 DUTY TO COLLECT, RECORDS OF COLLECTION**

### **Section 1.1 Administrative provisions**

#### **(A) Period of limitation**

- (1) No additional assessment of occupational license fee shall be made by the Division of Revenue after five (5) years from the time the return was due or filed, whichever is later. This limitation shall not apply to an additional assessment in the case of a return that omits gross income in excess of twenty-five percent (25%) of that required to be reported, or in the case of filing a false or fraudulent return to evade the license fee or in the case of failure to file a return.
- (2) In those cases in which the Internal Revenue Service and the licensee have executed a waiver of the federal statute of limitations, the period within which an assessment/refund may be made by the Division of Revenue is extended one (1) year from the time of final determination of federal income tax liability.
- (3) Additional amounts of less than one dollar (\$1.00) shall not be assessed unless such assessment results from income which the licensee has failed to report.

#### **(B) License fee audit and assessment appeal process**

- (1) A licensee shall have the right to appeal audit findings or an additional assessment within thirty (30) days by (1) sending a written notice, including sufficient documentation to support the appeal, to the Director of the Division of Revenue or (2) submitting a written request for a meeting with the Director of the Division of Revenue to explain his appeal and present evidence. After reviewing documentation and/or hearing the licensee, the Director of the Division of Revenue shall in writing affirm, modify, or withdraw the assessment.
- (2) A licensee shall have the right to appeal a reaffirmed or adjusted audit assessment within thirty (30) days by (1) sending a written notice of appeal, including sufficient documentation to support the appeal, to the

Commissioner of Finance or (2) submitting a written request for a meeting with the Commissioner of Finance to explain his appeal and present evidence. After reviewing documentation and/or hearing the licensee, the Commissioner of Finance shall in writing affirm, modify, or reverse the assessment.

- (C) **Records required of employers and others subject to the occupational license fee** - Employers and others subject to the occupational license fee under the Ordinance are required to keep such records as will enable the filing of true and accurate returns, whether of fees withheld at source or of fees payable upon employee wages or net profits (or losses), or both, and such records are to be preserved to enable the Commissioner or his designee to verify the correctness of the returns filed.
- (D) **Automatic extension if due date falls on Saturday, Sunday or an Urban County Government holiday** - Any return required to be filed hereunder shall be considered to have been timely filed if it is postmarked or hand-delivered to the Urban County Government Division of Revenue on or before the due date or, in the event the due date is a Saturday, Sunday or Urban County Government legal holiday, if it is postmarked or hand-delivered to the Urban County Government offices on the next day which is not a Saturday, Sunday or Urban County Government holiday.

## **Section 2.1 Refunds**

### **(A) Refunds and credits of overpayments - General**

- (1) An overpayment of license fee shall be refunded if a claim for refund is made within five (5) years from the date on which such payment was due.
- (2) No refund shall be made to any licensee or person until he has complied with all provisions of the Ordinance and has furnished all required information. Refunds may be withheld from an employee until the employer has filed all required forms and provided all required information.
- (3) Overpayments will first be applied to previous occupational license fee delinquencies prior to any other disposition.
- (4) Overpayments of less than one dollar shall not be refunded.

### **(B) Refunds and credits of overpayments - Specific**

- (1) **Refunds of withholding on compensation attributable to activities outside the Urban County**

An employee who has compensation attributable to activities outside the Urban County, but whose employer has withheld and remitted the

occupational license fee on such income to the Urban County Government, may file for a refund using Form 211-22, Application for Refund, obtainable from the Division of Revenue, with a schedule and computation sufficient to verify the claim attached. The Division of Revenue may confirm with the employer the percentage of time spent and the amount of income for activities outside the Urban County prior to the approval of a refund.

(2) **Refund of license fee withheld due to unreimbursed employee business expenses**

Expenses which are a condition of employment, are incurred within the Urban County and are normally reported on federal Form 2106, Employee Business Expenses, are deductible from subject employee compensation.

Employees may file a request for a refund in connection with such business expenses by filing Form 211-22, Application for Refund, obtainable from the Division of Revenue, with a copy of federal Form 2106 and federal Schedule A attached for support.

(3) **Refund of license fee withheld on allowable employee moving expenses**

An employee may request a refund of license fee withheld on moving expenses by filing Form 211-22 with a copy of federal Form 3903 attached for support. The moving expenses must be deductible on his federal income tax return and be in connection with a work-related move into Fayette County. A refund of license fee withheld will be made only if the employer has remitted the amount withheld to the Urban County Government.

(4) **Credit or refund of overpayment of license fee**

(a) **Amounts paid by an employer in excess of amounts due** - A licensee may use an overpayment of license fee withheld on employee wages to offset future license fee liabilities of the licensee or request a refund provided sufficient documentation has been submitted to the Commissioner or his designee to verify such overpayment. Refunds will be issued only if all prior filing and payment requirements have been fulfilled.

(b) **Amounts withheld from an employee in excess of amounts due** - A licensee may not file for a credit or refund of excess license fee withheld from an employee's wages since the excess is due the employee.

## **REGULATION 13-12 PAYMENT IN ARREARS; FAILURE TO WITHHOLD**

## Section 1.1 Interest and penalties

Failure to timely file any return or report and/or pay any license fee due under the Ordinance or these Regulations shall result in the assessment of interest and penalties as described in Paragraphs (A), (B) and (C) of this Section.

### (A) Interest

All occupational license fees imposed and all monies withheld or required to be withheld by employers and remaining unpaid after they become due shall bear interest at the rate of twelve percent (12%) per annum.

### (B) Penalties

In addition to interest as provided for in Paragraph (A) of this Section, penalties based on the unpaid license fee due are imposed as follows:

- (1) **Failure to timely file a return and/or pay license fees due on net profits** - One and one-half percent (1½%) of unpaid license fees for each calendar month or portion of a calendar month such license fees remain unpaid, to be assessed on the first day after the due date and on the first day of each succeeding calendar month.
- (2) **Failure to timely file a return or report and/or pay license fees withheld or due from employee wages** - Four and one-half percent (4½%) of unpaid license fees for each calendar month or portion of a calendar month such license fees remain unpaid, to be assessed on the first day after the due date and on the first day of each succeeding calendar month.
- (3) The Commissioner may waive or reduce penalties, but not interest, as he deems proper.

### (C) General

- (1) Any corporate officer or other individual required to withhold or truthfully account for and remit to the Urban County Government any license fee required to be withheld from employee wages who willfully fails to withhold such fee, or truthfully account for and remit such fee or willfully attempts in any manner to evade or defeat the payment of any such fees shall be criminally or civilly liable for the total amount of the fee evaded, not collected or not accounted for and remitted. Neither the corporate dissolution or withdrawal of the corporation from the State of Kentucky nor the cessation of holding any such corporate office shall discharge the forgoing liability of any such person.

- (2) The failure of any licensee or person to receive or procure a return or other required form shall not excuse him from making any return, from filing such form, or from paying the license fee.

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