

# OCCUPATIONAL LICENSE FEE

## COUNTY OF SPENCER

### ORDINANCE NO.4 (2009 Series)

AN ORDINANCE RELATING TO THE IMPOSITION AND ADMINISTRATION OF AN OCCUPATIONAL LICENSE REQUIREMENT, AND PAYMENT OF AN OCCUPATIONAL LICENSE FEE BY PERSONS AND BUSINESS ENTITIES CONDUCTING BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN SPENCER COUNTY, KENTUCKY.

WHEREAS, Spencer County Fiscal Court desires to comply with the requirements of KRS 67.080, KRS 67.083 and KRS 67.750-67.795; and

WHEREAS, Spencer County Fiscal Court deems it necessary and desirable that certain changes be made to an existing ordinance imposing occupational license fees on persons and business entities conducting businesses, occupations, and professions within Spencer County, Kentucky so that the assessment and payment of Occupational License Fees can be administered more efficiently and in compliance with new statutory mandates.

NOW THEREFORE, be it ordained by the fiscal court of County of Spencer, Commonwealth of Kentucky:

Ordinance No. 24-2007 and Ordinance No. 5 – 2008 are hereby amended and re-adopted in full to read as follows:

#### **SECTION 1: LICENSE FEES, ON WHOM IMPOSED**

There is hereby levied and imposed a license fee upon all persons engaged in any occupation, trade, or profession, in Spencer County, Kentucky, for the privilege of engaging in such occupation, trade or profession, which license fee shall be measured by 1 percent of the gross salaries, wages, commissions, and other compensation earned by persons employed by others, and measured by 1 percent of the net profits of self-employed persons on and after October 1, 2007.

#### **SECTION 2: DEFINITIONS**

The following expressions when used in this chapter shall have the meaning ascribed to them in this section, except where the context clearly indicates or requires a different construction:

- (1) "Occupational Tax Collector" means the official collector of the occupational tax, to be appointed by Spencer County Fiscal Court;
- (2) "County" means Spencer County, Kentucky, including the City of Taylorsville, and any other community whether incorporated or not;
- (3) "Business" means an enterprise, activity, profession or undertaking of any nature conducted for gain or profit, whether by a self-employed person, a corporation, an association, a co-partnership or any other entity; it shall include specifically but not exclusively the rental of any property, real or personal, having a situs in the county, but shall not include the usual activities of a board of trade, chamber of commerce, trade association, or unions; community chest funds or foundations; corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, educational, or fraternal purposes, where no part of the earnings,



income, or receipts of such units, groups, or associations inures to the benefit of any private shareholder or other person;

- (4) "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;
- (5) "Association" means a partnership or any other form of unincorporated enterprise owned by two or more persons;
- (6) "Corporation" means a corporation or joint stock company organized under the laws of the United States, Kentucky, another state, territory or foreign country or dependency thereof;
- (7) "Year" means the calendar year or the fiscal year "employed by a business subject to the license tax imposed by this chapter" if the taxpayer reports for the state income tax purposes on the basis of a period other than the calendar year;
- (8) "Fiscal year" means fiscal year as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (9) "Taxpayer" means any person or business made liable for taxation or for payment of amounts withheld from employees under the terms of this chapter;
- (10) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, of the year in which the tax is due, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, of the year in which the tax is due, that would otherwise terminate;
- (11) "Sales" means net sales of merchandise or of services, or both, computed by whatever method of accounting is authorized for state income tax purposes;
- (12) "Sales Revenue" means receipts from the sale, lease, or rental of goods, services, or property;
  - (a) Rental Income as reported on the Federal Income Return is subject to these provisions
  - (b) All commercial rental activity is subject to these provisions
- (13) "Sales within the county" means sales of merchandise within the county or of services performed within the county;"
- (14) "Tax district" means any county or city with the authority to levy net profits or occupational license taxes;
- (15) "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 Internal Revenue Code, and adjusted as follows:
  - (a) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;
  - (b) Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;



- (c) Include any amount claimed as a net operating loss 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;
  - (f) Each schedule of Income Tax reporting form filed with the IRS will stand alone and be taxed as such;
- (16) The words "net profits" shall also mean and include the total gross amount of all commissions, bonuses, fees, rental, wages, or other money payments of any kind, or any consideration having monetary value, which any self-employed person receives, or is entitled to receive, for the performance of any kind of trade, occupation, profession or enterprise including rental property within Spencer County, less all expenses incurred and paid in the process of engaging in said trade, occupation, profession or enterprise;
  - (17) The words "gross receipts and compensation" shall not mean or include gratuities and tips customarily received by an employee from persons other than his employer;
  - (18) "Taxable net profit" in case of a business entity having payroll or sales revenue both within and without Spencer County means net profit as defined in subsections (15) and (16) of this section, and as apportioned under Section (5) of this Ordinance; and
  - (19) "Taxable year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed;
  - (20) "Non-Resident" means an individual, co-partnership, fiduciary, or association or other entity domiciled outside the county;
  - (21) "Person" shall mean any natural person, sole proprietorship, partnership, limited partnership, corporation or other legal entity. Whenever the word "Person" is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise shall mean the partner or member thereof, and applied to corporations shall mean the officers and directors thereof;
  - (22) The words "trade, occupation and profession" shall mean and include the doing of any kind of work, the rendering of any kind of personal service or the holding of any kind of position or job within Spencer County, by any clerk, laborer, tradesman, manager, official or other employee, including any non-resident of Spencer County, who is employed by an employer as defined in this section, where the relationship between the individual performing the services and the person for whom such services are rendered is, as to those services, the legal relationship of the employer and employee, including also a partner of a firm or an officer of a firm or corporation if such partner or officer of a firm or corporation receives compensation, but that it not mean or include domestic servants employed in private homes or businesses or unless a partner of a firm, or any person who is an employee within the meaning of this Section;

The words "trade, occupation and profession" with respect to self-employed persons, shall mean and include the doing of any kind of work, the rendering of any kind of personal services, or the holding of any kind of position or job within Spencer County, Kentucky by any clerk, laborer, tradesman, manager, official, person, officer or other person not employed by another, or in



practices or carrying on any such trade, occupation, or profession within Spencer County, Kentucky, including any non-resident of Spencer County, Kentucky;

The words "trade, occupation and profession" shall also include an officer, agent or employee (whether elected, appointed, enlisted, or commissioned) of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section, or unit of the Commonwealth of Kentucky, or any of the political subdivisions thereof, or those of any other state or Commonwealth or an officer, agent or employee (whether elected, or appointed, enlisted or commissioned) of a governmental administration, arm, authority, board, body, branch, bureau, department, division, section, or unit of the United States government or of a corporation created and/or controlled by the United States government or any of its agencies or those of any foreign country of dependency;

- (23) "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 anyone (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee;
- (24) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:
- (a) If the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" means the person having control of the payment of such wages, and
  - (b) In the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" means such person;
- (25) The words "gross receipts and compensation" shall have the same meaning and both shall mean and include the total gross amount of all salaries, wages and commissions, considerations having monetary value, which a person receives from or is entitled to receive from or be charged for by his employer for any work done or personal services rendered in any trade, occupation, or profession including any kind of deductions before "take home pay" is received, but the words, "gross receipts" and "compensation" shall not mean or include amounts paid to traveling salesman or other workers as allowance of reimbursement for traveling or other expenses incurred in the business of the employer, except to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to his employer;
- (26) "Compensation" means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:
- (a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; 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;



- (27) The words "gross receipts and compensation" shall not mean or include gratuities and tips customarily received by an employee from persons other than his employer;
- (28) The word "license" shall mean and include any person required to file a return or pay a license fee under this ordinance;
- (29) "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 Spencer County;
- (30) "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;
- (31) "Final determination of the federal audit" means the revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service;
- (32) The singular shall include the plural and vice-versa, and the masculine shall include the feminine and the neuter.

### **SECTION 3 – OCCUPATIONAL LICENSE APPLICATION REQUIRED**

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 Spencer County, KY shall be required to complete and execute the questionnaire prescribed by the Occupational License Administrator's Office. Each person shall be required to complete a separate questionnaire for each separate business before the commencement of business or in the event of a status change, other than change of address. Licensees are required to notify the Occupational Tax Office of changes of address, or the cessation of business activity and of other changes which render inaccurate the information supplied in the completed questionnaire. Upon completion of the questionnaire, the person or business entity will be given a Spencer County business License

### **SECTION 4 – OCCUPATIONAL LICENSE TAX PAYMENT REQUIRED**

- (1) Except as provided in subsection (2) and subsection (5) 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 Spencer County an occupational license tax for the privilege of engaging in such activities within Spencer County. The occupational license tax shall be measured by 1% of:
  - (a) All wages and compensation paid or payable in Spencer County for work done or services performed or rendered in Spencer County by every resident and nonresident who is an employee;
  - (b) The net profit from business conducted in Spencer County by a resident or nonresident business entity.
- (2) All partnerships, S corporations, and all other entities where income is "passed through" to the owners are subject to this ordinance. The occupational license tax imposed in this ordinance is assessed against income before it is "passed through" these entities to the owners.
- (3) If any business entity dissolves, ceases to operate, or withdraws from Spencer 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 occupational license tax for the period of that taxable year during which the business entity had business activity in Spencer County

- (4) If a business entity makes, or is required to make, a federal income tax return, the 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.
- (5) The occupational license tax 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 state, Spencer 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 Spencer 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 91 A.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;
  - (h) The periodic payments, commonly recognized as "old age" or "retirement pensions", made to persons retired from service after reaching a specified age or after a stated period of employment.
  - (i) Payments made to employees by an employer under a disability, sickness, or accident plan;
  - (j) Unemployment compensation payments by the Commonwealth of Kentucky, or any other agency;
  - (k) Death benefits payable by the employer to the beneficiary of an employee or to his estate, whether payable in a single sum or otherwise;



- (l) Amounts received by employees under the Workmen's Compensation Act as compensation for a disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability.
- (m) Tobacco buy-out money is exempt as well as net profits from farming operations. However, workers employed/paid by farms are still subject to the occupational tax.

## **SECTION 5: DETERMINATION OF WORK PERFORMED WITHIN THE COUNTY**

### **(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 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 (5) of this section, the business entity shall file an apportionment form provided by the Occupational Tax Office.
- (2) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in Spencer 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 Spencer County based on the time the individual's service is performed within Spencer County.
- (3) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in Spencer 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 Spencer County if:
    - (1). The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within Spencer County regardless of the f.o.b. point or other conditions of the sale; or
    - (2). The property is shipped from an office, store, warehouse, factory, or other place of storage in Spencer 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 of real property, are apportioned to Spencer County based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within Spencer 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 Spencer County, the business entity may petition Spencer County or Spencer County 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 Spencer 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 Spencer 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 Spencer County. The license tax shall be computed by obtaining upon the oath of the employer, or if required by the clerk-tax collector or such other person as may be hereinafter designated by the fiscal court of Spencer County, Kentucky, upon the oath of the employee or self-employed person the percentage which the compensation for work performed or services rendered within Spencer County bears to the total wages and compensation paid or payable. In order for Spencer County to verify the accuracy of a taxpayer's reported percentages under this subsection, the taxpayer shall maintain adequate records. If adequate records are not kept, it will be assumed all work was performed in Spencer County. Therefore, all occupational license fees will be due and payable to Spencer County, KY.

#### **SECTION 6: EMPLOYERS TO WITHHOLD LICENSE FEES AND FILE RETURNS**

- (1) Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation any tax imposed against the compensation by Spencer County. Amounts withheld shall be paid to Spencer County in accordance with Section (4) 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 Spencer County, and pay to Spencer County, 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 Spencer County.
- (3) Every employer who fails to withhold or pay to Spencer County any sums required by this ordinance to be withheld and paid shall be personally and individually liable to Spencer County for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.
- (4) Spencer County shall have a lien upon all the property of any employer who fails to withhold or pay over to Spencer County sums required to be withheld under this section. If the employer withholds, but fails to pay the amounts withheld to Spencer County, the lien shall commence as of the date the amounts withheld were required to be paid to Spencer County. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by Spencer County.
- (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 Spencer County a reconciliation of the occupational license tax withheld where compensation is paid or payable to employees. Either copies of federal forms W -2 and W-3, transmittal of wage and tax statements, or a detailed employee listing with the required equivalent information, as determined by Spencer County, 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 Spencer County during the preceding calendar year.
- (7) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.
- (8) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this 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 the corporate dissolution or withdrawal of the business entity from Spencer 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 the 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 that the taxes imposed by this ordinance become or became due.
- (9) Every employee receiving compensation in Spencer County subject to the tax imposed under Section (4) 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 Spencer County 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 Spencer County. 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 Occupational 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.

## **SECTION 7: RETURNS TO BE FILED BY EMPLOYEES AND SELF-EMPLOYED PERSONS**

- (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 Spencer County.
- (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 Spencer County. Whenever, in the opinion of Spencer County, it is necessary to examine the federal



income tax return of any business entity in order to audit the return, Spencer County may compel the business entity to produce for inspection a copy of any statements and schedules in support thereof that have not been previously filed. Spencer County may also require copies of reports of adjustments made by the federal government.

- (3) Every business entity subject to an occupational license tax governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply with rules as Spencer County from time to time may prescribe. Whenever Spencer County deems it necessary, Spencer County may require a business entity, by notice served to the business entity, to make a return, render statements under oath or keep records, as Spencer County deems sufficient to determine the tax liability the business entity.
- (4) Spencer County 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 Spencer County 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 Spencer County, to maintain records of such payments and to report such payments to Spencer County. 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 Spencer County. 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 Spencer County for the calendar year.
- (7) Said self-employed person may, if he so desires, file and pay quarterly returns for the periods and in the manner heretofore set out for employed persons under Section 4 of this ordinance. Each self-employed person making a return required by this section shall at the time of the filing thereof, pay to the clerk-tax collector the amount of the license fee due under this ordinance.



## **SECTION 8: EXTENSIONS**

- (1) Spencer County may grant any business entity an extension of not more than six (6) months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by Spencer County 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 Spencer County. A fraction of a month is counted as an entire month.

## **SECTION 9: REFUNDS**

- (1) Where there has been an overpayment of tax under Section (6) 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 (6) by the employer;
- (2) Unless written application for refund or credit is received by Spencer County 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 the Spencer County, based on time spent outside Spencer County, whose employer has withheld and remitted to this Spencer County, the occupational license tax on the compensation attributable to activities performed outside Spencer 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 Spencer County may confirm with the employer the percentage of time spent outside Spencer County and the amount of compensation attributable to activities performed outside Spencer County prior to approval of the refund.

## **SECTION 10: ADMINISTRATIVE PROVISIONS**

- (1) No suit shall be maintained in any court to restrain or delay the collection or 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 Spencer County, 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 Spencer County, 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 in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.



For the purposes 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.

- (3) The authority to refund or credit overpayments of taxes collected pursuant to this ordinance is vested exclusively in Spencer County.

### **SECTION 11: DUTIES OF THE CLERK-TAX COLLECTOR**

It shall be the duty of the clerk-tax collector to collect and receive all license fees imposed by this ordinance and to keep records showing the amounts received by him/her from each employer, employee or self-employed person.

### **SECTION 12: INVESTIGATIVE POWERS OF CLERK-TAX COLLECTOR; FEDERAL AUDIT PROVISIONS**

- (1) As soon as practicable after each return is received; Spencer County may examine and audit the return. If the amount of tax computed by Spencer County 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 Spencer County 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 of a fraudulent return the additional tax may be assessed at any time.
  - (b) In the case of a return where a business entity understates net profit, or omits an amount properly includable in net profits, or both, which understatement or omission, or both, is in excess of twenty-five 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 Spencer County 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 Spencer County. 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 filing 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) Spencer County may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (1) of this section.
- (4) The clerk-tax collector, or any agent or employee designated by him/her is hereby authorized to examine the books, papers, and records of any employer or supposed employer or any licensee in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of license fee due under the terms of this ordinance by such examination. Each such employer or supposed employer or licensee or supposed licensee shall give to the clerk-tax collector or to his/her duly authorized agent or employee the means, facilities, and opportunity for the making of such examination and investigation. The clerk-tax collector is hereby



authorized to examine any person under oath concerning any gross receipts which were or should have been shown in a return and to this end he/she may compel the production of books, papers, records and the attendance of all persons before her, whether as parties or as witnesses, whom he/she believes to have knowledge of such gross receipts or compensation, to the extent that any officer empowered to administer oaths in this Commonwealth is permitted to cause such coercion.

### **SECTION 13: REGULATIONS MAYBE PROMULGATED**

The clerk-tax collector, acting under the direction of the County Judge Executive and Spencer County Fiscal Court, is hereby charged with the enforcement of the provisions of this ordinance, and, subject to the approval of the County Judge Executive and the fiscal court, is hereby empowered to prescribe, adopt, promulgate and enforce regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions for the reexamination and correction of returns as to which an overpayment or underpayment is claimed or found to have been made, and the regulations so promulgated shall be binding upon all licensees and employers.

### **SECTION 14: INFORMATION TO BE CONFIDENTIAL**

- (1) No present or former employee of Spencer County 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 Spencer County 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 Spencer County from testifying in any court, or from introducing as evidence returns or reports filed with Spencer County, in an action for violation of a Spencer County tax laws or in any action challenging Spencer County laws.
- (2) Spencer County reserves the right to disclose to the Commissioner of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent all such information and rights to inspect any of the books and records of Spencer County if the Commissioner of Revenue of the Commonwealth of Kentucky grants to Spencer County 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 Spencer County 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, Spencer County 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 this ordinance.

### **SECTION 15: INTEREST AND 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 Spencer County; 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).

- (2) Every employer who fails to file a return or pay the tax on or before the date prescribed under Section (6) of this ordinance may be subject to a penalty in an 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 Spencer County. A fraction of a month is counted 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 Spencer County.
- (5) Spencer County may enforce the collection of the occupational tax due under section (4)(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 law, Spencer County 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 Spencer County and required to be filed with Spencer County by the provisions of this ordinance or by the rules of Spencer County or by written request for information to the business entity by Spencer County.
- (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 16: USE OF LICENSE FEES**

All money derived for license fees under the provisions of this ordinance shall be paid to the clerk-tax collector and placed to the credit of the general revenue of Spencer County, Kentucky to be used according to law.

## **SECTION 17: MINIMUM FEES**

Any self-employed person operating a permanent place of business shall pay to the clerk-tax collector a license fee, in advance, and before that person is permitted to engage in said business, trade or occupation, or profession, of which \$25.00 shall be a credit against the amount owing after section 1 hereof, but the sum of \$25 shall be a minimum fee and no refund shall be owing to any person if their license and liability for a given year is figured under section 1 shall be an amount less than said \$25. Any person maintaining a regular, permanent place of business in Spencer County, Kentucky and who certifies to the clerk-tax collector that the conduct of the clerk-tax collector's business, trade, profession, occupation or other form of work is only limited or part-time basis shall pay to the clerk-tax collector in advance and before that person is allowed to engage in such work \$25 which shall be credited in the same manner as set out hereinabove.

## **SECTION 18: SEVERABILITY**

The provisions of this ordinance are severable. If any provision section, paragraph, sentence or part hereof, or the application thereof to any employer or license or class of persons shall be held unconstitutional, such decision shall not affect or impair the remainder of this ordinance, it being the legislative intent to retain and enact such provisions, section, paragraph, sentence, and part thereof, separately and independently of each other.

## **SECTION 19: UNLAWFUL IMPOSITION OF LICENSE FEE**

It is not the intention of Spencer County, Kentucky or of this ordinance to impose and require an occupational license fee for any occupation, trade or profession prohibited by law or ordinance.

## **SECTION 20: EFFECTIVE DATE**

This ordinance shall become effective upon being duly passed by the Fiscal Court of Spencer County, Kentucky and to be enacted into law on

## **SECTION 21: PERIODIC WORK IN SPENCER COUNTY KENTUCKY**

In addition to the provisions for minimum fees for itinerant activities provided in Section 12, any person not maintaining a regular permanent place of business in Spencer County, Kentucky shall be required to post a cash or corporate bond in the amount of \$75 to secure filing of the returns required hereunder and payment of the fees assessed hereunder. A failure to file and pay by April 15, for the preceding calendar year shall constitute a forfeiture of said bond upon ten days written notice mailed to whatever address said person provided to Spencer County, Kentucky when said bond is posted.

## **SECTION 22: PAYMENT OF MINIMUM FEES, YEAR OF ENACTMENT**

Minimum fees for the year after the year of enactment hereof shall be paid on or before January 31, 2008, and on or before January 31, in each year thereafter.



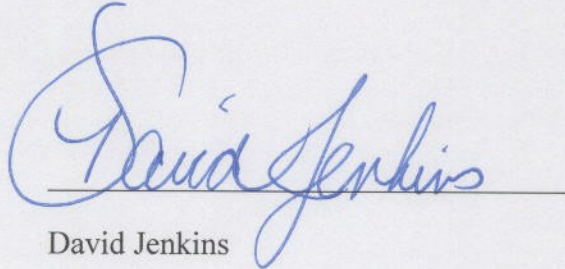
**SECTION 23: EXPIRATION DATE**

The amount reflected in this ordinance shall revert to zero percent as a matter of law when it is replaced by Fiscal Court action.

This ordinance shall take effect and be in full force on October 6, 2008, and upon its adoption and publication as prescribed by law. All prior ordinances, resolutions, or parts thereof inconsistent with this ordinance are hereby repealed.

Given first reading and approval on September 8<sup>th</sup>, 2008.

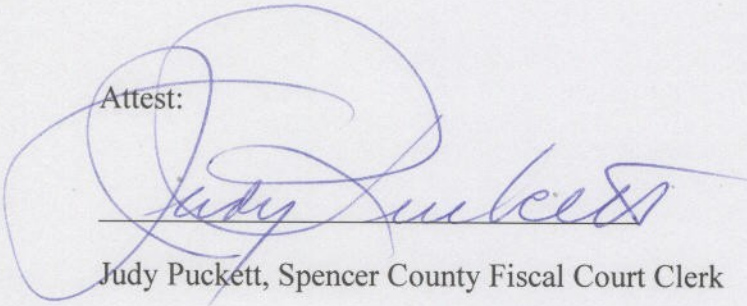
Given second reading and adoption on October 6<sup>th</sup>, 2008.

A handwritten signature in blue ink, reading "David Jenkins", written over a horizontal line.

David Jenkins

Spencer County Judge Executive

Attest:

A handwritten signature in blue ink, reading "Judy Puckett", written over a horizontal line.

Judy Puckett, Spencer County Fiscal Court Clerk