

Ordinance 236, Series 2008

Occupational License Tax (Net Profit)

County of Harrison

An Ordinance Amending Ordinance No. 231, Series 2008_

AN ORDINANCE RELATING TO THE IMPOSITION AND ADMINISTRATION OF A NET PROFIT AND OCCUPATIONAL LICENSE REQUIREMENTS, AND PAYMENT OF A NET PROFIT AND OCCUPATIONAL LICENSE TAX BY PERSONS AND BUSINESS ENTITIES CONDUCTING BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN THE COUNTY OF HARRISON, KENTUCKY.

WHEREAS, the Harrison County Fiscal Court desires to comply with the requirements of KRS 67.750 to 67.790 and deems it necessary and desirable that certain changes be made to existing ordinances imposing net profit and occupational license taxes on persons and businesses entities conducting businesses, occupations, and professions within the County of Harrison, so that the assessment and payment of Net Profit and Occupational License Taxes can be administered more efficiently.

Now, therefore, be it ordained by the Fiscal Court of the County of Harrison, Kentucky that Ordinance No. 97, Series 1994, Ordinance No. 134, Series 1997, Ordinance No. 141, Series 1999 and Ordinance No. 203, Series 2004, and Ordinance No. 231, Series 2008, are hereby amended and re-adopted in full to read as follows:

Ordinance No. 231 is hereby enacted and shall read in full as follows:

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Section 1 - Definitions

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

- (1) “Business entity” means each separate corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (2) “Business” means any enterprise, activity, profession or undertaking of any nature, including rental/leased activity, conducted for gain or profit, whether conducted by an individual, partnership, association or any other entity, but shall not include the usual activities of boards of trade, chambers of commerce, trade associations or unions (or other association performing the services usually performed by trade associations or unions); community chest funds or foundations; or corporations, associations, clubs or fraternal organizations organized and operated exclusively for religious, charitable, scientific, literary, educational, social, fraternal or civic purposes where no part of the earnings of income or receipts of such units, groups or associations inures to the benefit of any private shareholder or individual;
- (3) “County” means Harrison County, Kentucky, including the cities of Cynthiana, Berry, and any other cities now or hereafter incorporated;
- (4) “Compensation” means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:
 - (a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 408, 414(h), or 457 of the Internal Revenue Code; and
 - (b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code;
- (5) “Conclusion of the federal audit” means the date that the adjustments made by the Internal Revenue Service to net income as reported on the business entity’s federal income tax return become final and unappealable;
- (6) “Final determination of the federal audit” means the revenue agent’s report or other documents reflecting the final unappealable adjustments made by the Internal Revenue Service;
- (7) “Fiscal year” means fiscal year as defined in Section 7701(a)(24) of the Internal Revenue Code;

(8) “Employee” means any person who renders services to another person or any business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency of instrumentality of any one(1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.

(9) “Employer” means employer as defined in Section 3401(d) of the Internal Revenue Code;

(10) “Internal Revenue Code” means the Internal Revenue Code in effect on December 31, 2006, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2006, that would otherwise terminate;

(11) “Net profit” means gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by Chapter 1 of the Revenue Code, and adjusted as follows:

(a) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;

(b) Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;

(c) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;

(d) Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes; and

(e) Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution, or the Constitution and statutory laws of the United States;

(12) “Person” shall mean and include all natural persons, partnerships, firms, associations, governmental bodies and agencies, and corporations, whenever used in any interpretation. Whenever the term “person” is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to associations, shall mean the partners of members thereof and as applied to corporations, the officers and directors;

(13) “Return” or “Report” means any properly completed and, if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with the county.

(14) “Sales Revenue” means receipts from the sale, lease, or rental of goods, services, or property;

- (15) “Tax district” means any county or city with the authority to levy net profits or occupational license taxes;
- (16) “Taxable net profit” in case of a business entity having payroll or sales revenue only within the county means net profit as defined in subsection (11) of this section;
- (17) “Taxable net profit” in case of a business entity having payroll or sales revenue both within and without the county means net profit as defined in subsection (11) of this section, and as apportioned under Section (4) of this Ordinance; and
- (18) “Taxable year” means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed;
- (19) “Administrator” means an official administrator of the Occupational and Net Profits License fee, said administrator to be appointed by the Harrison County Fiscal Court;
- (20) “Corporation” means a corporation or joint stock association organized under the laws of the United States, the State of Kentucky, or any other state, territory or foreign country or dependency;
- (21) “License Fee” means shall mean a tax imposed for the privilege of exercising the right to engage in trade, occupation or profession for compensation paid by others or the right to engage in trade, occupation or profession for oneself, for profit or gain, within Harrison County, Kentucky;
- (22) “Licensee” means any person required hereunder to file a return or to pay a license fee under this Ordinance;
- (23) “Nonresident” means an individual, partnership, corporation, association, governmental body or agency, or other entity domiciled or having a business situs outside Harrison County;
- (24) “Resident” means an individual, partnership, corporation, association, governmental body or agency, or other entity domiciled or having a business situs in Harrison County;
- (25) “Trade, occupation or profession” shall include any and all activities and the rendering of any and all services of all kinds or other remuneration, or net profit or gain of any kind when applied to persons so engaged for themselves whether the person be a resident of Harrison County or not;
- (26) The singular shall include the plural, the plural shall include the singular, the masculine or feminine shall include both and the neuter genders wherever susceptible to such.

Section 2 - License Application Required

- (1) Every person or business entity engaged in any trade, occupation, or profession, or other activity for profit or anyone required to file a return under this ordinance in Harrison County shall be required to complete and execute the questionnaire prescribed by the Harrison County Tax Administrator. Each person shall be required to complete a separate questionnaire for each separate business before the commencement of business or in the event of status change, other than change of address. Licensees are required to notify the Harrison County Tax Administrator of changes of address, or the cessation of business activity, and of other changes which render inaccurate the information supplied in the completed questionnaire.

Section 3 – License Tax Payment Required

- (1) Except as provided in subsection (3) and subsection (6) of this section, every person or business entity engaged in any business for profit and any person or business entity that is required to make a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to the Harrison County Tax Administrator a license tax for the privilege of engaging in such activities within Harrison County. The license tax shall be measured by 1.5% of:
 - (a) all wages and compensation paid or payable in Harrison County for work done or services performed or rendered in Harrison County by every resident and nonresident who is an employee;
 - (b) the net profit from business conducted in Harrison County by a resident or nonresident business entity;
 - (c) the net profit from business in Harrison County will be remitted by each separate identification number, i.e. John Smith farm files on Schedule F under his social security number and Smith’s Backhoe, LLC has a Federal ID, the two will file separate returns, but John Smith farm files a Schedule F under his social security number and John Smith dba Smith’s Backhoe files a Schedule C under his social security number, John Smith can file one return.
- (2) Individuals and fiduciaries, acting on behalf of individuals or deceased individuals, who receive income from the rental of real property located in Harrison County are reputedly presumed to be engaged in an “activity” which requires a license fee to be paid and a return to be filed, unless the individual’s annual gross receipts derived from the rental of real property are less than **FIFTEEN THOUSAND DOLLARS (\$15,000.00)**; provided, however that rental income from warehouses, apartment hotels, hotel buildings, office buildings, and other similar structures where payments typically are made for both the privilege of occupying the property and for services provided for the convenience of the occupant must be included in computing the net profit of an individual and fiduciary acting on behalf of an individual or deceased individual even though less than **\$15,000.00** of gross receipts are received annually. Generally, services are considered provided for the convenience of the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. Services provided for the convenience of the occupant include, for example, (i) janitorial and maid service, (ii) furnishing linens and towels, (iii) providing laundry service and (iv) preparing and serving meals. Services not provided for

the convenience of the occupant include, for example, (i) utilities, (ii) security, (iii) janitorial and maid services for the common areas, (iv) garbage and trash collection, and (v) maintenance of the leased property.

Individuals and fiduciaries who receive less than **\$15,000.00** of gross receipts annually from the rental of real property and provide no services for the convenience of the occupant are not engaged in the business of renting real property. For example, an individual who leases a residence, provides no services for the convenience of the occupant, and receives less than **\$15,000.00** of annual gross rental receipts would not include rental income in determining his net profit. The **\$15,000.00** test is based on aggregated gross rental receipts from properties located in Harrison County.

An individual or fiduciary acting on behalf of an individual or deceased individual may rebut the presumption created by this Section by presenting evidence to the Harrison County Tax Administrator on or before the date the license fee is due sufficient to show that said licensee is not by virtue of the rental income received by the licensee engaged in a an “activity” subject to the license fee.

In determining whether an individual has presented evidence sufficient to rebut the presumption of subsection (1) of this section, the Harrison County Tax Administrator shall consider all relevant evidence including:

- (a.) the number of properties owned by the individual licensee either solely or jointly with others;
- (b.) the extent to which the lease or leases governing the rental of the properties require the lessor to undertake responsibility for taxes, insurance, repairs and other maintenance costs;
- (c.) the duration of the lease or leases;
- (d.) the amount of time that the individual, either directly or through an agent or agents is found to have spent in the exercises of management and control of the property;
- (e.) the extent to which the individual participated in making management decisions affecting the subject property and the rental thereof; and
- (f.) the extent to which the individual’s ownership of the property is linked to the individual’s other business interests.

Corporations, partnerships and other associations receiving income from the rental of real property, wherever located, are presumed to be in the business of renting said property.

Licensees engaged in the business of renting real property shall include in net profit any capital gain arising from the sale of any real property included in the licensee’s business of renting real property. *Commissioners of the Sinking Fund v. Estate of Doyle, et al., 573 S.W. 2d 932 (KY. App. 1978).*

- (3) All partnerships, S corporations, and all other entities where income is “passed through” to the owners are subject to this ordinance. The net profit and occupational tax imposed in this ordinance is assessed against income before it is “passed through” these entities to the owners.

- (4) If any business dissolves, ceases to operate, or withdraws from Harrison County during any taxable year, or if any business entity in any manner surrenders or loses its charter during any taxable year, the dissolution, cessation of business, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of any net profit or occupational license tax for the period of that taxable year during which the business entity had business activity in Harrison County.
- (5) If a business entity makes, or is required to make, a federal income tax return, the net profit or occupational license tax shall be computed for the purposes of this ordinance on the basis of the same calendar or fiscal year required by the federal government, and shall employ the same methods of accounting required for federal income tax purposes.
- (6) The occupational and net profit license taxes imposed in this section shall not apply to the following persons or business entities:
- (a) Any bank, trust company, combined bank and trust company, combined trust, banking and title business organized and doing business in this state, any savings and loan association whether state or federally chartered;
 - (b) Any compensation received by members of the Kentucky national guard for active duty training, unit training assemblies and annual field training;
 - (c) Any compensation received by precinct workers for election training or work at election booths in the state, Harrison County, and local primary, regular or special elections;
 - (d) Public Service Corporations that pay an ad valorem tax on property valued and assessed by the Kentucky Department of Revenue pursuant to the provisions of KRS 136.120. Licensees whose businesses are predominantly non-public service who are also engaged in public service activity are required to pay a license fee on their net profit derived from the non-public service activities apportioned to Harrison County;
 - (e) Persons or business entities that have been issued a license under KRS Chapter 243 to engage in manufacturing or trafficking in alcoholic beverages. Persons engaged in the business of manufacturing or trafficking in alcoholic beverages are required to file a return, but may exclude the portion of their net profits derived from the manufacturing or trafficking in alcoholic beverages;
 - (f) Insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky except as provided in KRS 91A.080;
 - (g) Any profits, earnings, distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor.

Section 4 - Apportionment

(1) Except as provided in subsection (4) of this section, net profit shall be apportioned as follows:

- (a) For business entities with both payroll and sales revenue in more than one (1) tax district, by multiplying the net profit by a fraction, the numerator of which is the payroll factor, described in subsection (2) of this section, plus the sales factor, described in subsection (3) of this section, and the denominator of which is two (2); and
- (b) For business entities with sales revenue in more than one (1) tax district, by multiplying the net profit by the sales factor as set forth in subsection (3) of this section.
- (c) For the purposes of subsections (1) thru (4) of this section, the business entity shall file an apportionment form provided by the Harrison County Tax Administrator.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in Harrison County during the tax period by the business entity for compensation, and the denominator of which is the total compensation paid or payable by the business entity everywhere during the tax period. Compensation is paid or payable in Harrison County based on the time the individual's service is performed within Harrison County.

(3) The sales factor is a fraction, the numerator of which is the total amount paid or business entity in Harrison County during the tax period, and the denominator of which is the total sales revenue of the business entity everywhere during the tax period.

(a) The sales, lease, or rental of tangible personal property is in Harrison County if:

- 1. The property is delivered or shipped to a purchaser within Harrison County regardless of the f.o.b. point or other conditions of the sales; or
- 2. The property is shipped from an office, store, warehouse, factory, or other place of storage in Harrison County and the purchaser is the United States government.

(b) Sales revenues, other than revenue from the sale, lease or rental of tangible personal property or the lease or rental property, are apportioned to Harrison County based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within Harrison County and the denominator of which is the total time spent performing that income-producing activity.

(c) Sales revenue from the sale, lease, or rental of real property is allocated to the tax district where the property is located.

(4) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in Harrison County, the business entity may petition the Harrison County Tax Administrator or the Harrison County Tax Administrator may require, in respect to all or any part of the business entity's business activity, if reasonable:

- (a) Separate accounting;
- (b) The exclusion of any one (1) or more of the factors;
- (c) The inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in Harrison County; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of net profit.

(5) When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without Harrison County, the license tax shall be measured by that part of the compensation paid or payable as a result of work done or service performed or rendered within Harrison County. The license tax shall be computed by obtaining the percentage which the compensation for work performed or services rendered within Harrison County bears the total wages and compensation paid or payable. In order for the Harrison County Tax Administrator to verify the accuracy of a taxpayer's reported percentages under this subsection, the taxpayer shall maintain adequate records.

Section 5 – Employers to Withhold

(1) Every employer making payment of compensation to an employee shall deduct and withhold upon payment of the compensation any tax imposed against the compensation by Harrison County. Amounts withheld shall be paid to the Harrison County Tax Administrator in accordance with Section (3) of this ordinance.

(2) Every employer required to deduct and withhold tax under this section shall, for the quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter, make a return and report to the Harrison County Tax Administrator, and pay to the Harrison County Tax Administrator, the tax required to be withheld under this section, unless the employer is permitted or required to report within a reasonable time after some other period as determined by the Harrison County Tax Administrator.

(3) Every employer who fails to withhold or pay to the Harrison County Tax Administrator any sums required by this ordinance to be withheld and paid shall be personally and individually liable to the Harrison County Tax Administrator for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.

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

(5) Every employer required to deduct and withhold tax under this section shall annually on or before February 28 of each year complete and file on a form furnished or approved by the Harrison County Tax Administrator a reconciliation of the occupational license tax withheld where compensation is paid or payable to employees. Either copies of federal W-2 and W-3,

transmittal of wage and tax statements, or a detailed employee listing with the required equivalent information, as determined by the Harrison County Tax Administrator, shall be submitted.

(6) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and occupational license tax deducted by the employer from the compensation paid to the employee for payment to the Harrison County Tax Administrator during the preceding calendar year.

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

(8) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity to this ordinance shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid to one or more employees of any business entity, and neither corporate dissolution or withdrawal of the business entity from Harrison County, nor the cessation of holding any corporate office, shall discharge that liability of any person; provided that the personal and individual liability shall apply to each or every person holding the corporate office at the time tax becomes or became obligated. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this ordinance at the time the taxes imposed by this ordinance become or became due.

(9) Every employee receiving compensation in Harrison County subject to the tax imposed under Section (3) of this ordinance shall be personally liable for the tax notwithstanding the provisions of subsections (7) and (8) of this section. In all cases where the employer does not withhold the tax levied under this ordinance from the employee, such employee or employees shall be responsible for filing with the Harrison County Tax Administrator each quarter in the same manner as if they were the employer. If an employer fails to or is not required to withhold, report, or pay the License Fee it shall become the duty of the employee to file with the Harrison County Tax Administrator. The only employer that is not required to withhold, report and pay the occupational license tax is the Federal Government including the United States Postal Service. The payment required to be made by an employee, can be made quarterly for the periods ending March 31st, June 30th, September 30th, and December 31st of each year, or at any time the employee wishes to make an estimated payment for the year in which wages are earned. All license fees must be received by February 28th for the preceding calendar year, together with a copy of the employee's W-2 form. Employers not required to withhold, report, or pay the license fee must annually during the month of January of each year make a return to the Harrison County Tax Administrator, in which is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions, or other compensation earned during such preceding year by each such employee. This list shall include all current full time employees, part time employees, temporary employees, and terminated employees whether it be voluntary or involuntary.

(10) No church, religious congregation or religious society of any creed is required under the terms of this Ordinance to withhold or deduct any sum from the wages, salaries, commissions or other compensation due by such church, religious congregation or religious society to its ministers or employees as salaries, wages, commissions or other compensation; however, this failure to withhold by such employers such license fees shall not relieve the ministers or employees of such churches, religious congregations or religious societies from the filing of net profit or the payment of license fees required by this Ordinance.

Section 6 – Returns Required

- (1) All business entity returns for the preceding taxable year shall be made by April 15 of each year, except returns made on the basis of a fiscal year, which shall be made by the fifteenth day of the fourth month following the close of the fiscal year. Blank forms for returns shall be supplied by the Harrison County Tax Administrator.
- (2) Every business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its occupational license tax return with the Harrison County Tax Administrator. Whenever in the opinion of the Harrison County Tax Administrator, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the Harrison County Tax Administrator may compel the business entity to produce for inspection a copy of any statements and schedules in support thereof that have not been previously file. The Harrison County Tax Administrator may also require copies of reports of adjustments made by the federal government.
- (3) Every business entity subject to an occupational license tax governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply with the rules as the Harrison County Tax Administrator from time to time may prescribe. Whenever the Harrison County Tax Administrator deems it necessary, the Harrison County Tax Administrator may require a business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as the Harrison County Tax Administrator deems sufficient to determine the tax liability the business entity.
- (4) The Harrison County Tax Administrator may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or of any other person having knowledge in the premises.
- (5) The full amount of the unpaid tax payable by any business entity, as appears from the face of the return, shall be paid to the Harrison County Tax Administrator at the time prescribed for filing the occupational license tax return, determined without regard to any extension of time for filing the return.
- (6) It shall be the responsibility of persons who make Federal Form 1099 “non-employee compensation” payments to natural persons other than employees for services performed within Harrison

County, to maintain records of such payments and to report such payments to the Harrison County Tax Administrator. Said payments must be reported on by remitting Federal Form 1099 by February 28 of the year following the close of the calendar year in which the non employee compensation was paid. If a business entity or person is not required to remit Federal Form 1099 to the IRS, including but not limited to payments less than \$600, they are still liable to remit the equivalent information to the Harrison County Tax Administrator. The information required to be reported by said licensee shall include:

- (a) Payer's name, address, social security and/or Federal identification number.
- (b) Recipient's name and address.
- (c) Recipient's social security and/or Federal identification number.
- (d) Amount of non employee compensation paid in the calendar year.
- (e) Amount of non employee compensation earned in Harrison County for the calendar year.

Section 7 – Extensions

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

Section 8 – Refunds

- (1) Where there has been an overpayment of tax under Section (5) of this ordinance, a refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under Section (5) by the employer;
- (2) Unless written application for refund or credit is received by the Harrison County Tax Administrator from the employer within two (2) years from the date the overpayment was made, no refund or credit shall be allowed;
- (3) An employee who has compensation attributable to activities performed outside Harrison County, based on the time spent outside Harrison County, whose employer has withheld and remitted to the Harrison County Tax Administrator, the occupational license tax on the

compensation attributable to activities performed outside Harrison County, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the Harrison County Tax Administrator may confirm with the employer the percentage of time spent outside Harrison County and the amount of compensation attributable to activities performed outside Harrison County prior to approval of the refund.

Section 9 – Federal Audit Provisions

- (1) As soon as practicable after each return is received, the Harrison County Tax Administrator may examine and audit the return. If the amount of tax computed by the Administrator is greater than the amount returned by the business entity, the additional tax shall be assessed and a notice of assessment mailed to the business entity by the Harrison County Tax Administrator within five (5) years from the date the return was filed, except as otherwise provided in this subsection.
 - (a) In the case of a failure to file a return or a fraudulent return the additional tax may be assessed at any time.
 - (b) In the case of a return where a business entity understates net profit, or omits an amount properly includable in net profits, or both, which understatement or omission, or both, is in excess of twenty-five percent (25%) of the amount of net profit stated in the return, the additional tax may be assessed at any time within six (6) years after the return was filed.
 - (c) In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this subsection, or six (6) months from the date the Harrison County Tax Administrator receives the final determination of the federal audit from the business entity, whichever is later.

The times provided in this subsection may be extended by agreement between the business entity and the Harrison County Tax Administrator. For the purposes of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day. Any extension granted for the return shall also be considered as extending the last day prescribed by law for filing the return.

- (2) Every business entity shall submit a copy of the final determination of the federal audit within thirty (30) days of the conclusion of the federal audit.
- (3) The Harrison County Tax Administrator may initiate a civil action for collection of any additional tax within the times prescribed in subsection (1) of this section.

Section 10 – Administrative Provisions

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

(2) Any tax collected pursuant to the provisions of this ordinance may be refunded or credited within two (2) years of the date prescribed by law for the filing of a return or the date the money was paid to the Harrison County Tax Administrator, whichever is the later, except that:

- (a) In any case where the assessment period contained in Section (9) of this ordinance has been extended by an agreement between the business entity and the Harrison County Tax Administrator, the limitation contained in this subsection shall be extended accordingly.
- (b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

For the purpose of this subsection and subsection (3) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

Section 11 – Information to Remain Confidential

- (1) No present or former employee of the Harrison County Tax Administrator’s office shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the Harrison County Tax Administrator or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person’s business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer’s properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the Harrison County Tax Administrator’s office from testifying in any court, or from introducing as evidence returns or reports filed with the Harrison County Tax Administrator, in an action for violation of a Harrison County tax laws or any action challenging the Harrison County laws.
- (2) The Harrison County Tax Administrator reserves the right to disclose the Commissioner of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent all such information and rights to inspect the books and records of the Harrison County Tax Administrator if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the Harrison County Tax Administrator the reciprocal right to obtain information from the files and records of the Kentucky Department of Revenue and maintains the privileged character of the information so furnished. Provided, further, that the Harrison County Tax Administrator may publish statistics based on such information in such a manner as not to reveal data respecting net profits or compensation of any person or business entity.
- (3) In addition, the Harrison County Tax Administrator is empowered to execute similar reciprocity agreements as described in subsection (2) of this section with any other taxing entity, should

there be a need for exchange of information in order to effect diligent enforcement of the ordinance.

Section 12 – Penalties

- (1) A business entity subject to tax on net profits may be subject to a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof if the business entity:
 - (a) Fails to file any return or report on or before the due date prescribed for filing or as extended by the Harrison County Tax Administrator; or
 - (b) Fails to pay the tax computed on the return or report on or before the due date prescribed for payment.The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25), which includes entities with losses who fail to file on time.
- (2) Every employer who fails to file a return or pay the tax on or before the date prescribed under Section (5) of this ordinance may be subject to a penalty in the amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).
- (3) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the Harrison County Tax Administrator. A fraction of a month is considered as an entire month.
- (4) Every tax imposed by this ordinance, and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to Harrison County.
- (5) The Harrison County Tax Administrator may enforce the collection of the occupational tax due under section (3) of this ordinance and any fees, penalties, and interest as provided in subsections (1), (2), (3), and (4) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by the law, the Harrison County Tax Administrator shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this ordinance.
- (6) In addition to the penalties prescribed in this section, any person, business entity or employer who willfully fails to make a return, willfully makes a false return, or who willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.
- (7) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under this ordinance of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or

required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.

- (8) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the Harrison County Tax Administrator and required to be filed with the Harrison County Tax Administrator by the provisions of this ordinance, or by the rules of the Harrison County Tax Administrator or by written request for information to the business entity by the Harrison County Tax Administrator.
- (9) Any person violating the provisions of section (11) of this ordinance by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred dollars (\$500) or imprisoned for not longer than six (6) months, or both.
- (10) Any person violating the provisions of section (11) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand (\$1000) or imprisoned for not more than one (1) year, or both.

Section 13 - Use of Net Profit or Occupational License Tax

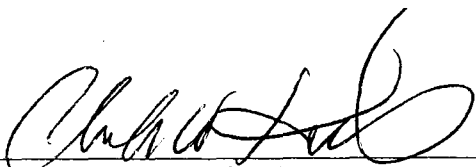
It shall be the duty of the Harrison County Tax Administrator to collect all occupational and net profits license fees as defined in this ordinance and deliver same on the next business day after receipt to the Harrison County Treasurer. All receipts from said license fees shall be deposited in the General fund of Harrison County for the operation of the county, including the payment of general and administrative expenses and capital improvements or purchases.

Section 14 – Severability

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

This ordinance shall become effective from and after its passage and publication as required by law, and shall apply to all returns filed and to be filed for the 2008 tax year and thereafter.

Respectfully submitted:



CHARLES W. KUSTER
Harrison County Attorney

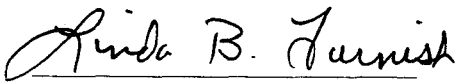
Given the first reading and approved by the Fiscal Court of Harrison County, Kentucky at a regular meeting on the 26th day of August, 2008.

Given second reading and adopted by the Fiscal Court of Harrison County, Kentucky at a regular meeting on the 9th day of September, 2008, and on the same occasion, signed in open session by the County Judge-Executive as evidence of its approval, attested under seal by the Harrison County Fiscal Court Clerk and declared to be in full force and effect.



Alex Barnett
Harrison County Judge-Executive

ATTEST:



Linda B. Furnish
Harrison County Fiscal Court Clerk