

OCCUPATIONAL LICENSE FEE
COUNTY OF SPENCER
ORDINANCE NO. 5

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, the Spencer County Fiscal Court desires to comply with the requirements of KRS 67.083 and 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.

NOW THEREFORE, be it ordained by the Spencer County Fiscal Court of Spencer County, Kentucky that Ordinance No. 24-2007 is hereby amended and re-adopted in full to read as follows:

This is an ordinance levying and imposing fees for the privilege of engaging in occupations, trades and professions in Spencer County, Kentucky, by all persons employed by others, measured by 1 percent gross receipts earned in Spencer County, Kentucky, by such employed persons; and all self-employed persons, measured by 1 percent of their net profits earned in Spencer County, Kentucky by said self-employed persons on or after October 1, 2007; defining words and terms; prescribing regulations and providing for the administration, enforcement, and collection of such license fee; requiring the filing of returns and the giving of information by employers and the duty of collecting license fees at the source; exempting certain occupations from the provisions hereof; providing the license fees collected shall be paid into the general fund of Spencer County, Kentucky for the payment of general governmental expenses of said county;

providing the penalty for violation thereof, repealing all ordinances in conflict therewith and providing a severability clause.

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

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 the 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) "Association" means a partnership or any other form of unincorporated enterprise owned by two or more persons;

(5) "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;

(6) "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;

(7) "Taxpayer" means any person or business made liable for taxation or for payment of amounts withheld from employees under the terms of this chapter;

(8) "Employer" means an individual, co-partnership, association, corporation, governmental body or units or administration or agency, or any other entity who (or that) employs one or more persons on the basis of salary, wage, or other compensation, regardless of whether such employer is engaged in business;

(9) "Sales" means net sales of merchandise or of services, or both, computed by whatever method of accounting is authorized for state income tax purposes;

(10) "Sales within the county" means sales of merchandise within the county or of services performed within the county;

(11) "Net Profit" means the net income from the operation of a business after provision for all costs and expenses incurred (or disbursed) in the conduct thereof, and the term shall be defined as the same as reported for the state income tax purposes pursuant to state laws in effect as of October 1, 2007, excluding items exempt hereunder but without the deduction of taxes based on income;

(12) "Non-Resident" means an individual, co-partnership, fiduciary, or association or other entity domiciled outside the county;

(13) "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;

(14) 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.

(15) 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.

(16) The word "employee" and the words "self-employed person" shall mean and include any person engaging in or following any trade occupation, or profession, within the meaning of Section 14 of this ordinance.

(17) 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.

The words "net profits" shall 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.

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) The following are not subject to license fee:

(a) 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.

(b) Payments made to employees by an employer under a disability, sickness, or accident plan;

(c) Unemployment compensation payments by the Commonwealth of Kentucky, or any other agency;

(d) Death benefits payable by the employer to the beneficiary of an employee or to his estate, whether payable in a single sum or otherwise;

(e) 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.

(19) The word "license" shall mean and include any person required to file a return or pay a license fee under this ordinance.

(20) The singular shall include the plural and vice-versa, and the masculine shall include the feminine and the neuter.

SECTION 3: DETERMINATION OF WORK PERFORMED WITHIN THE COUNTY

In cases where compensation is earned as a result of work done or services performed both within and without the county, the license fee required under this ordinance shall be computed by determining 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, that percentage of the work which was done or performed within the county.

SECTION 4: EMPLOYERS TO WITHHOLD LICENSE FEES AND FILE RETURNS

Each employer shall deduct from the pay due an employee the amount of the license fee measured by the compensation due each employee beginning on October 1, 2007. The payments required to be made on account of such deductions by employers shall be made quarterly to the clerk-tax collector for the quarterly periods ending March 31, June 30, September 30 and December 31, on or before the last day of the month next following the end of each such quarterly period, and each employer shall at the same time make a return on a form furnished by the clerk-tax collector.

SECTION 5: RETURNS TO BE FILED BY EMPLOYEES AND SELF-EMPLOYED PERSONS

When a return in form and substance satisfactory to the clerk-tax collector is not filed by the employer and license fees are not paid the county by such employer, the employee for whom no return has been filed and no payment has been made shall file a return with the clerk-tax collector on or before April 15, showing in said return his gross receipts subject to license fees for the period from April 1 through December 31 of the previous year and shall file a return with the clerk-tax collector on or before April 1, and on said return his gross receipts subject to license fees during the pending calendar year. Such return may be made by completing the original copy of the statement furnished him by his employer in accordance with Section 4 hereof if such statement shows all the compensation earned by him, wherever employed, during the period for which such return is made. If for any reason all license fees of a person subject to the provisions of this ordinance were not withheld by his employer from his gross receipts, such persons

shall file a return required by this section on a form obtainable at the clerk-tax collector's office. In addition to the gross receipts earned by him, such return shall show other pertinent information as may be required by the clerk-tax collector. Each person making a return required by this section shall at the time of the filing thereof, pay unto the clerk-tax collector the amount of the license fee due under this ordinance; provided, however, that any portion of the license fee deducted at the source shall be deducted on the return and only the balance, if any, shall be due and payable at the time of the filing of said return. The amount of any license fees which were due on March 31, June 30, September 30, and December 31, in each year as provided herein shall bear interest from the date same became due at the rate of 8% per annum until paid, and the employer failing to pay the same when due shall also pay the penalty imposed under Section 9 of this ordinance.

When a license is required of any self-employed person under the terms of this ordinance, said self-employed person shall file a return with the clerk-tax collector, on or before April 15 of each year, showing in said return his net profits subject to license fees for the period of April 1 to December 31, and shall file such a return with the clerk-tax collector on or before April 15 of each year, showing in said return his net profits subject to license fees during the preceding calendar year. 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. The amount of any license fee in each year as provided herein shall bear interest from the date the same became due at the rate of 8% percent per annum until paid, and the self-employed person

failing to pay the same when due shall also pay the penalty imposed under Section 9 of this ordinance.

SECTION 6: 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 7: INVESTIGATIVE POWERS OF CLERK-TAX COLLECTOR

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 8: REGULATIONS MAY BE 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 9: INFORMATION TO BE CONFIDENTIAL

Any information gained by the clerk-tax collector or any other official or agent or employee of the county as a result of any returns, investigations, hearings or verifications, required or authorized by this ordinance, shall be confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law, and any person or agent divulging such information shall, upon conviction, be subject to a fine of not less than \$50.00 nor more than \$500.00 or to imprisonment of not exceeding 30 days, or to both such fine and imprisonment at the discretion of the court or jury. Provided however, the clerk-tax collector may disclose to the Commissioner of Revenue of the State of Kentucky or his duly authorized agent all such information and right to inspect any of the books and records of the clerk-tax collector if said Commissioner of Revenue of the State of Kentucky grants to the clerk-tax collector the reciprocal right to obtain information from the files and records of the Department of Revenue of the State of Kentucky and maintains the privileged character of the

information so furnished him. Provided further, that the county may publish statistics based on such information in such a manner so as not to reveal data respecting the gross receipts of any person.

SECTION 10: INTEREST AND PENALTIES

(a) All license fees imposed by this ordinance which remain unpaid after they become due shall bear interest at the rate of 8% percent per annum from the date when the same became due, and there shall also be charged a percentile of 10% percent of the amount of such unpaid license fees. Any person or employee who fails or refuses to withhold any license fee payable under this ordinance, or who fails to pay such fees, after withholding the same, to the clerk-tax collector at the time it is due as provided under the terms of Section 4 hereof, shall become liable to Spencer County, Kentucky for such fees, as well as for the interest thereon at the rate of 8% percent per annum and for the aforesaid penalty. Provided, however, that the minimum penalty imposed against such person or employee shall be \$100.00.

(b) Any person or employee who shall fail, neglect or refuse to make any return required by this ordinance or any licensee who shall fail, neglect or refuse to pay a license fee, or any employee who shall fail to withhold said license fees or to pay over to Spencer County, Kentucky such license fees, penalties or interest imposed by this ordinance, or person or employer shall refuse to permit the clerk-tax collector, in writing, to examine the clerk-tax collector's books, records, and papers, or who shall attempt to do anything whatever to avoid the full disclosure of the amount of gross receipts or compensation in order to avoid the payment of the whole or any part of a license fee shall, upon conviction be subject to a fine or penalty of not less than \$100.00 nor more than

\$500.00 or imprisonment, for each offense. Such criminal penalties shall be in addition to the penalties imposed under sub-section (a) of this section.

SECTION 11: 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 12: 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 a 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 13: 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 14: 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 15: 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 October 1, 2007.

SECTION 16: 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 17: 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.

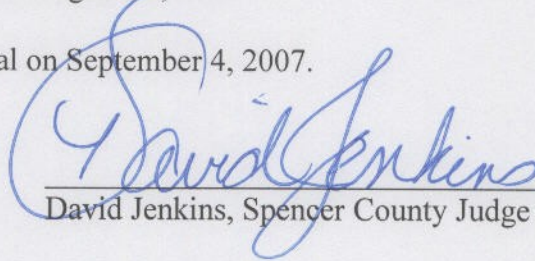
SECTION 18: EXPIRATION DATE

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 1, 2007 and upon its adoption and publication as prescribed by law. All prior ordinances, resolutions, or parts thereof inconsistent with this ordinance are hereby repealed.

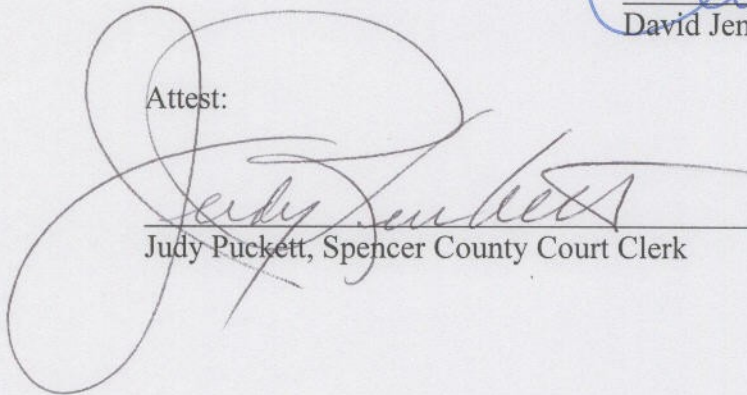
Given first reading and approval on August 21, 2007.

Given second reading and approval on September 4, 2007.



David Jenkins, Spencer County Judge Executive

Attest:



Judy Puckett, Spencer County Court Clerk