

Occupational License Tax Regulations Of the Louisville/Jefferson County Metro Revenue Commission

As made and adopted by the Commissioners of the Louisville/Jefferson County Metro Revenue Commission on November 11, 2021, to become effective January 1, 2022, upon approval by the Commissioners of the Louisville/Metro Revenue Commission. These Regulations are numbered in accordance with the numbering of Section 110.01 to 110.99 of the Louisville Metro Code of Ordinances, to which they refer and respond.

These Regulations replace all previous versions of the Regulations of the Louisville/Jefferson County Metro Revenue Commission adopted by the Commissioners.



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§1.00 Introduction

The governmental and corporate functions and powers formerly exercised by the City of Louisville and Jefferson County have been vested, following the approval by the voters of Jefferson County, in a new form of government called a consolidated local government, now known as the Louisville/Jefferson County Metro Government (“[Metro Government](#)”).¹ The Kentucky General Assembly has enacted a series of statutes designed to achieve uniformity with respect to various facets of the administration and collection of occupational license taxes by school districts, cities, counties and other local jurisdictions across the Commonwealth of Kentucky.² The current Metro Government Ordinances imposing and governing occupational license taxes collected and administered by the Revenue Commission include a number of provisions required by these state uniformity statutes.³

The Revenue Commission’s general duties and functions are established in [LMCO §32.450](#) to [LMCO §32.453](#). These duties include the payment of the general obligation bonded debt of Metro Government, as well as the collection of license fees and miscellaneous taxes such as transient room taxes imposed by the Metro Council for revenue purposes.⁴ The Commission is under the control and management of the [Commissioners](#) of the Louisville/Jefferson County Revenue Commission and their membership consists of the Mayor, the President of the Metro Council, and the Superintendent of Jefferson Public Schools, or their designated representatives, and three citizen members. The Commissioners “may make and enforce bylaws, rules, and regulations, not contrary to law, for the conduct of the business of the Revenue Commission.” Furthermore, the Revenue Commission is specifically empowered by [LMCO §110.11\(A\)](#) “to prescribe, adopt, promulgate, and enforce rules and regulations related to all matters pertaining to the administration and enforcement” of the occupational license tax ordinances “including without limitation rules and regulations clarifying, construing, and supplementing” those ordinances. These new revised and updated regulations set out below are adopted pursuant to this authority.

The imposition of taxes by cities, counties, and other local governments such as Metro Government is limited by [Section 181 of the Kentucky Constitution](#) and must be authorized by the Kentucky General Assembly. The requisite statutory authority to impose any occupational license tax has been bestowed by the General Assembly upon cities of the first class (the City of Louisville) by [KRS 91.200](#) and upon Jefferson County (a county with a population of 300,000 or more) by [KRS 68.180](#). Metro Government has succeeded to this taxing authority as a consolidated local government in accordance with [KRS 67C.101\(2\) and \(3\)](#). Pursuant to this statutory authority, the Metro Council has imposed by ordinance an annual occupational license tax upon 1) one and one-fourth percent of all wages and compensation paid or payable to every

¹ [KRS 67C.101](#)

² [KRS 67.750](#) to [67.795](#)

³ [LMCO §§110.01 to 110.99](#)

⁴ [LMCO §32.452](#)

resident or non-resident employee for work done or services performed or rendered in Louisville Metro and 2) one and one-fourth percent of the net profit from business activities conducted in Louisville Metro by a business entity.⁵

The Revenue Commission's current duties include the collection of occupational license taxes imposed by the Jefferson County Board of Education and the City of Anchorage Board of Education. These taxes are not imposed on non-residents of these school districts.⁶

Finally, the Revenue Commission collects and administers the occupational license tax imposed pursuant to [LMCO §110.02\(B\)](#), which was established by a referendum held in accordance with [KRS 96A.310](#) to [KRS 96A.370](#) to provide funding for the Transit Authority of River City (TARC) and is referred to as the transit tax.

§1.01 Definitions

AGENT

A person or business authorized to act on behalf of another person or business.

APPORTIONMENT

The way net profit and/or payroll is divided between taxing jurisdictions.

BUSINESS

Any enterprise, activity, trade, profession, occupation or undertaking of any nature conducted for gain or profit. However, this term 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. Business shall not include funds or foundations, corporations or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic 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 individual except to the extent that there is unrelated business income.

BUSINESS ENTITY

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.

COMMISSION

The Louisville/Jefferson County Metro Revenue Commission.

⁵ [LMCO §110.02\(A\)](#)

⁶ [KRS 160.483\(6\); KRS 160.611](#)

COMMISSIONERS

The Commissioners of the Commission.

COMPENSATION

Wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee as defined in KRS 67.750(2).

COMPENSATION shall also include any amount designated by a unit of government of any state or political subdivision thereof or by any agency or instrumentality of any of the foregoing as an employee contribution to an employees' trust described in Section 401(a) of the Internal Revenue Code or to a plan described in Section 403(a) of the Internal Revenue Code, where the employing unit has picked up the employees' contribution pursuant to the provisions of Section 414(h) of the Internal Revenue Code. **COMPENSATION** shall also include non-cash fringe benefits taxable for federal income tax purposes as provided in this section.

CONCLUSION OF THE FEDERAL AUDIT

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.

COUNTY

Jefferson County, Kentucky.

DOMICILE

That place where a person has his or her fixed, permanent home, and to which he or she has, whenever absent, the intention of returning and from which he has no present intention of moving.

DULY ORDAINED MINISTER OF RELIGION

A natural person who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect or religious organization to teach and preach its doctrines or to administer its rites in public worship and who regularly performs one or more of those duties.

ELECTRONIC FILING

The electronic transmission of an electronic document to the Commission's electronic filing system.

ELECTRONIC FUND TRANSFER

A transfer of funds as defined in the Electronic Fund Transfer Act (EFTA) (15 USC 1693 et seq.)

EMPLOYEE

Any person who renders services to another person or any business entity for compensation, except for independent contractors, including an officer, employee, or elected official of the United States, a state, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one (1) or more of the foregoing. The term **EMPLOYEE** also includes an officer or corporation. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee. If there is a dispute as to the status

of a worker, the Commission will require a copy of the federal SS-8 determination and follow the federal determination.

EMPLOYER

The person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:

(1) If the person for whom the individual performs or performed the services does not have control of the payment of the compensation for such services, the term employer for withholding tax purposes means the person having control of the payment of such compensation; and

(2) In the case of a person paying compensation 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.

ENTITY

Something that has its own independent existence. For purposes of these regulations, an entity is any individual, company, business or organization having rights and responsibilities under the law.

FEDERAL AUDIT

An audit of federal income tax returns conducted by the federal government.

FEDERAL INCOME TAX RETURN

U.S income tax return or U.S. return of income.

FINAL DETERMINATION OF THE FEDERAL AUDIT

The revenue agents report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

FISCAL YEAR

An accounting period of 12 months ending on the last day of any month other than December.

INDIVIDUAL

A natural person.

INTERNAL REVENUE CODE

The Internal Revenue Code as defined by KRS 67.750.

KAR

The Kentucky Administrative Regulations.

KRS

The Kentucky Revised Statutes.

LICENSE TAX

An occupational license fee or tax for revenue purposes.

LMCO

The Louisville Metro Code of Ordinances.

LOUISVILLE METRO

Jefferson County, Kentucky.

METRO GOVERNMENT

Louisville/Jefferson County Metro Government.

NET PROFIT

For a business entity 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:

(1) 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;

(2) 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;

(3) Include any amount claimed as a net operating loss carry back or carry forward allowed under Section 172 of the Internal Revenue Code;

(4) 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;

(5) Include contributions to Keogh (HR-10) Retirement Plans and contributions to a Simplified Employee Pension Plan as defined in Section 408(k) of the Internal Revenue Code and contributions to any other self-employment retirement plan and other deductions that benefit non-employee individuals.

(6) Exclude any sum elected by the business entity as a credit against its federal income tax liability in lieu of a deduction for business expenses otherwise available to the business entity.

(7) Exclude the amount of foreign dividend gross-up under Section 78 of the Internal Revenue Code;

(8) Exclude the amount of Subpart F income included under Section 951 of the Internal Revenue Code but not actually received;

(9) Exclude for taxable years beginning on or after July 1, 1986, the amount of dividends described in Section 862(a)(2) of the Internal Revenue Code after deducting from such dividends the expenses and other deductions properly apportioned or allocated thereto as provided under Section 862(b);

(10) Exclude for taxable years beginning on or after July 1, 1987 interest income described in Section 862(a)(1) of the Internal Revenue Code, rental or royalty income described in Section 862(a)(4) of the Internal Revenue Code and other gains and profits described in

Sections 862(a)(5) and 862(a)(6) of the Internal Revenue Code, after deducting from such interest, rental, royalty, gain or profit the expenses, losses and other deductions properly apportioned or allocated thereto as provided in Section 862(b) of the Internal Revenue Code;

(11) Include for taxable years beginning on or after July 1, 1987 any deduction claimed by the licensee on its federal income tax return for any loss arising from the sale of its interest in any corporation other than a corporation described in Section 861(a)(2) of the Internal Revenue Code;

(12) Include for taxable years beginning on or after July 1, 1987 any deduction claimed by the licensee on its federal income tax return for any loss arising from default under any bond, note or other obligation bearing interest of a type described in Section 862(a)(1) of the Internal Revenue Code, and for any loss arising from any property described in Section 862(a)(4), Section 862(a)(5) and Section 862(a)(6) of the Internal Revenue Code;

(13) 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.

NEXUS

A business connection within a jurisdiction.

PASS-THROUGH ENTITY

Any entity that is a pass-thru entity for federal tax purposes per 26 U.S.C. §1(h)(10).

PERSON

Every individual, partnership, fiduciary, association or corporation. 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 partnerships or other form of unincorporated enterprise shall mean the partners or members thereof and as applied to corporations, shall mean the officers and directors thereof.

PROFESSIONAL EMPLOYER ORGANIZATION

An organization that enters into an agreement with another entity to perform some or all of the payroll functions related to workers performing services for the entity. Professional employer organizations are sometimes referred to as employee leasing companies.

PROPERTY

For purposes of the sales factor shall include tangible personal property and real property. This definition does not apply to taxpayers whose principal business activity is trading in securities.

RECEIPTS

see SALES REVENUE.

REMOTE EMPLOYEE

An employee who performs services for the employer from a location that is not the employer's business location. Remote employees are sometimes referred to as teleworkers.

RESIDENT

An individual domiciled in Louisville Metro.

RETURN or REPORT

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 Commission.

SALES REVENUE

Receipts from the sale, lease or rental of goods, services, or property.

SECRETARY-TREASURER

The Secretary-Treasurer of the Commission.

SOLE PROPRIETOR

An individual engaged in any business, profession or occupation, but not as an employee.

TAX DISTRICT

A city of the first to fifth class, county, urban-county, charter county, consolidated local government, school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license taxes.

TAXABLE NET PROFIT

(1) In case of a business entity having payroll or sales revenue only within Louisville Metro, the term means “net profit” as defined above in this section.

(2) In case of a business entity having payroll or sales revenue both within and without Louisville Metro, the term means “net profit” as defined above in this section, and as apportioned under § 1.06 of these regulations.

TAXABLE YEAR

The calendar year or fiscal year ending during the calendar year, upon the basis of which net profit is computed.

THIRD PARTY PAYROLL REPORTING AGENT

Each business entity (defined herein) through which another business entity processes its employee payroll, including deductions of occupational license taxes mandated by law, and files its occupational license tax withheld returns.

UNRELATED BUSINESS INCOME

Unrelated business income is income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the organization’s exemption.

§1.02 Occupational License, Transit and School Board Taxes

ORDINANCE AUTHORITY: [LMCO §110.02](#); [LMCO §110.11](#)

A. Occupational License Tax: Every natural person and [business entity](#) engaged in any [business](#), trade, occupation, profession, or other activity for profit in Louisville Metro shall pay to the [Commission](#), as collecting [agent](#) for [Metro Government](#), an annual occupational license tax for the privilege of engaging in these activities. This occupational license tax shall be measured by:

1. One and one-fourth percent of all wages and compensation paid or payable to every [resident](#) or non-resident employee for work done or services performed or rendered in Louisville Metro; and
2. One and one-fourth percent of the [net profit](#) from business activities conducted in Louisville Metro by a business entity.

B. Transit and School Board Taxes

1. **Transit Tax:** In addition to the occupational license taxes required in subsection A, every person and [business entity](#) engaged in any [business](#), trade, occupation, profession, or other activity for profit in Louisville Metro shall pay to the [Commission](#), an occupational license tax for the privilege of engaging in these activities. This additional occupational license tax shall be measured by:

- a. One fifth of one percent (.20%) of all wages and compensation paid or payable to every [resident](#) or non-resident employee for work done or services performed or rendered in Louisville Metro; and
- b. One fifth of one percent (.20%) of the [net profit](#) from business activities conducted in Louisville Metro by a business entity.

2. **School Boards Tax:** In addition to the occupational license tax required in subsection A, KRS 160.482 – 160.488 provides for the imposition of a license tax on compensation and business activities to be distributed to the school districts located within Louisville Metro. Every person, with the exception of non-resident individuals, and every business entity engaged in any business, trade, occupation, profession, or other activity for profit in Louisville Metro shall pay to the Commission, a school boards tax for the privilege of engaging in these activities. The school boards tax shall be measured by:

- a. Three fourths of one percent (.75%) of all wages and compensation paid or payable to every [resident](#) employee for work done or services performed or rendered in Louisville Metro;
- b. Three fourths of one percent (.75%) of the net profit from business activities conducted in Louisville Metro by a [resident](#) individual; and
- c. Three fourths of one percent (.75%) of the net profit from business activities conducted in Louisville Metro by a business entity.

C. Mass Transit Trust Fund: All occupational license taxes, plus any applicable interest and penalties, received by the [Commission](#) pursuant to [subsection B\(1\)](#) above, less a fixed charge for services rendered in the amount 1.35% of the net [receipts](#) thereof, shall be paid over monthly into, and pending disbursement be held in, a separate and special trust fund identified as the Mass Transit Trust Fund to be used solely for purposes of the Mass Transportation Program approved by the electorate of Jefferson County, November 5, 1974, and as provided in [KRS Chapter 96A](#).

D. Occupational License Tax on Net Profits of Pass-Through Entities:

1. All partnerships, S corporations, limited liability companies, limited liability partnerships, limited partnerships, or similar entities (for example, real estate investment trusts) are subject to the provisions in this chapter. Each separate [entity](#) must file an occupational license tax return and include the income, deductions, gains, losses, credits or any other similar attributes that are passed through to the partners, members, shareholders or owners for federal tax purposes. However, deductions that benefit non-employee individuals, including, but not limited to, contributions to Keogh (HR-10) Retirement Plans, contributions to a Simplified Employee Pension Plan as defined in [Section 408\(k\)](#) of the Internal Revenue Code, and contributions to any other self-employment retirement plan shall be excluded from the calculation of [net profit](#) for occupational license tax purposes.
2. The occupational license taxes imposed in this chapter are assessed against [business](#) income at the [entity](#) level and before it is passed through to the partners, members, shareholders or owners. Each separate [business entity](#) must file an OL-3.

EXAMPLE: ABC LLC is an S-Corporation with four shareholders that operates a medical supply business in Louisville Metro. ABC files a federal Form 1120-S return for the tax year, reporting ordinary business income of \$25,000. In addition, the company reported on its federal Form 1120-S, Schedule K the following items passed through to the shareholders:

Interest Income	\$8,000
Net short-term capital gain	\$12,000
Section 179 deduction	(\$3,500)
Contributions to Keogh Plan	(\$2,600)

CONCLUSION: The \$2,600 contribution to the shareholder's KEOGH plan is not deductible from Ordinary Business Income (Loss) in the calculation of the net profit subject to occupational license tax. As a result, the KEOGH plan payment is excluded from the Schedule K items added to or subtracted from Ordinary Business Income (Loss). ABC's net profit subject to occupational license tax is \$41,500, calculated as follows:

Ordinary Business Income	\$25,000
Interest income	\$8,000
Net short-term capital gain	\$12,000
Section 179 deduction	(\$3,500)
Adjusted net profit	\$41,500

The \$2,600 contribution to the shareholder's KEOGH plan is not deductible from Ordinary Business Income (Loss) in the calculation of the net profit subject to occupational license tax.

EXAMPLE: XYZ LP is a partnership with twelve partners that conducts business in Louisville Metro. XYZ files a federal Form 1065 return for the tax year, reporting an ordinary business loss of (\$10,000), after adding back SEP contribution. In addition, the partnership reported on its federal Form 1065, Schedule K the following items passed through to the partners:

Net Rental Real Estate Income	\$28,000
Guaranteed Payments to Partners	\$120,000
Section 179 deduction	(\$5,000)
Contribution to SEP Plan	(\$6,000)

CONCLUSION: The \$6,000 contribution to the partners' SEP plan is not deductible from Ordinary Business Income (Loss) in the calculation of the net profit subject to occupational license tax. As a result, the SEP plan payment is excluded from the Schedule K items added to or subtracted from Ordinary Business Income (Loss). XYZ LP's net profit subject to occupational tax is \$133,000, calculated as follows:

Ordinary Business Loss	(\$10,000)
Net Rental Real Estate Income	\$28,000
Guaranteed Payments to Partners	\$120,000
Section 179 deduction	(\$5,000)
Adjusted net profit	\$133,000

EXAMPLE: ACME Properties is a real estate investment trust with property located in Louisville Metro. ACME filed a federal Form 1120-REIT for the tax year, reporting the following:

Income before special deductions	\$843,500
Dividends Paid to Investors	(\$850,000)
REIT Taxable Income (Loss)	(\$6,500)

CONCLUSION: ACME's net profit subject to occupational license tax is \$843,500, calculated as follows:

REIT Federal Taxable Income (Loss)	(\$6,500)
Dividends Paid to Investors	\$850,000
Adjusted net profit	\$843,500

The \$850,000 in dividends that were passed through to investors is added back to federal taxable income in the calculation of the net profit subject to occupational license tax.

- E. Occupational License Tax on Ceased Businesses:** If any [business entity](#) dissolves, ceases to operate, withdraws from the Louisville Metro area, or surrenders or loses its charter during any [taxable year](#), the business entity is required to file all occupational license tax returns and pay any tax owed for the period of that taxable year during which the business entity had [business](#) activity in the Louisville Metro area. The business entity must provide notice that business operations have ceased in Louisville by marking the final return area on the tax return and providing the date that operations had ceased in Louisville. If the return is not marked as final, the tax account will remain open and the business will continue to receive tax notices for subsequent tax years.
- F. Occupational License Tax on Net Profit – Fiscal Tax Year:** If a [business entity](#) is required to file a [federal income tax return](#), the [net profit](#) shall be computed 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. The occupational license tax is imposed annually upon [taxable net profit](#) and is based upon [taxable years](#) as defined in [LMCO § 110.01](#), which may be calendar or fiscal years. [LMCO § 110.02\(A\)\(2\)](#) and [\(B\)\(2\)](#). This tax is based upon various provisions of the Internal Revenue Code described in the definitions contained in [LMCO § 110.01](#) and accordingly [LMCO § 110.02\(F\)](#) requires in conjunction with [LMCO § 110.07\(A\)](#) that 1) a business entity compute [net profit](#) on the basis of the same taxable year as required by the federal government and use employ the same method of accounting as required for federal income tax purposes and 2) the business entity shall also provide with the annual net profit return a copy of the relevant federal tax return.

EXAMPLE: Smith, Inc. files its federal tax return on a fiscal year basis, with a tax year ending June 30. The company uses the accrual method of accounting to compute federal taxable income.

CONCLUSION: Smith, Inc is required to file its occupational license tax return on a fiscal year basis, with a tax year ending June 30. In addition, Smith Inc. is required to use the accrual method of accounting to compute net profit subject to the occupational tax.

G. Nexus:

1. The annual license tax imposed by [LMCO §110.02](#) broadly applies to every natural person or [business entity](#) engaged in any [business](#), trade, occupation, profession, or other activity for profit in Louisville Metro.
2. The imposition of the tax requires:
 - a. That the taxpayer (natural person or business entity) be regularly, and not occasionally or in isolated instances, engaged in any business in Louisville Metro;
and

- b. In situations where the taxpayer does business both in Louisville Metro and other [tax districts](#) in Kentucky as well as in other states, the Due Process and Commerce Clauses of the United States Constitution require that the taxpayer must have a minimum connection with, and purposefully directed its activities toward, the economic market of Louisville Metro, including its [residents](#) and any other persons engaged in any business here, in order to be subjected to the occupational license tax.
3. Taxpayers engaged in business only in Louisville Metro shall pay the entire tax imposed by [LMCO §110.02](#) on their [net profit](#). Taxpayers doing business in other tax districts and states as well as Louisville Metro shall pay the tax on their net profit as apportioned in accordance with [LMCO §110.06](#) and [§1.06](#) herein.

H. Activity Creating a Tax Nexus with Louisville Metro:

1. Activities that establish or create a taxable [nexus](#) in Louisville Metro shall include, but not be limited to, the following:
 - a. Any office, store, location, or place of any nature at which any activity in furtherance of any [business](#) in Louisville Metro is conducted.
 - b. The delivery or shipment to addresses within Louisville Metro, whether by employees, [agents](#), or contractors, other than through the mail or common carrier.
 - c. Contracting to sell or provide goods or services in Louisville Metro.
 - d. Advertising, solicitation, negotiation, or any other activity in Louisville Metro that leads to a contract for the sale of goods or provision of services.
 - e. The lease or rental of real or tangible person property located in Louisville Metro or to a person located in Louisville Metro, subject to the provisions of [LMCO §110.16](#).
 - f. The presence of employees, independent contractors, [agents](#), representatives or other persons acting on the taxpayer's behalf in Louisville Metro.
2. The following scenarios or categories of persons or entities have been specifically identified, for purposes of this section, to have a tax [nexus](#) with Louisville Metro:
 - a. **Transportation:** Common carriers and others engaged in interstate commerce are subject to the occupational license tax in accordance with the [apportionment](#) formula provided in [LMCO § 110.02](#).
 - b. **Nonresident Individuals:** A self-employed non-resident individual (including an individual doing [business](#) as a professional services corporation) who performs personal services has a tax nexus with Louisville Metro if:
 - (1) services are performed within Louisville Metro during any part of four or more calendar days in a calendar year, or
 - (2) [receipts](#) for services are \$3,000 or more in a calendar year.
 - c. **Resident Individuals:**
 - (1) A [resident](#) individual (including an individual doing [business](#) as a professional services corporation) who provides a service at a location within Louisville Metro has a tax nexus.
 - (2) A resident individual has a tax nexus if engaged in the sale of tangible and/or intangible property from a location within Louisville Metro if the sales are required to be reported as business or hobby income for federal tax purposes. In general, to the extent that the sales proceeds exceed the seller's cost for the property, the sale is subject to occupational license tax if the combined sales for

such items exceeds \$600 during the taxable year and the sale is not exempt under the provisions of §1.03(A)9 of these regulations.

d. Economic Nexus:

- (1) A person or [entity](#) who sells tangible personal property or digital property delivered or transferred electronically to a purchaser in Louisville Metro has a tax nexus if:
 - (a) the seller sold tangible personal property or digital property that was delivered or transferred electronically to purchasers in Louisville Metro in 200 or more separate transactions in the taxable period or
 - (b) the seller's gross [receipts](#) derived from the sale of tangible personal property or digital property delivered or transferred electronically to purchasers in Louisville Metro during the taxable period exceeded \$25,000.
- (2) A person or [entity](#) hosting an online booking platform for short-term rentals located in Louisville Metro has a tax nexus if:
 - (a) the person or entity hosted 200 or more separate online booking transactions for property located in Louisville Metro during the taxable period, or
 - (b) the person or entity's gross receipts derived from the online booking transactions for property located in Louisville Metro exceeded \$25,000 during the taxable period.
- (3) A [professional employer organization](#) (PEO) who contracts with a client to assume the employment-related duties of the employees working on behalf of the client has a Louisville Metro tax nexus if:
 - (a) the PEO has two or more clients located in Louisville, or
 - (b) the PEO receives \$10,000 or more in fees from clients located in Louisville.

e. Physical Presence of Remote Employees:

- (a) An employer who employs one or more [remote employees](#) working within Louisville Metro has a tax nexus if:
 1. 10% or more of taxpayer's employees work remotely in Louisville Metro, in whole or in part, at any time during the taxable period or
 2. compensation paid to remote employees working within Louisville Metro exceeds \$75,000 during the taxable period.
- (b) Regardless of the employer's tax nexus status, the employer is required to withhold and remit occupational tax from the compensation paid to remote employees working within Louisville Metro.
- (c) [Apportionment](#) of the taxpayer's [net profit](#) would be based on taxpayer and/or employee time spent teleworking and/or telecommuting in Louisville Metro. For apportionment purposes, the employee's wages earned while located within Louisville Metro should be used to determine the wage factor, regardless of whether or not the minimum threshold for withholding Occupational License employment tax was met.

I. Exception for Activities Protected by Pub. L. 86-272 ([15 U.S.C. 381](#) to [384](#)):

General: This regulation adopts a narrow interpretation of the immunity afforded by Pub. L. 86-272, codified as [15 U.S.C. 381](#) to [384](#), which precludes the imposition of Occupational License tax upon a corporation or [pass-through entity](#) located outside the taxing jurisdiction,

if the sole activity in Louisville Metro is the corporation's or pass-through entity's representatives soliciting orders for the sale of tangible personal property in the name of the corporation or pass-through entity or in the name of a prospective customer if the orders meet the conditions described in [103 KAR 16:240 Section 3](#) as they relate to activities conducted within Louisville Metro.

§1.03 Exempt Activities

ORDINANCE AUTHORITY: [LMCO §110.03](#); [LMCO §110.11](#)

A. **Exempted Activities:** The occupational license tax imposed in [LMCO § 110.02](#) shall not apply to the persons, business entities and activities listed in this section. The burden of proving or establishing entitlement to an exemption, deduction, or exclusion provided for in any ordinance or applicable statute and that every requirement is satisfied rests upon the [business entity](#), person or taxpayer claiming that exemption, deduction or exclusion. Any exemption, deduction or exclusion shall be narrowly construed in favor of the [Commission](#) and against the application of the exemption, deduction or exclusion. Failure to provide information required by this regulation or requested by the Commission may result in the denial of an exemption, deduction or exclusion. Any activity excluded or deducted in the calculation of [net profit](#) must also be excluded from the [apportionment](#) calculation as prescribed in [§1.06](#).

1. **Certain Public Service Corporations:** Public service corporations or companies are identified in [KRS 136.120](#) and consist of such business entities as:
 - a. railway companies
 - b. sleeping car companies
 - c. chair car companies
 - d. dining car companies
 - e. gas companies
 - f. water companies
 - g. bridge companies
 - h. street railway companies
 - i. interurban electric railroad companies
 - j. express companies
 - k. electric light companies
 - l. electric power companies, including wind turbine and solar generating companies
 - m. commercial air carriers
 - n. air freight carriers
 - o. pipeline companies
 - p. privately owned regulated sewer companies
 - q. railroad car line companies, which means any company, other than a railroad company, which owns, uses, furnishes, leases, rents, or operates to, from, through, in, or across this state or any part thereof, any kind of railroad car including, but not limited to, flat, tank, refrigerator, passenger, or similar type car, and every other like company or [business](#) performing any public service.

The business entity claiming the exemption as a public service corporation shall present to the [Commission](#) proof of assessment and payment of ad valorem tax pursuant to [KRS 136.120](#). Business entities whose business is predominantly non-public service shall apportion that portion of their business to Louisville Metro in accordance with [§1.06](#).

2. **Banks, Trusts, and Savings and Loan Associations:** Any [business entity](#) claiming an exemption as a:
 - a. bank,
 - b. trust company,
 - c. combined bank and trust company,
 - d. combined trust, banking and title [business](#), or
 - e. savings and loan associationunder this provision shall provide the [Commission](#) with its state or federal charter, or other document that establishes its legal authority to engage in these kinds of businesses.

3. **Multichannel Video Programming or Communications Services:** Multichannel video programming and communication services are identified in [KRS 136.602](#) and consist of such [business](#) activities as:
 - a. Multichannel video programming services: Live, scheduled, or on-demand programming provided by or generally considered comparable to or in competition with programming provided by a television broadcast station, including but not limited to:
 - (1) Cable service, including the provision of video, audio, or other programming service.
 - (2) Satellite broadcast and wireless cable service.
 - (3) Internet protocol television provided through wireline facilities without regard to delivery technology.
 - (4) Video streaming services.
 - b. Communications services, including the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals by or through any electronic, radio, light, fiber-optic, or similar medium or method now in existence or later devised. Communications services does not include information services or multichannel video programming services. Communications services includes, but is not limited to:
 - (1) Local and long-distance telephone services
 - (2) Telegraph and teletypewriter services
 - (3) Prepaid and postpaid calling services
 - (4) Private communications services involving a direct channel specifically dedicated to a customer's use between specific points
 - (5) Channel services involving a path of communications between two (2) or more points.
 - (6) Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method.
 - (7) Caller ID services, ring tones, voice mail and other electronic messaging services
 - (8) Mobile telecommunications service as defined in [4 U.S.C. sec. 124\(7\)](#)
 - (9) Voice over Internet Protocol (VOIP)

The [business entity](#) claiming the exemption for providing multichannel video programming or communication services shall present to the [Commission](#) proof of payment of the excise tax imposed under [KRS 136.602](#). This exemption applies only to that portion of the [business](#) that provides multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services. Any portion of the business that is not associated with multichannel video programming or communications services shall apportion that portion of their business to Louisville Metro in accordance with [§1.06](#).

4. **Investment Fund Income Defined in [KRS 154.20-250 to 154.20-284](#):** An investment fund that is approved by the authority to make qualified investments pursuant to [KRS 154.20-256](#) is exempt from the license tax imposed on any profits, earnings or distributions from such investment fund. Qualified investments eligible for this exemption are equity investments in Kentucky-based small businesses that meet the criteria defined in [KRS 154.20-254](#). The [business entity](#) claiming this exemption shall provide a copy of the approval issued by the Kentucky Department of Revenue.
5. **Precinct Workers:** Any income or compensation received by precinct workers for election work training or work at election booths in primary, regular or special elections for state, county and local elections.
6. **Kentucky National Guard:** Any income or compensation received by members of the Kentucky National Guard for active-duty training, unit training assemblies and annual field training.
7. **Certain Insurance Companies:** Insurance companies that pay a license fee or tax based on premiums or capital under the provisions of the following chapters of the Louisville Metro Code of Ordinances are exempt from the occupational license tax imposed on [net profit](#) imposed by [LMCO 110.02\(A\)\(2\)](#) and [\(B\)\(2\)](#):
 - a. [LMCO Chapter 122](#): Life insurance issued on the lives of persons residing in Louisville Metro and any insurance except health insurance issued on risks located within Louisville Metro.
 - b. [LMCO § 38.64](#): Health insurance issued on risks located [within](#) the Louisville Urban Services District. Health insurance issued on risks located outside the Louisville Urban Services District do not qualify for the exemption and are subject to the occupational license tax on net profit.
 - c. [LMCO § 38.36 and 38.80\(D\)](#): [KRS 136.320\(5\)](#) requires an exemption from occupational license tax for domestic life insurance companies that pay an ad valorem tax on taxable capital. The insurance company claiming this exemption shall provide satisfactory proof that it is indeed a domestic life insurance company subject that has in fact paid the tax on taxable capital referred to in [LMCO § 38.36](#).
8. **Alcoholic Beverages:** The manufacture or sale of alcoholic beverages for persons or business entities who are licensed under [KRS Chapter 243](#) is not subject to license tax. [Businesses](#) that qualify under this exemption may exclude the portion of their [net profits](#) that are derived from the manufacturing or sale of alcoholic beverages as described in

[KRS Chapter 243](#) from their [taxable net profit](#). Businesses shall provide a detail of the deduction, calculated as follows:

$$\frac{\text{Louisville Alcoholic Beverage Sales}}{\text{Total Sales Everywhere}} \times \text{Adjusted Net Profit Before Alcoholic Beverage Deduction}$$

Because Kentucky alcoholic beverage sales are excluded from net profit, they must also be excluded from the [apportionment](#) calculation as prescribed in [§1.06](#).

The portion of net profits from a retail outlet located on the premises of a distillery is excluded from [taxable net profit](#) in accordance with [KRS 243.0305](#).

EXAMPLE: ABC Convenience Store is a retailer headquartered in Lexington, Kentucky, with retail outlets located in Kentucky and Tennessee. In addition to food and various other items, ABC sells packaged alcoholic beverages. ABC reported the following for its taxable year:

Gross receipts from business operations everywhere	\$5,800,000
Total Louisville receipts:	\$1,750,000
• Gross non-alcoholic beverage receipts from Louisville sales	\$950,000
• Gross alcoholic beverage receipts from Louisville sales	\$800,000
Gross Kentucky alcoholic beverage receipts	\$2,300,000
Federal Taxable Income	\$65,000
State Income Tax deducted on Federal Return (OL return addback)	\$8,000
Federal Credit taken in lieu of deduction (OL return deduction)	\$5,000

CONCLUSION:

ABC calculates its alcoholic beverage deduction as follows:

Percentage of total business attributed to Kentucky alcohol sales:

$$\frac{\text{Kentucky Alcoholic Beverage Sales } \$2,300,000}{\text{Total Sales Everywhere } \$5,800,000} = 39.65517\%$$

Federal Taxable Income:	\$65,000
Plus: State income tax deducted on federal return:	+ \$8,000
Less: Federal Credit taken in lieu of expense	- \$5,000
Net Profit before alcoholic beverage deduction	\$68,000
Kentucky alcoholic beverage sales percentage	39.65517%
Kentucky alcoholic beverage deduction	\$26,966

ABC calculates its adjusted net profit as follows:

Net Profit before alcoholic beverage deduction	\$68,000
Kentucky alcoholic beverage deduction	\$26,966
Adjusted Net Profit after alcoholic beverage deduction	\$41,034

ABC calculates its apportioned net profit subject to occupational tax as follows:

$$\frac{\text{Louisville non-Alcoholic Beverage Sales } \$950,000}{\text{Total Sales Everywhere less Kentucky alcohol sales } \$3,500,000} = 27.14286\%$$

Adjusted Net Profit after alcoholic beverage deduction \$41,034

Apportioned Net Profit Subject to Occupational License Tax \$11,138

9. **Sales of Used Goods:** The sale of used goods conducted or participated in by an individual occurring on the individual’s residential property is not considered to be a [business](#) activity unless such sales are conducted for more than three consecutive days or occur more than four times annually. Such sales include, but are not limited to, yard sales conducted by [residents](#) of Louisville Metro at Louisville Metro residences.

EXAMPLE: John Smith is a resident of Louisville who conducts a garage sale at his residence every Saturday. Mr. Smith frequents other yard sales, flea markets and estate sales to find items to re-sell at his garage sales.

CONCLUSION: Mr. Smith is subject to the occupational license tax for his garage sale activity because he conducts the sales more than four times a year. He must report the amount of net profit he earns from this activity annually on his occupational license tax return.

EXAMPLE: Betsy Jones and Mary Brown are neighbors who are residents of Louisville. Ms. Jones allows Ms. Brown to conduct a monthly yard sale on her property since her residence is situated on a corner lot that provides more visibility to people passing through the neighborhood. In exchange for the use of her property, Ms. Brown compensates Ms. Jones with 5% of her sales, with a minimum of \$50 per month.

CONCLUSION: Both Ms. Jones and Ms. Brown are subject to the occupational license tax for their yard sale activity. Because the sales occur more than four times a year, the activity exceeds the maximum limitation to qualify for the exemption. Ms. Brown must report the amount of net profit she earns from her yard sale activity annually on her occupational license tax return. In addition, because Ms. Jones participated in the yard sale activity by providing the use of her property in exchange for a portion of the profit, she is also required to file the occupational license tax return and pay the tax on an annual basis.

10. **Derby Week Parking:** Parking fees received by [residents](#) who provide parking spaces during “Derby Festival Week” (the week preceding and including the first Saturday in May) in the area bounded by Colorado Avenue on the north, Interstate 264 (Watterson Expressway) on the south, Louisville Avenue at the railroad tracks on the east and Seventh Street Road on the west.

11. **Ordained Ministers:** Any income or compensation received by a [duly ordained minister of religion](#) in the performance of their regular duties as a minister of religion in accordance with [KRS 91.200\(10\)](#). Activities not related to the regular duties of a minister of religion are subject to the occupational license tax. In accordance with [KRS 160.483\(7\)](#), the exemption for the performance of duties as a minister of religion does not extend to the school boards tax; therefore, a [net profits](#) return shall be filed by any minister whose compensation is not subject to withholding at the source. Proof of ordination as a minister shall be provided to be eligible for the exemption.

EXAMPLE: Reverend Johnson, a resident of Louisville, is a duly ordained minister of religion who provides ministerial services in a church located in Louisville. The church does not withhold any occupational license tax on his compensation. In addition, Rev. Johnson operates a small photography business out of his residence unrelated to his regular ministerial duties.

CONCLUSION: The compensation that Reverend Johnson receives from his occupation as a minister of religion is exempt from the occupational license tax; however, it is subject to the school boards tax. In addition, Rev. Johnson's photography business is subject to both the occupational license tax and school boards tax. Rev. Johnson must file an occupational license tax return and report both activities.

EXAMPLE: Reverend Smith, a resident of Bullitt County, is a duly ordained minister of religion who provides ministerial services in a church located in Louisville. In addition, Rev. Smith is a member of a local bluegrass band that performs throughout the Louisville and Southern Indiana areas.

CONCLUSION: Because Reverend Smith is not a resident of Louisville Metro, the compensation that she receives from her occupation as a minister of religion is exempt from the occupational license and Jefferson County school boards taxes in accordance with [KRS 91.200\(10\)](#) and [KRS 160.483\(6\)](#). The compensation Rev. Smith receives for performances conducted in Louisville related to her bluegrass band activity is subject to occupational license tax, but it is not subject to the Jefferson County school board tax in accordance with [KRS 160.483\(6\)](#).

12. **Venture Capital Funds** Income received by venture capital funds that meet all the following criteria:
- a. The venture capital fund is a limited liability company, limited liability partnership, or limited partnership.
 - b. The venture capital fund is formed and operated for the exclusive purpose of buying, holding and/or selling securities, including debt securities, on its own behalf and not as a broker.

- c. More than 80% of the securities are securities of non-publicly traded companies. For purposes of this limitation, a non-publicly traded company is any [entity](#) that is not a publicly traded company and is not traded on any of the following exchanges or systems:
 - (1) A national securities exchange registered under § [6 of the Securities Exchange Act of 1934](#) or exempted from registration under such act by [15 U.S.C. § 78f](#) because of the limited volume of transactions;
 - (2) A foreign securities exchange operating under principles analogous to a national securities exchange;
 - (3) A regional or local exchange;
 - (4) An interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise; or
 - (5) On a secondary market or the substantial equivalent thereof, if taking into account all of the facts and circumstances, the owners are readily able to buy, sell or exchange their ownership interest in a manner that is comparable, economically, to trading on an exchange.
- d. More than 80% of the capital of the fund is derived from investments by entities and/or individuals which are neither directly nor indirectly related to the fund. For purposes of this limitation, related means entities and/or individuals that are related as determined by [26 U.S.C. § 267\(b\) and \(f\)](#) and any federal regulations applicable thereto.
- e. More than 80% of the capital of the fund is derived from investments by entities and/or individuals which are not affiliated with the fund. For purposes of this limitation, affiliated entities are part of an affiliated group as defined in [26 U.S.C. § 1504\(a\)](#) and any applicable federal regulations thereto.

The entity shall file an annual informational return on the due date prescribed in § [1.07](#).

- 13. Family Limited Partnerships:** Income received by family limited partnerships that meet all the following criteria:
- a. The family limited partnership is a non-corporate [entity](#) where the sole activity is the production of investment income. For purposes of this exemption, investment income means and includes the gross [receipts](#) derived from dividends, interest, annuities, and sales or exchanges of stock or securities to the extent of any gains therefrom. Investment income does **not** include income received from tangible or real property.
 - b. At least 95% of the equity of the family limited partnership is owned by members of the family. For purposes of this exemption, with respect to an individual only, family means:
 - (1) An ancestor of such individual;
 - (2) The spouse or former spouse of such individual;
 - (3) A lineal descendent of such individual, of such individual's spouse or former spouse, or of a parent of such individual;
 - (4) The spouse or former spouse of any lineal descendent described in subsection c.; or
 - (5) The estate or trust of a deceased individual who, while living, was as described in any of the above subsections.

- (6) For purposes of this section, a legally adopted child of an individual shall be treated as the child of such individual by blood.

The entity shall file an annual informational return on the due date prescribed in § [1.07](#).

- 14. Exemptions Provided by Federal or State Law:** No occupational license tax is imposed on any income or compensation that is expressly exempted elsewhere in [LMCO Chapter 110](#) or by federal or state law, including, but not limited to:
- a. No license tax is imposed on person engaged in the [business](#) of conducting a racetrack per [KRS 137.190](#).
 - b. No license tax is imposed on the activities of an [entity](#) that is not a business as defined in [§1.01](#).

As stated previously in this section, the burden of proving or establishing entitlement to an exemption, deduction, or exclusion provided for in any ordinance or applicable statute and that every requirement is satisfied rests upon the [business entity](#), person or taxpayer claiming that exemption, deduction or exclusion. Any exemption, deduction or exclusion shall be narrowly construed in favor of the [Commission](#) and against the application of the exemption, deduction or exclusion. Failure to provide information required by this regulation or requested by the Commission may result in the denial of an exemption, deduction or exclusion.

- B. Regulatory License Fees:** The provisions of this subsection apply only to the occupational license tax and do not apply to license fees imposed for regulatory purposes.

§1.04 Occupational License application required

ORDINANCE AUTHORITY: [LMCO §110.04](#); [LMCO §110.11](#)

A. Initial Licensing Requirement:

1. Business entities required to file a return under [LMCO § 110.07](#) and all employers must apply before commencing [business](#) for an occupational license tax reporting number (account number) and in such process shall complete and execute the questionnaire prescribed by the [Commission](#). Business entities and employers are required to notify the Commission of changes of address, of the cessation of business activity and of other changes which render inaccurate the information supplied in the completed questionnaire.
 - a. Each separate [business entity](#) conducting business in the Louisville Metro is required to submit a separate Registration Application form and will be supplied a separate account number.
 - b. An unincorporated individual engaged in more than one business activity as a [sole proprietor](#) is permitted to use the same account number for all business activities in which the individual is engaged.
 - c. When a corporation becomes a new legal [entity](#), as when it dissolves and incorporates again, a new Registration Application must be submitted.

- d. Account numbers are assigned and licenses are processed on the basis of the information supplied by the completed Registration Application.
2. All employers located within a Development Area created pursuant to [KRS 65.490](#) through [65.499](#) and [2007 House Bill 549](#) will be subject to additional informational reporting requirements as prescribed by the [Commission](#).

§1.05 Deduction to be made by employers

ORDINANCE AUTHORITY: [LMCO §110.05](#); [LMCO §110.11](#)

- A. Employers Shall Deduct and Withhold License Tax:** Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation the license tax imposed under [LMCO § 110.02](#). Wages are deemed to have been earned in Louisville Metro when the services for which they are paid were performed in Louisville Metro, regardless of where the payment was made or received.

The license tax shall be computed by obtaining the percentage which the compensation for work performed or services rendered within Louisville Metro bears to the total compensation earned. The requirement imposed on employers pursuant to [LMCO § 110.02](#) shall apply with respect to wages paid employees who work both within and without Louisville Metro if the employee is physically located within the Louisville Metro while on the job for more than five percent (5%) of the time the employee is on the job in any calendar year. The employer shall multiply the total wages paid each employee by a fraction whose numerator is the days spent on the job in the Louisville Metro and whose denominator is the total days spent on the job by the employee everywhere. The amount resulting from this calculation shall be treated as the wages subject to the license tax imposed by [LMCO § 110.02](#). For the purposes of calculating the numerator and the denominator of the fraction referred to in this Section, time spent on the job shall not include time for which the employee is compensated for sick pay, vacation pay, compensatory pay or other similar compensation. Provided, however, that no employer shall be permitted to apportion wages of an employee who is physically located within Louisville Metro during ninety-five (95%) or more of the employee's time on the job and no such employee shall be permitted to claim a refund for overpayment of occupational license taxes based on [apportionment](#) of wages. Employees who are physically located within Louisville Metro during five percent (5%) or less of their time on the job shall not be required to file an employee [net profit](#) license tax return or to pay a license tax pursuant to [LMCO § 110.02](#) arising from the portion of their wages earned within Louisville Metro.

- B. Quarterly Reporting Required:** Every employer who employs one or more persons within Louisville Metro and is subject to the requirement to withhold Occupational tax under this section shall deduct the occupational tax from compensation *at the time of payment to the employee*, or, in the case of deferred compensation, *at the time the deferred compensation is earned*.

The employer shall file a quarterly occupational tax withholding return and report the wages from which the occupational license tax has been withheld and make the required payment as directed in this section.

The occupational tax withholding return shall be filed by the last day of the month following the end of the quarter, as demonstrated in the following schedule:

**SCHEDULE FOR FILING QUARTERLY OCCUPATIONAL TAX
WITHHOLDING RETURNS**

Quarter Ending	Date Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The total tax due as shown on the return is required to be paid by the due date of the return as shown above. A return is regarded as timely filed if it is electronically delivered or postmarked on or before the due date of the return. If the return is hand-delivered, it is regarded as timely filed if it is delivered to the [Commission](#)'s office on or before the due date of the return. If the due date occurs on a Saturday, Sunday or [Metro Government](#) legal holiday, the return shall be electronically delivered, postmarked or hand-delivered to the Commission's office on or before the next day that is not a Saturday, Sunday or Metro Government legal holiday to be regarded as timely filed. In addition, monthly withholding requirements apply to employers whose occupational taxes withheld meet the threshold set forth in Paragraph C below.

- C. **Monthly Payments Required for Taxes Exceeding \$3,000:** Despite the provisions of subsection (B) above, each employer whose aggregate withholding tax requirement for [Metro Government](#), Mass Transit Trust fund and school boards tax exceeds \$3,000 during any one (1) of the preceding four (4) quarters shall remit the occupational license taxes required to be withheld from employees on a *monthly* basis. The monthly estimated payment is due by the 15th day of the following month, as shown in the following schedule:

**SCHEDULE FOR EMPLOYER'S MONTHLY ESTIMATED TAX
WITHHOLDING PAYMENTS**

Month Wages Paid or Deferred	Date Payment Due
January	February 15
February	March 15
March	April 15
April	May 15
May	June 15
June	July 15
July	August 15
August	September 15
September	October 15
October	November 15

November
December

December 15
January 15

D. Examples of Compensation and Occupational Tax Treatment:

1. **Compensation Subject to the Occupational License Tax:** The license tax on wages applies to all payments paid to employees for employment includable as wages in accordance with the Internal Revenue Code, including the following:
 - a. **Salaries** - Salaries, bonuses or incentive payments earned by an individual, whether directly or through an [agent](#):
 - (1) As an officer or employee, or both, of a corporation;
 - (2) As an officer or employee (as distinguished from a partner or member) of a partnership or other association;
 - (3) As an employee (as distinguished from the proprietor) of a [business](#) conducted by an individual owner;
 - (4) As an officer or employee (whether elected or appointed, enlisted or commissioned) of a governmental agency; or
 - (5) As an officer or employee of any business or other [entity](#).
 - b. **Wages** - Wages, bonuses, or incentive payments received by an employee, whether directly or through an [agent](#):
 - (1) Whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or other rates; and
 - (2) Whether paid by an individual, non-profit association, corporation, partnership, fiduciary, governmental agency, or any business or other [entity](#).
 - c. **Commissions** - Commissions received by an employee, from his employer whether directly or through an [agent](#), for services rendered regardless of how computed, including any amounts received as a drawing account exceeding the commissions earned.
 - d. **Fees** - Fees received by an employee, whether directly or through an [agent](#), for services rendered regardless of how computed.
 - e. **Vacation, Sick Leave, Holiday Payments** - Vacation, sick leave and holiday payments made to an employee pursuant to an employer's wage or salary continuation plan during periods of absence by an employee from work.
 - f. **Employee Contributions to Qualified Federal Tax Deferral Plans** - Compensation on which an employee has elected to defer payment of federal income tax under [Sections 401\(k\), 403\(b\), or 457](#) of the Internal Revenue Code. For a 401(k) plan, the amount deferred into the plan pursuant to a cash or deferral election as well as the amount deferred by reason of a salary reduction election are both included as taxable compensation. For compensation deferred for federal tax purposes and subject to occupational license tax, the employer shall deduct the occupational tax at the time the deferred compensation is earned by the employee.
 - g. **Employer Contributions to a Qualified Plan Arising from Employee Elections** - Amounts contributed by an employer to a qualified plan or an IRC [Section 403\(b\)](#) plan which would be received as wages taxable in the year earned by the employee except for the employee's election to have the employer contribute the compensation to the plan.

- h. **“Picked Up” Employee Contributions** - Employee contributions to IRC [Section 401\(a\)](#) or [Section 403\(a\)](#) plans which are “picked up” by an employer pursuant to [Section 414\(h\)](#) of the Internal Revenue Code.
- i. **Contributions to Non-Qualified Plans** - Employer contributions and/or assignments to any plan other than a plan described by [Section 401\(a\)](#), [Section 401\(k\)](#), [Section 403\(b\)](#), [Section 414\(h\)](#) or [Section 457](#) of the Internal Revenue Code (any plan under which the employer is not permitted for federal income tax purposes to deduct its expenses arising from its contributions or assignments into such plan during the year in which such contributions or assignments are made). All license taxes shall be withheld by the employer at the time when the compensation is earned irrespective of the time that the contribution or assignment to the qualified or non-qualified plan is made.
 - (1) Employers may apply (and upon request of the employee, shall apply) for a refund of license taxes withheld from forfeited benefits and deposited with the [Commission](#) on behalf of any employee whose employment is terminated prior to becoming eligible for benefits, provided that the employee does not receive the benefits and loses all rights to future benefits under the non-qualified plan. The refund application shall be filed at any time within two years after the employee’s employment is terminated.
- j. **Non-Cash Fringe Benefits** - Fringe benefits received by any employee to the extent that such benefits are taxable for federal income tax purposes. Every employer shall withhold from each employee the occupational license tax when the employee receives non-cash fringe benefits taxable for federal income tax purposes at the time at which the receipt of such non-cash benefits by the employee is required to be reported by the employer for federal income tax purposes. The employer shall remit the occupational license tax withheld from the non-cash fringe benefits to the Commissioner with the deposit made for the period in which such non-cash benefits are so reported. Non-cash fringe benefits shall be valued for purposes of the imposition of the occupational license tax as provided by the Internal Revenue Code and as provided by the Code of Federal Regulations in effect for the [taxable year](#).
- k. **Flexible Benefit Plan Payments** – 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 the employee to elect to reduce federal taxable compensation under the Internal Revenue Code. These payments include, but are not limited to, contributions made under IRC [Sections 125](#) and [132](#), also known as cafeteria plans, flexible benefit plans or mini-flex plans, which provide the opportunity for employees to elect to reduce their taxable compensation to pay for benefits such as hospitalization, group term life insurance, group disability insurance, etc., not otherwise paid for by the employer.
- l. **Separation Payments** – Separation payments, which include:
 - (1) Payments made by an employer to an employee at the time of retirement for accrued vacation pay, unused sick pay, severance pay and, if such benefits would be subject to the license tax if they were paid to an active employee, other benefits accrued pursuant to any employment contract between the employee and the employer.

- (2) Payments made in lieu of any payment the employer is obligated to make to or on behalf of the employee to the extent that such payments would be subject to the license tax if they were made to an active employee.
- m. **Expense Accounts** - Amounts allowed and paid by employers to employees for expenses, to the extent that the payments are required to be recognized as wages for federal income tax purposes.
- n. **Payments for Services Rendered by Students** - Stipends, honorariums, grants and other payments made to students to the extent that such payments are made for services rendered by the student and an employer/employee relationship exists between the payor and the student.
- o. **Early Retirement and Similar Inducements** - Payments made in consideration for early retirement or other inducements paid by the employer to an employee arising from the employee's service to the employer.
- p. **Property and Services Received as Compensation** - The fair market value of property or services received as compensation by an employee and paid by the employer including board and lodging and similar items where such board and lodging is considered part of the compensation paid and is not afforded for the convenience of the employer.
- q. **Stock Options:**
- (1) What is taxable: If an employer grants an option to purchase stock of the employer or other property to an employee for any reason connected with the employment of such employee within Louisville Metro, and if:
- (a) the option is not a stock option as defined by [Section 421\(a\)](#) of the Internal Revenue Code or
- (b) the option was disqualified for treatment pursuant to [IRC Section 421\(a\)](#) due to a disposal as described under [IRC Section 421\(b\)](#),
- then the fair market value of the option shall be subject to occupational license taxes on the wages of the employee.
- (2) Amount to be Included in Wages:
- (a) If the option was actively traded on an established market and had a readily available fair market value at the time it was granted, the fair market value of the option (as determined pursuant to [IRC Section 20.2031-2](#)) shall be included in the employee's wages at the time it was granted.
- (b) If the option does not have a readily ascertainable fair market value at the time it was granted, the employee shall include in wages:
1. the value of the option at the time the employee disposes of the option for value or
 2. the difference between the fair market value of the property at the time the option is exercised and the amount payable for the property pursuant to the option at the time that the employee exercises the option and acquires an additional right to receive the property subject to the option. The employee has an unconditional right to receive the property subject to the option when the right to receive such property is not subject to any conditions, other than conditions which may be performed by the employee at any time.

- (3) **Apportionment Determination:** For purposes of determining the extent to which compensation paid to an employee in the form of an option has been paid for work done or services performed within Louisville Metro, the full amount of the compensation derived from the option shall be multiplied by the fraction determined pursuant to § [1.06](#) of these Regulations applicable *for the year in which the option was granted*.

EXAMPLE: In 2016, George Smith received a stock option from his employer for the right to purchase 1000 shares of the employer’s stock in 2021 for \$10 per share. The stock option was not eligible under IRC Section 421 and options to purchase the employer’s stock in 2021 were not actively traded on an established market. During 2016, Mr. Smith worked 60% of his time in Louisville Metro while employed by this employer. In 2021, Mr. Smith exercised his option to purchase the 1000 shares of the employer’s stock. The value at the time of the purchase was \$25 per share.

CONCLUSION: The amount of compensation to be included in Mr. Smith’s wages is calculated as follows:

Fair Market Value of 1000 shares of Employer’s stock	\$25,000
Purchase price paid by Mr. Smith for 1000 shares	\$10,000
Compensation attributable to exercise of option	\$15,000
Percentage of time worked in Louisville Metro in 2016	60%
Compensation to be included in Louisville wages in 2021	\$9,000

Note: The percentage of time that Mr. Smith spent for work performed within Louisville Metro during 2021 (the year the option was exercised) is not relevant to this calculation.

- r. **Other Income** - All other income paid by an employer and received by an employee for the performance of any activity subject to the license tax, not expressly exempt (see § [1.05 D.2](#), below) unless such income is to be reported and a [net profit](#) license tax paid under the provisions of § [1.02](#) of these Regulations.
2. **Compensation Not Subject to the Occupational License Tax:** Compensation which is not subject to the license tax on wages includes the following:
- Insurance Payments** - Payments made to employees under a disability, sickness or accident insurance plan.
 - Unemployment Compensation** - Unemployment Compensation payments made by any governmental agency.
 - Death Benefits** - Death benefits payable by an employer to the beneficiary of an employee or to his estate, whether payable in a single sum or otherwise.
 - Workmen’s Compensation** - Amounts received by employees under the Workmen’s Compensation Act as compensation for disability sustained during the course of employment, together with any damages received by suit or agreement on account of such disability.

- e. **Allowance and Reimbursement for Expenses** - Sums allowed and paid by employers to employees for expenses necessarily and actually incurred by the employee in the direct performance of his services.
 - f. **Strike Benefits** - Strike pay benefits paid from a fund which is established and/or replenished, in whole or in part, from the employee's wages.
 - g. **Kentucky National Guard** - Compensation paid members of the Kentucky National Guard for active-duty training, unit training assemblies and annual field training. The imposition of the license tax on such income is expressly forbidden by [KRS 91.200](#) and [KRS 68.180](#).
 - h. **Fringe Benefits Not Taxable for Federal Income Tax Purposes** - Non-cash fringe benefits which, pursuant to [Section 132](#) of the Internal Revenue Code, are not taxable for Federal income tax purposes. These fringe benefits include:
 - (1) no additional cost services,
 - (2) qualified employee discounts,
 - (3) working condition fringes, and
 - (4) de minimis fringes
 - i. **Employer Contributions to Qualified Plans Not Arising From Employee Election** - Except as expressly provided in [§ 1.05.D.1\(h\)](#) of these Regulations, employer contributions to qualified plans other than contributions made pursuant to an employee election to defer compensation into a plan under [Section 401\(a\)](#), [Section 401\(k\)](#), [Section 403\(b\)](#) or [Section 457](#) of the Internal Revenue Code.
 - j. **Employer Payments for Employee Benefits** – Employer payments for employee benefits, including payments for employee life insurance premiums not treated as wages for federal income tax purposes and payments for employee health insurance benefits.
 - k. **Amounts Paid from Qualified and Non-Qualified Plans** - Amounts paid from retirement plans, profit sharing plans, stock bonus plans or employee stock ownership plans, whether or not such plans are qualified plans pursuant to the Internal Revenue Code.
 - l. **Payments to Students Not Related to Employment** - Stipends, honorariums, grants and other payments made to students are not subject to the license tax to the extent that such payments are conditioned only upon the recipient's pursuit of studies and/or participation in athletic or other intercollegiate competition. In addition, scholarships and other non-cash fringe benefits received by duly registered students from the school, college or university in which they are enrolled are not subject to the occupational license tax.
 - m. **Exemptions Afforded by Treaty** - Any wages, salaries, or other compensation paid to a foreign national to the extent that such payments are exempt from state and local taxation by a treaty of the United States.
 - n. **Payments to Non-Resident Military Personnel** - Payments to non-resident military personnel exempt from state and local taxation under the Servicemembers Civil Relief Act (SCRA), ([50 U.S.C. §§ 3901](#) et seq.)
3. **Compensation Not Classified as Wages Subject to Occupational License Tax:**
 Compensation which is not required to have occupational tax withheld by the employer, but is nevertheless subject to the license tax and must be submitted by the employee if not withheld and remitted by the employer includes, but is not limited to:

- a. **Tip Income** – Employees are required to file an occupational license tax return and remit the tax due on any tip income that is not withheld upon by the employer.
 - b. **Directors’ Fees** - Corporations are permitted, but not required, to withhold and remit license taxes on the fees paid to directors, provided that such corporations submit the 1099 information required by § [1.07 K](#) of these Regulations, indicate that such payments are directors’ fees, and state the amount of the license tax withheld.
4. **Proration of Sick Leave/Vacation Pay:** Compensation received by an employee for accrued unused vacation pay, unused holiday pay, unused sick leave, compensatory time pay, separation pay, or other payment made under an employer’s wage or salary continuation plan during any period of absence from work shall be apportioned according to the percentage of time spent on the job within Louisville Metro in the last year during which the employee worked on the job.
- E. Annual Employee Information Return to LMRC due February 28th:** Every employer shall, annually on or before February 28th of each year make a return on a form prescribed by the [Commission](#) to reconcile the total compensation paid and the aggregate occupational taxes withheld to the amounts previously reported on the quarterly withholding returns. The return shall include a report for each employee detailing the name, address, Social Security Number, amount of gross wages earned in Louisville Metro and the amount of occupational license tax withheld for the previous year. In addition, the amount and date of any contributions or assignments on behalf of an employee to a non-qualified plan shall be reported, along with other pertinent information required by the Commission.
- F. Statement to Employee of Amount Withheld due January 31st:** Every employer shall furnish each employee a statement, on or before January 31 of each year, showing the amount of compensation earned and the occupational license tax deducted and remitted to the [Commission](#) by said employer during the preceding calendar year.
- G. Application for Employee Refund:** In the event of an overpayment of the employee occupational license tax resulting from excess tax withholding by the employer, the employer shall, upon request by the employee, complete an application for employee refund and certify the overpayment of occupational tax. Where the employee has not made a refund request, the employer may apply to the [Commission](#) on behalf of the employee. No employer is required to certify an employee’s application if the employer remits the overpayment directly to the employee or if the overpayment is less than \$1.00.
- H. Overpayment of Taxes not Withheld from Employee Compensation:** Unless written application for refund or credit is received by the [Commission](#) from the employer or employee within two years from the date the overpayment was made, no refund or credit shall be allowed. Where there has been an overpayment of license tax under this chapter, 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 by the employer under this section.
- I. Refunds of Taxes Withheld on Compensation earned outside Louisville Metro:** An employee who has compensation attributable to activities performed outside the Louisville Metro area, based on time spent outside the Louisville Metro area, whose employer has

withheld and remitted to the [Commission](#) the occupational license tax on the compensation attributable to activities performed outside the Louisville Metro area, may file for a refund within two 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 Commission shall confirm with the employer the percentage of time spent outside the Louisville Metro area and the amount of compensation attributable to activities performed outside the Louisville Metro prior to approval of the refund. The employer's certification shall be notarized and all pertinent documentation substantiating the overpayment shall be included with the application upon submission.

- J. Discovery of Underpayment:** Every employer who employs one or more persons within Louisville Metro and who is notified of or discovers an underpayment by the employer of the employee occupational license tax shall correct the previously submitted return(s) showing the under-withholding and shall remit the payment of the employee occupational license tax not previously paid, along with any applicable penalty and interest.
- K. Employer Liability for Payment of Withholding Tax:** Every employer who fails to withhold or pay to the [Commission](#) any amounts required by this section to be withheld and paid shall be personally and individually liable to the Commission for any amount of unpaid tax, penalty and interest in accordance with the provisions in this section. Every employer, by employing persons within Louisville Metro, is regarded as a trustee of the Commission as a result of undertaking an obligation to collect and hold the employee occupational license tax as funds held in trust. Criminal charges may be initiated against any employer who withholds occupational license taxes from one or more employees employed within Louisville Metro and intentionally fails to remit such occupational license taxes withheld to the Commission, as provided in [KRS 514.070](#).
- L. Officer Liability for Payment of Withholding Tax:** The president, vice-president, secretary, treasurer or any other person holding an equivalent corporate office of any [business entity](#) subject to this section shall be personally and individually liable, both jointly and severally, for any occupational license tax required to be withheld from compensation paid or payable to one or more employees of the business entity. Neither the corporate dissolution or withdrawal of the business entity from Louisville Metro area, nor the cessation of holding any corporate office, shall discharge that liability; provided that the personal and individual liability shall apply to each and every person holding the corporate office at the time the occupational license tax becomes or became obligated. No person shall be personally and individually liable under this subsection unless such person had authority to collect, truthfully account for, or pay over the occupational license tax imposed by this chapter at the time that the taxes imposed by this chapter become or became due.
- M. Employee Liability for Payment of Withholding Tax:** Despite subsections (K) and (L) of this section, every employee receiving compensation subject to the occupational license tax shall be personally liable for any amount due unless the full amount of tax owed was deducted from the employee's compensation by the employer. Every employer who employs one or more persons within Louisville Metro and any employee whose compensation subject to the occupational license tax has not been reduced by the full occupational tax due shall be

jointly and severally liable to the [Commission](#) for any amount of unpaid tax, penalty and interest. The burden for remitting the occupational tax on wages is imposed primarily on the employer and secondarily on the employee.

N. Actions Against Employer for Nonpayment of Withholding Tax: The [Commission](#) shall have a lien upon all the property of any employer who fails to withhold or remit to the Commission sums required to be withheld under this section. If the employer withholds occupational tax from the employees' pay and fails to remit the funds withheld to the Commission, the lien shall commence on the date the payment was due. If the employer fails to withhold, the lien shall commence at the time the occupational license tax liability is assessed.

O. Employee Requirement for Filing Occupational Return An employee whose occupational tax obligation on wages earned in Louisville Metro have not been withheld by their employer, in whole or in part, shall file an Occupational License tax return on or before April 15th following the calendar year during which the occupational tax was not fully withheld and remit any tax not withheld, along with any applicable interest and penalty. The employee shall provide a statement furnished by the employer (such as a Federal W-2 or a similar statement) showing the compensation paid, wherever employed during the period for which the return is made. Other pertinent information as may be required by the [Commission](#) shall also be provided with the return. Each person making a return required by this section shall, at the time of filing, pay the amount of license tax due under this section, provided that any portion of the license tax deducted and withheld by the employer shall be credited on the return and only the balance, if any, shall be due and payable at the time of filing the return.

P. Withholding Tax Payments to be Made by Electronic Fund Transfer:

1. [Third party payroll reporting agents](#) whose aggregate payment of occupational license taxes deducted and withheld pursuant to [LMCO §110.05\(B\)](#) on behalf of multiple employers exceeds \$25,000 or who report and pay for more than 25 individual accounts shall remit all payments by [electronic fund transfer](#).
2. The electronic fund transfer shall be made on or before the occupational license tax is due.
3. The requirement that an employer remit the payment by electronic fund transfer may be waived if the employer is unable to remit funds electronically. The employer may request a waiver by submitting a written request on the [Electronic Filing](#) or Electronic Payment Waiver Request form.

§1.06 Apportionment of Net Profit

ORDINANCE AUTHORITY: [LMCO §110.06](#); [LMCO §110.11](#)

A. Payroll Factor: A fraction, the numerator of which is the total amount paid or payable in [compensation](#) in Louisville Metro as defined in [LMCO §110.01](#), during the tax period, and

the denominator of which is the total compensation paid or payable everywhere during the tax period.

$$\frac{\text{total compensation paid for work performed in Louisville Metro}}{\text{total compensation paid for work performed everywhere}}$$

1. Wages made by third party payors and/or for leased employees must be included in the payroll factor of the person or [entity](#) who *has control of the actions and the work product of the employees*, regardless of whether that [business](#) files wage withholding returns within Louisville Metro

EXAMPLE: ABC Corporation, an Illinois entity with a business location in Louisville, contracts with XYZ Corporation, a third-party payroll provider, to handle all payroll functions of the business, ABC Corporation maintains control of the actions of the employees who work at all locations. XYZ Corporation files all federal, state, and local payroll returns and remits all taxes withheld from the employees who work for ABC Corporation.

CONCLUSION: Because ABC Corporation maintains control of the employees performing the work for its business, ABC Corporation must include the wages of these employees in the payroll factor of its net profit return, even though ABC Corporation does not file wage withholding returns with the Commission.

- B. **Sales Factor:** A fraction, the numerator of which is the total [sales revenue](#) of a [business](#) in Louisville Metro during a tax period, and the denominator of which is the total sales revenue of the [business entity](#) everywhere during the tax period.

$$\frac{\text{sales revenue in Louisville Metro}}{\text{total sales revenue}}$$

Sales revenue is broadly defined in [LMCO §110.01](#) as [receipts](#) from the sale, lease, or rental of goods, services, or property. Property as defined in [LMCO §110.01](#) includes tangible personal property and real property, but this definition does not include taxpayers whose principal business activity is trading in securities. This sales revenue includes, but is not limited to: All cash payments, the fair market value of all property and services, and any receivable from transactions and activities performed in the regular course of business, whether computed on a cash or accrual basis in accordance with [LMCO §110.02](#) and Regulation [§1.02](#) herein. Sales revenue would not include items of income excluded from [net profit](#) under the definition of net profit [LMCO §110.01](#).

Where the sales revenue of a business entity is determined to have been realized or taken place in a [tax district](#) or Louisville Metro is determined by the rules set forth in [LMCO §110.06\(C\)](#), the following examples illustrate the application of these rules in the determination of sales factor.

1. **Tangible Personal Property:** the sale, lease, or rental of tangible personal property is in Louisville Metro (and therefore must be included in [sales revenue](#) in Louisville Metro) if the property is **delivered** or **shipped** to a purchaser (or designee of the purchaser) within Louisville Metro.
 - a. Property is delivered or shipped to a purchaser within Louisville Metro if the recipient is in Louisville, even though the property is ordered from outside Louisville.

EXAMPLE: During the taxable year, ABC Corporation, in Covington, KY, sold all of its widgets to a purchaser, 123 Corporation for \$100,000. 123 Corporation has branch stores in several locations throughout the United States, including Louisville Metro. 123's purchasing department, located in Lexington, KY, placed the order. Widgets worth \$25,000 of the total widget order were shipped directly to 123 Corporation's store in Louisville.

CONCLUSION: ABC Corporation must source \$25,000 of its sales to Louisville Metro to calculate its sales factor. ABC Corporation is a Kentucky Corporation doing business in Louisville Metro as well as other tax districts. The ABC Corporation sales factor would be as follows:

$$\frac{\text{sales revenue in Louisville Metro}}{\text{total sales revenue}} = \frac{\$25,000 (\text{sales revenue in Louisville Metro})}{\$100,000 (\text{total sales revenue})} \text{ or } \frac{1}{4}$$

- b. Property is delivered or shipped to a purchaser in Louisville Metro if the shipment terminates or ends in Louisville, even if the property may be later transferred by the purchaser to another location.

EXAMPLE: ABC Corporation makes a sale of \$25,000 in widgets to a purchaser corporation (P Corp) which maintains a central warehouse in Louisville. P Corp receives all widget purchases for the company at its Louisville warehouse before re-shipping its widgets to its branch stores throughout the United States. ABC Corporation's total sales for the taxable year is \$250,000.

CONCLUSION: The \$25,000 in widgets is shipped to P Corp's warehouse in Louisville. Therefore, ABC Corporation must include the entire \$25,000 sale in its Louisville sales revenue for purposes of calculating its sales factor. The calculation is therefore:

$$\frac{\$25,000 (\text{sales revenue in Louisville Metro})}{\$250,000 (\text{total sales revenue})} \text{ or } \frac{1}{10}$$

2. **Sales other than tangible personal or real property:** the [sales revenue](#) is apportioned to Louisville Metro based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within Louisville Metro and the denominator of which is the total time spent performing that income producing activity.

$$\frac{\text{time performing income producing activity in Louisville}}{\text{total time spent performing that income producing activity}}$$

EXAMPLE: Mr. Smith was appointed as Executor or Administrator for his uncle’s estate. As Executor, he is a fiduciary considered a business entity acting on behalf of deceased individuals, and therefore subject to [net profit. LMCO § 110.01](#) (Defining Business Entity and Net Profit); [LMCO§ 110.16\(B\)](#). His duties as executor were performed primarily in Louisville Metro; however, Mr. Smith was required to travel outside of Louisville on multiple occasions to finalize settlement issues with his uncle’s heirs. Mr. Smith earned \$20,000 for services performed acting as executor during the taxable year. In the final settlement filed with Probate Court, he stated he performed a total of 200 hours performing his executor duties. Of those 200 hours, 120 hours of work was performed in Louisville Metro. The remainder of his time was time spent traveling and performing duties out of county.

CONCLUSION: Because Mr. Smith was paid a lump sum fee for work performed in multiple locations during this taxable year, he must apportion his net profit as follows:

$$\frac{\text{Time spent performing fiduciary services in Louisville Metro}}{\text{Time spent performing fiduciary services everywhere}} \text{ or } \frac{120 \text{ hours}}{200 \text{ hours}}$$

EXAMPLE: General Corporation provides cleaning services in locations throughout the United States, including in Louisville. General reported the following income:

- Gross receipts from cleaning service fees: \$1,000,000, of which \$180,000 was from services performed in Louisville.
- Interest and dividends from investments: \$98,000
- Capital Gains from the sale of investments: \$103,000

CONCLUSION: General Corporation’s sales factor is calculated as follows:

$$(a) \frac{\text{Fees earned for time performing cleaning services in Louisville}}{\text{Fees earned for time performing cleaning services everywhere}} = \frac{\$180,000}{\$1,000,000}$$

Since General Corporation’s principal business activity is not trading in securities, only the cleaning service fees are included in the sales factor. Sales revenue does not include Interest, dividends, and capital gains from investments unless the principal business activity of the entity is trading in securities. [LMCO §110.01](#). Therefore, those items are excluded from the calculation.

EXAMPLE: XYZ Corporation operates several gyms across Louisville and Southern Indiana. In addition to charging membership dues for the use of their equipment, XYZ also sells merchandise to customers at the gym locations and online.

CONCLUSION: XYZ must include both the receipt of the membership dues (other than tangible personal property) **and** the sales receipts of the merchandise sold (tangible personal property) in the sales factor. The receipts attributed to Louisville must include the following:

- the membership dues associated with the Louisville locations
- the merchandise sold at the Louisville locations
- the merchandise shipped to Louisville locations from online purchases

EXAMPLE: Chuck’s Advertising Company provides advertising services in the form of flyers, billboards and radio spots to Bud’s Sporting Goods located in Louisville. Chuck’s received \$100,000 from Bud’s Sporting Goods for the following advertising services:

- \$30,000 to distribute 300,000 flyers, of which 280,000 were delivered to residences in Louisville and 20,000 were delivered to residences located in Bullitt County, outside of Louisville.
- \$30,000 to advertise on three billboards, two of which are in Louisville Metro and the third in Bullitt County.
- \$40,000 for radio advertising on Louisville radio stations – the only stations the taxpayer advertises.

CONCLUSION: Method used to Calculate Louisville Sales:

Flyers:

$$\frac{\text{Time spent distributing flyers in Louisville (280,000 flyers)}}{\text{Time spent distributing flyers everywhere (300,000 flyers)}} \times \$30,000 = \$28,000$$

Billboard Advertising:

$$\frac{\text{Billboard Advertising in Louisville (2)}}{\text{Billboard Advertising everywhere (3)}} \times \$30,000 = \$20,000$$

Radio Advertising:

$$\frac{\text{time spent advertising on Louisville Radio}}{\text{time spent advertising on all Radio}} \times \$40,000 = \$40,000$$

The Louisville sales represent \$88,000 of the \$100,000 total sales.

Calculation of the Sales Factor is therefore:

$$\frac{\$88,000}{\$100,000} = .88 \text{ or } 88\%$$

EXAMPLE: Ready Loan Company has eight branch locations, three of which are located within Louisville Metro. Ready’s main office is in New

Albany, Indiana, where the loans that are negotiated at the branch offices are reviewed and approved.

CONCLUSION: The nature of Ready Loan Company’s business is the sales of services (providing loans). In this case, Ready’s sales factor is calculated by dividing the receipts from the sale of services derived from loans originated in their offices in Louisville by the total receipts from loans negotiated everywhere.

$$\frac{\textit{Time spent performing loan services in Louisville}}{\textit{Time spent performing loan services everywhere}}$$

EXAMPLE: Jane Smith is an author who lives and writes books in Louisville Metro. During the taxable year, she worked a cumulative total of 115 days writing a book and she received an advance of \$95,000 from her publisher based on anticipated sales of the book. In addition, she received \$60,000 during the taxable year in royalties from the publisher resulting from actual sales of the book. Ms. Smith also participated in a three-month book tour, where she promoted her book at 30 bookstores throughout the country at book signings lasting 2 hours each. Two of the book signings occurred in bookstores located in Louisville.

CONCLUSION: Ms. Smith is engaged in the service of both writing a book and promoting its sales. She is not engaged in the sale of tangible personal property; rather, the sales of the books themselves are reported by the publisher who in turn compensates her through royalty payments. Ms. Smith’s sales apportionment factor for the taxable year is calculated as follows:

Work performed outside Louisville: 28 book signings outside of Louisville at 2 hours each.

$$56 \textit{ hours} \div 8 \textit{ hour workday} = 7 \textit{ days outside Louisville}$$

Work performed in Louisville: 115 days writing the book and .5 days for 2 book signings within Louisville at 2 hours each ($4 \textit{ hours} \div 8 \textit{ hour workday} = .5 \textit{ days in Louisville}$)

Therefore, the sales factor is $\frac{\textit{Days worked in Louisville}}{\textit{Total days worked}} \frac{115.5}{122.5}$, or .943. With total sales of \$155,000, the Louisville sales are \$146,165.

Royalty payments for the book that are received in future tax periods are attributable 100% to Louisville sales.

EXAMPLE: LMNO Properties owns 15 apartment complexes, 9 of which are located in Louisville. During the taxable year, LMNO sold one of the

Louisville apartment buildings for a net gain of \$50,000 and one Clarksville, Indiana apartment building for a net gain of \$35,000.

CONCLUSION: LMNO Properties must include the gain from the sale of the properties in its sales factor as follows:

$$\frac{\$50,000 \text{ Gain on sale of real property in Louisville}}{\$85,000 \text{ Gain on sale of real property Everywhere}}$$

3. **Lease or rental of Real Property:** [Sales revenue](#) from the lease or rental of real property is allocated, assigned, or apportioned to the [tax district](#) where the property is located.

EXAMPLE: ABC Corporation owns five commercial properties that it leases to unrelated business entities. Two of the five properties are in Louisville Metro.

CONCLUSION: ABC Corporation must include the gross lease receipts from the properties located in Louisville in the numerator of its sales factor, while the gross lease receipts from all five commercial properties must be included in the denominator.

$$\frac{\text{Gross Receipts from two properties in Louisville}}{\text{Gross receipts from all five properties owned by ABC Corporation}}$$

- C. **How to Apportion Net Profit:** Except as provided in [§1.06 \(E\)](#) of these regulations and [LMCO § 110.06 \(F\)](#), [net profit](#) of business entities must be apportioned in accordance with [LMCO §110.06 \(A\)](#) through [\(C\)](#) as follows:

1. The [apportionment](#) of net profit is determined by a two-factor formula, except when one of the factors is absent. Business entities with payroll **and** [sales revenue](#) in more than one [tax district](#) as defined in [LMCO §110.01](#) must multiply the net profit by a fraction representing the payroll factor and sales factor divided by 2 as follows:

$$\text{net profit} \times \frac{\text{payroll factor} + \text{sales factor}}{2}$$

EXAMPLE: Kentucky Menswear Company has retail stores in eight Kentucky cities, including Louisville. Sales in Louisville for the taxable year were \$468,000 and total sales were \$1,720,000. Employees working in Louisville during the taxable year were paid \$85,000 while the total payroll for the taxable year was \$265,000. The company's net profit was \$105,000.

CONCLUSION: Kentucky Menswear Company must multiply its net profit of \$105,000 by 29.674%, resulting in an apportioned net profit in

Louisville of \$31,158.00. The company's apportionment percentage is calculated as follows:

Sales Factor	Payroll Factor
$\frac{\text{Louisville Sales}}{\text{All Sales}} \text{ or } \frac{\$468,000}{\$1,720,000} = 27.209\%$	$\frac{\text{Louisville Payroll}}{\text{All Payroll}} \text{ or } \frac{\$85,000}{\$265,000} = 32.075\%$
Apportionment Factor $\frac{27.209\% + 32.075\%}{2} = 29.642\%$	

EXAMPLE: XYZ Factory is in Louisville, where all its employees work. XYZ Factory manufactures and ships widgets that are sold throughout the US. XYZ Factory's sales in Louisville for the taxable year were \$680,000 and its total sales were \$820,000. XYZ Factory's payroll for the taxable year was \$115,000. The company's net profit after expenses was \$250,000.

CONCLUSION: XYZ's apportioned net profit is calculated as follows:

Sales Factor:

$$\frac{\$680,000 \text{ (Louisville Sales)}}{\$820,000 \text{ (Total Sales Everywhere)}} = 82.927\%$$

Payroll Factor:

$$\frac{\$115,000 \text{ (Louisville Payroll)}}{\$115,000 \text{ (Total Payroll Everywhere)}} = 100\%$$

$$\text{Average Apportionment} = 82.927\% + 100\% = 182.927\% / 2 = 91.464\%$$

$$\text{Apportioned Net Profit: } \$250,000 \times 91.464\% = \$228,660$$

2. Businesses entities with [sales revenue](#) (but no payroll factor) in more than one [tax district](#) must multiply the [net profit](#) by the sales factor as follows:

$$\text{net profit} \times \text{sales factor}$$

EXAMPLE: John Smith is an independent contractor who installs siding on houses in Louisville and the surrounding area. Mr. Smith does not have any employees, and therefore no payroll factor. His Louisville sales for the taxable year are \$80,000 and his total sales everywhere for the taxable year are \$100,000. His net profit after expenses is \$40,000.

CONCLUSION: Mr. Smith's apportioned net profit is calculated as follows:

Sales Factor:

$$\frac{\$80,000 \text{ (Louisville Sales)}}{\$100,000 \text{ (Total Sales Everywhere)}} = 80\%$$

$$\text{Average Apportionment} = 80\%$$

$$\text{Apportioned Net Profit: } \$40,000 \times 80\% = \$32,000$$

D. Determination of Average Apportionment Percentage Where One Factor is Absent:

1. If either the payroll factor or sales factor is absent, the [apportionment](#) percentage shall be equal to the remaining percentage determined under (A) or (B).
 - a. Summary: A [business](#) should apportion [net profit](#) based on sales and payroll factors provided that both factors are present. However, if one factor is absent, a business should apportion net profit based on sales factor or payroll factor depending on which factor is present for the [business entity](#).
 - b. Wages made by third party payors and/or for leased employees must be included in the wage apportionment of the person or [entity](#) who has control of the actions and the work product of the employees, regardless of whether that business files wage withholding returns with the LMRC.
2. A factor is not deemed to be absent merely because:
 - a. none of the business entity's [sales revenue](#) arose inside the Louisville Metro area; or
 - b. none of the wages or compensation paid by the business entity were for services performed or rendered inside the Louisville Metro area.

EXAMPLE: XYZ Factory is located in Louisville, where all its employees work. XYZ manufactures and ships widgets that are sold throughout the US. XYZ had no sales in Louisville for the taxable year and its total sales were \$820,000. XYZ's payroll for the taxable year was \$115,000. Net profit after expenses was \$295,000.

CONCLUSION: XYZ's apportionment is calculated as follows:

Sales Factor:

$$\frac{\$0 \text{ (Louisville Sales)}}{\$820,000 \text{ (Total Sales Everywhere)}} = 0\%$$

Payroll Factor:

$$\frac{\$115,000 \text{ (Louisville Payroll)}}{\$115,000 \text{ (Total Payroll Everywhere)}} = 100\%$$

Average Apportionment: $0\% + 100\% = 100\% / 2 = 50\%$

Apportioned Net Profit: $\$295,000 \times 50\% = \$147,500$

E. Alternate Method of Apportionment of Net Profits

1. If the [apportionment](#) provisions of [LMCO § 110.06\(A\)-\(D\)](#) do not fairly represent the extent of a [business entity](#)'s activity in Louisville Metro, that business entity or taxpayer may petition the [Commission](#), or the Commission may require, an alternate method of apportionment as allowed in [LMCO § 110.06\(F\)](#).
2. The regular apportionment formula prescribed by these provisions is presumed to determine fairly and correctly the taxpayer's business entity's [net profits](#) from activities conducted in Louisville Metro. The burden of proof rests upon the party seeking to use an alternate method or formula to establish by clear and convincing evidence that the regular formula does not fairly represent the taxpayer's activity in Louisville Metro. The use of an alternate method or formula will not be permitted merely because it reaches a different result or apportionment percentage than that arrived at under the regular apportionment provisions or formula. An alternate apportionment shall be granted only in limited and

specific cases involving unusual or unique fact situations that produce incongruous or grossly distorted results under the regular formula, or if it is clearly established that the application of the regular formula results in unconstitutional outcomes, such as the apportionment of net profit to Louisville Metro out of all proportion to the taxpayer's activity in Louisville Metro.

3. A petition for alternate apportionment shall be in writing and include the following:
 - a. a statement of all relevant facts and the reasons, including any pertinent legal authority, why the regular apportionment provisions do not fairly reflect the extent of the taxpayer's activity in Louisville Metro,
 - b. The proposed alternate apportionment the taxpayer believes is appropriate, and
 - c. The [taxable year](#) the alternative apportionment method shall commence.
4. The taxpayer shall timely comply with any requests for information made by the [Commission](#) concerning the taxpayer's petition.
5. The petition shall be filed by the original due date of the applicable occupational license tax return of the taxable year or period for which an alternate apportionment is sought. Any petition not filed by this due date shall be void and not considered for an alternate apportionment for the taxable year or period in question.
6. The filing of an occupational license tax return shall not be considered as, or constitute, a proper petition for an alternate apportionment, even if it contains language that could be interpreted as requesting an alternate apportionment. A petition for alternate apportionment must be identified as such and timely filed separately from any tax return.
7. Consistent with [LMCO § 110.10\(A\)](#), the filing of a petition for an alternate apportionment shall not suspend, toll or delay the filing of any return or payment of any occupational license tax due for any taxable year or period. A taxpayer shall timely file all returns and timely pay all taxes due and the taxpayer's failure to do so may preclude consideration of its petition.
8. A taxpayer may challenge the denial of a petition for alternate apportionment in one of two ways:
 - a. The taxpayer may file the occupational license tax return based upon the position expressed in its petition, in which case it may become subject to assessment of additional tax, penalties, and interest in accordance with [LMCO § 110.13](#) and if the petition is ultimately denied by the [Commission](#), the taxpayer may then assert its position in the civil action brought by the Commission to collect the tax, interest, and penalties pursuant to [LMCO § 110.13\(D\)](#) or
 - b. The taxpayer may file a return based upon the regular formula and seek a refund pursuant to [LMCO § 110.10](#). Such a refund must be sought in accordance with the strict two-year deadlines prescribed in [LMCO § 110.10](#) and the running of these deadlines will not be suspended, tolled or delayed by the filing or pendency of a petition for alternate apportionment.
9. The [Commission](#) shall advise the taxpayer in writing whether the petition is denied or granted, wholly or in part, and the method of alternate apportionment that is approved. In accordance with [LMCO § 110.06\(G\)](#), the taxpayer shall continue to file its future occupational license tax returns until permission to do otherwise is given by Commission. The taxpayer may be required by the Commission to provide information confirming that the circumstances relevant to its occupational license tax reporting remain substantially unchanged. If the Commission finds that the circumstances relevant

to the taxpayer’s occupational license tax reporting no longer remain unchanged or have materially changed since the petition, it may take appropriate action, including the appropriate assessment of additional tax for those taxable years or periods for which there has been a material change in the circumstances relevant to its tax reporting.

§1.07 Filing of Annual Net Profit Return

ORDINANCE AUTHORITY: [LMCO §110.07](#)

- A. **Net Profit Tax Return:** Every [business entity](#) (including a [sole proprietor](#)) subject to the occupational license tax imposed by [LMCO Chapter 110](#) is required to file an annual net profit return. This requirement also applies to any individual whose wages subject to occupational tax are under-withheld by their employer, any individual who earns executor fees within Louisville, and estates and trusts who have [business](#) income subject to occupational tax. The net profit return shall be filed on a form that is made available by the [Commission](#) and shall include copies of the [federal income tax return](#) and any applicable schedules as substantiation for the statement of income and expenses reported on the return. The net profits return (or a valid extension) shall be filed by the 15th day of the 4th month following the close of business for the [fiscal year](#) or stub year, as demonstrated in the following schedule:

SCHEDULE FOR FILING OCCUPATIONAL LICENSE TAX RETURNS ON NET PROFIT

Fiscal Year Ending	Date Return/Extension Due
December 31	April 15
January 31	May 15
February 28	June 15
March 31	July 15
April 30	August 15
May 31	September 15
June 30	October 15
July 31	November 15
August 31	December 15
September 30	January 15
October 31	February 15
November 30	March 15

The annual net profit return shall also show the amount of the Occupational License tax imposed by [LMCO Chapter 110](#). The total tax due as shown on the return is required to be paid by the due date of the return as shown in the above schedule. If any portion of the occupational license tax was withheld at the source, credit may be taken on the return for the

tax withheld. Documentation that substantiates the amount withheld shall be included with the return.

- B. Timely Filing:** A return is regarded as timely filed if it is electronically delivered or postmarked on or before the due date of the return. If the return is hand-delivered, it is regarded as timely filed if it is delivered to the [Commission](#)'s office on or before the due date of the return. If the due date occurs on a Saturday, Sunday or [Metro Government](#) legal holiday, the return shall be electronically delivered, postmarked or hand-delivered to the Commission's office on or before the next day that is not a Saturday, Sunday or Metro Government legal holiday to be regarded as timely filed. If the due date of the federal return on which the net profits return is based occurs on a federal holiday (such as Emancipation Day), the return shall be electronically delivered, postmarked or hand-delivered on or before the next day that is not a Saturday, Sunday or Metro Government legal holiday to be regarded as timely filed.
- C. Quarterly Estimated Tax Payment Requirements:** Every [business entity](#), other than a [sole proprietorship](#), is required to make quarterly estimated payments by the 15th day of the 4th, 6th, 9th and 12th month of the [fiscal year](#) if the business entity's aggregate liability for occupational license taxes, measured by [net profits](#), due to the [Metro Government](#), the Mass Transit-Trust Fund and school boards for the [taxable year](#) exceeds \$5,000.

SCHEDULE FOR QUARTERLY ESTIMATED TAX PAYMENTS ON NET PROFIT

Fiscal Year Ending	1st Deposit Due	2nd Deposit Due	3rd Deposit Due	4th Deposit Due
December 31	April 15	June 15	September 15	December 15
January 31	May 15	July 15	October 15	January 15
February 28	June 15	August 15	November 15	February 15
March 31	July 15	September 15	December 15	March 15
April 30	August 15	October 15	January 15	April 15
May 31	September 15	November 15	February 15	May 15
June 30	October 15	December 15	March 15	June 15
July 31	November 15	January 15	April 15	July 15
August 31	December 15	February 15	May 15	August 15
September 30	January 15	March 15	June 15	September 15
October 31	February 15	April 15	July 15	October 15
November 30	March 15	May 15	August 15	November 15

- D. Calculation of Estimated Payments:** The quarterly estimated tax payment for business entities other than [sole proprietorships](#) shall be based on the lesser of:
1. 90% of the current year occupational tax liability submitted in four equal payments (twenty-two and one-half percent (22.5%) of the current [taxable year](#) tax liability),
 2. 100% of the prior full year (12 months) occupational tax liability submitted in four equal payments (twenty-five percent (25%) of the preceding full year taxable period tax liability), or

3. If the tax liability for the any of the three full taxable years (12 months each tax period) immediately preceding the current year exceeded \$20,000, 100% of the average occupational tax liability for the past three full taxable years submitted in four equal payments (twenty-five percent (25%) of the average tax liability for the three preceding full year taxable years' tax liabilities).

Stub Periods: For entities meeting the requirements to make quarterly estimated tax payments and whose taxable year is less than twelve (12) months (stub year), estimated tax payments shall be made for each quarter in which the [entity](#) operated during the stub year based on the calculation prescribed above.

- E. **Failure to Make Timely Quarterly Estimated Payments:** Any [business entity](#) subject to the quarterly estimated tax payment requirements that does not submit the minimum quarterly payment as prescribed in § [1.07\(D\)](#) by the due date as prescribed in § [1.07\(C\)](#) shall pay 12% per annum simple interest on the amount of tax unpaid from the earlier of:
1. The due date for the quarterly payment until the date the aggregate payments submitted equal the minimum aggregate payment due or
 2. The due date of the annual return.

EXAMPLE: A business entity is required to make quarterly estimated payments of \$10,000 each on April 15th, June 15th, September 15th and December 15th. If no estimated payments are made, interest on the missed deposits is calculated as follows:

- The aggregate of:
 - \$10,000 x 12% x 2/12 (for 2 months from 4/16 – 6/15)
 - \$20,000 x 12% x 3/12 (for 3 months from 6/16 – 9/15)
 - \$30,000 x 12% x 3/12 (for 3 months from 9/16 – 12/15)
 - \$40,000 x 12% x 3/12 (for 3 months from 12/16 – return due date)

If partial payments are made at any time during the period, interest is calculated on the unpaid portion of the aggregate of the minimum payments due for each quarter and are based on the date the payments are made.

- F. **Businesses Not Required to make Quarterly Estimated Payments:** Quarterly estimated payments are not required for a [business entity](#)'s first full or partial [taxable year](#) within Louisville Metro. In addition, quarterly estimated payments are not required the first taxable year a business entity's occupational tax liability exceeds \$5,000. Quarterly estimated payments are not required of [sole proprietors](#), regardless of the occupational tax liability.
- G. **Quarterly Estimated Payments Made before the Payment Due Date:** Quarterly estimated payments, including overpayments from previous tax periods, may be made any time prior to the due date of the quarterly payment.

- H. **Overpayments of Tax Liability:** If the amount of estimated tax paid for the tax period exceeds the actual tax liability as shown on the return as filed, a refund or credit, if a credit is requested, shall be made once the return is filed.
- I. **Overpayments Applied as Credits:** Overpayments of the tax liability shown on the return that result from the payment of estimated tax may be carried forward as a credit against the estimated tax due for the next succeeding [taxable year](#) or used to offset any tax deficiency or nonpayment for any previous taxable year.
- J. **Overpayments to be Refunded:** No refund will be made of any estimated tax paid unless a complete return is filed as required by [LMCO § 110.07 \(A\)](#).
- K. **Annual Non-Employee Compensation Return:** Every [entity](#) (including a [sole proprietor](#)) who makes payments of \$600 or more to a sole proprietorship or any natural person other than an employee for services performed within Louisville Metro shall report such payments made during the calendar year by filing a non-employee compensation return on or before February 28th of the following year. The return shall include the following information:
 1. **Payer Information:** Name, address, federal identification number or social security number, and Commission account number (if assigned).
 2. **Payee/Recipient:** Name, address, federal identification number or social security number, total amount of non-employee compensation paid in the calendar year, and amount of non-employee compensation earned in Louisville Metro.
- L. **Annual Non-Employee Compensation Return for Businesses with more than 100 payees:** Any [business entity](#) making non-employee compensation payments in excess of \$600 to more than 100 natural persons may submit copies of Federal Form 1099 reporting non-employee compensation paid at an address in Louisville Metro without the requirement to identify the amounts paid for services performed within Louisville Metro.

§1.08 Extension for Filing Annual Net Profit Return

ORDINANCE AUTHORITY: [LMCO §110.08](#); [LMCO §110.11](#)

- A. The [Commission](#) may grant any [business entity](#) an extension of time for the filing of its return, of not more than six months (unless a longer extension has been granted by the Internal Revenue Service and agreed to by the Commission).
- B. Such extension shall be by written request filed with the [Commission](#) by the [business entity](#) or a designated representative made on or before the due date of the return. At least 90% of the total occupational license tax obligation must be on file or be submitted at the time the extension is requested to avoid penalty. In lieu of a completed Commission extension form, a copy of the federal extension that includes the Commission account number can be filed with the Commission. However, a filing of a request submitted to the federal or state government does not satisfy the requirement of a written request to the Commission.

- C. If the time for filing a return is extended, the [business entity](#) shall pay, as part of the tax, an amount equal to 12% percent interest on the tax shown due on the return, but not previously paid, from the time the tax was due until the return is actually filed and the tax paid to the [Commission](#).

§1.09 Collection of Taxes; Records

ORDINANCE AUTHORITY: [LMCO §110.09](#); [LMCO §110.11](#)

The [Commission](#) shall collect and receive the occupational license taxes imposed by these Regulations, to keep records showing the amounts received from each [business entity](#) and each employer and the date of such receipt.

§1.10 Payment of Tax Not Delayed; Claims for Refund or Credit

ORDINANCE AUTHORITY: [LMCO §110.10](#); [LMCO §110.11](#)

- A. No suit shall be maintained in any court to restrain or delay the collection or payment of any license tax under the provisions of this chapter.
- B. Any license tax collected pursuant to the provisions of this chapter may be refunded or credited within two years of the date prescribed by law for the filing of a return or the date the money was paid to the [Commission](#), whichever is the later, except that:
1. In any case where the assessment period under this section has been extended by an agreement between the [business entity](#) and the Commission, the limitation contained in this section shall be extended accordingly.
 2. Credits related to adjustments resulting from a [federal audit](#) shall be limited to years covered by the audit or to related audit issues covered by the audit. Refunds will only be paid for credits timely requested within the two-year limitation contained in this section, and only if additional obligations for other years in the audit period have been satisfied; otherwise, the taxpayer will receive a credit to be first applied to all other obligations in the audit period and second to future obligations.

EXAMPLE: ABC Company timely filed and paid the tax liabilities for tax years 2016, 2017 and 2018. The company subsequently filed amended OL-3 returns for these tax years on 11/30/2020, immediately after the conclusion of a federal audit of the tax years 2016 – 2018. The federal audit adjustments created the following changes to the Occupational License tax liability for each tax year:

- **2016:** Increase of \$1,500
- **2017:** Decrease of \$2,000
- **2018:** Decrease of \$800

The company requested a net refund of \$1,300.

CONCLUSION: The company is eligible to receive a refund of \$800, calculated as follows:

- **2016:** The \$1,500 additional tax liability was satisfied by applying \$1,500 of the \$2,000 overpayment created in the 2017 tax year.
- **2017:** The \$2,000 overpayment was reduced to \$500 after \$1,500 of the credit was applied to the 2016 tax year. The remaining \$500 overpayment is not eligible to be refunded or applied to another tax period outside of the federal audit because the 2-year statute of limitations for payments to this tax period has expired.
- **2018:** The \$800 overpayment created by the [final determination of the federal audit](#) is eligible to be either refunded or credited to another tax period outside of the federal audit because the 2-year statute of limitations for refunds or credits for payments to this tax period has not expired.

3. 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.

C. Exclusive authority to refund or credit overpayments of license taxes collected is vested with the [Commission](#).

§1.11 Rules and Regulations

ORDINANCE AUTHORITY: [LMCO §110.11](#)

A. The [Commission](#) is charged with the enforcement of the provisions of [Chapter 110](#) of the Louisville Metro Code of Ordinances (LMCO). It is empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to all matters pertaining to the administration and enforcement of the provisions of [Chapter 110](#). This includes, without limitation, any rules and regulations clarifying, construing, and supplementing the provisions of [Chapter 110](#) in a manner not inconsistent with any of the provisions of [Chapter 110](#). The Commission shall give written notice of its intention to adopt or amend any regulations to the following individuals at least 30 days prior to the final adoption of any proposed regulations or amendments and shall allow an opportunity for comment on each proposed regulation or proposed amendment prior to adoption:

1. the Mayor,
2. the Council Clerk,
3. the Chairman of the Board of the Transit Authority of River City,
4. the Superintendent of the Jefferson County Public School System,
5. the Superintendent of the Anchorage School System,
6. the Executive Director of the Kentucky Society of Certified Public Accountants, and
7. the President of Greater Louisville, Inc.

The rules and regulations promulgated by the Commission and the rulings made by the Commission shall be binding on all business entities, employers, and employees affected.

- B. Notwithstanding any other provision of [Chapter 110](#), the [Commission](#) shall have the authority to resolve occupational license tax controversies, taking into consideration the facts and circumstances of each particular matter, but only to the extent of waiving penalties or interest, in whole or in part, and only where the business entity, employer or employee demonstrates to the satisfaction of the Commission that reasonable cause exists for the failure of the business entity, employer or employee to file or pay timely. The Commission shall also have the authority to resolve occupational license tax controversies based on the hazards and cost of litigation and/or doubt as to collectability of balance owed. These controversies include, but are not limited to:
1. Penalty and/or interest abatement requests based on hardship or reasonable cause.
 2. Apportionment Variance Requests based on unique [apportionment](#)-related circumstances.
 3. Requests for voluntary disclosure.

§1.12 Examination and Investigation of Books and Records

ORDINANCE AUTHORITY: [LMCO §110.11](#); [LMCO §110.12](#)

- A. The [Secretary-Treasurer](#) of the [Commission](#) and any employees or [agents](#) of the Commission designated in writing by the Secretary-Treasurer are authorized to:
1. examine the relevant books and records of any [business entity](#), employer, or other person who may have liability under this chapter;
 2. conduct such audits and investigations as may be necessary to determine the accuracy of any return made;
 3. ascertain the amount of occupational license tax and other amounts owed under the terms of this chapter for the years under review if no return was made.
- B. Every [business entity](#), employer, or other person who may have liability under the provisions of this chapter must provide the means, facilities, and opportunity, including the reasonable cooperation, for the [Secretary-Treasurer](#) and/or other designated employee or [agent](#) to conduct such examinations and investigations. The [Commission](#) shall provide a minimum of ten days from the date of notice for the business entity, employer or other person who may have liability under the provisions of this chapter to comply with this requirement.
- C. The [Secretary-Treasurer](#) and employees or [agents](#) of the [Commission](#) designated by the Secretary-Treasurer are authorized to examine under oath any person with regard to the liability for occupational license taxes or other amounts due under the terms of this chapter of any [business entity](#), employer, or person. This examination shall concern any return filed

with the Commission and any wages or [net profits](#) which were or should have been reported to the Commission.

- D. The [Secretary-Treasurer](#) and employees or [agents](#) of the [Commission](#) designated by the Secretary-Treasurer shall have the authority to compel the production of books and records and the attendance of all persons, whether as parties or witnesses, whom they reasonably believe to have knowledge relevant to any examination or investigation, through appropriate judicial proceedings.

§1.13 Assessment of Additional Tax; Federal Audit Adjustments

ORDINANCE AUTHORITY: [LMCO §110.11](#); [LMCO §110.13](#)

- A. As soon as practicable after each return is received, the [Commission](#) may examine and audit the return. If the amount of license tax computed by the [Commission](#) is greater than the amount shown on the return filed by the [business entity](#) or employer, the additional license tax shall be assessed and a notice of assessment mailed to the business entity or employer by the [Commission](#) within five years from the date the return was filed, except as otherwise provided in this subsection.
1. In the case of a failure to file a return or of a fraudulent return, the additional license tax may be assessed at any time.
 2. In the case of a return where a business entity understates [net profit](#) and/or omits an amount that could properly be included in net profit by an amount that is greater than 25% of the amount of net profit stated in the return, the additional license tax may be assessed at any time within six years after the return was filed.
 3. In the case of an assessment of additional license 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 months from the date the [Commission](#) receives the final determination of the federal audit from the business entity, whichever is later.
- B. The time limitations provided in this subsection may be extended by agreement between the [business entity](#) and the [Commission](#). 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.

EXAMPLE: Johnson Company filed an extension request on April 5, 2017 to extend the due date of its calendar year 2016 occupational license tax return until October 15, 2017. The company filed its 2016 occupational license tax return on September 30, 2017.

CONCLUSION: Additional tax may be assessed by the [Commission](#) on Johnson Company's 2016 occupational license return until October 15, 2022, which is five years from the later of the due date (or extended due date) of the return or the date the return was filed. If the company

understated its tax liability by more than 25% of the tax liability reported on the return, additional tax may be assessed until October 15, 2023.

- C. Every [business entity](#) shall submit a copy of the [final determination of the federal audit](#) within 30 days of the conclusion of the federal audit.
- D. The [Commission](#) may initiate a civil action for the collection of any additional license tax within the times prescribed in this subsection.

§1.14 Confidentiality of Information

ORDINANCE AUTHORITY: [LMCO §110.11](#); [LMCO §110.14](#)

- A. Any information obtained by the [Commissioners](#), Commission, or any other official, [agent](#), or employee of the [Metro Government](#) from any returns, investigations, hearings, or verifications required or authorized by this chapter shall be confidential, except in accordance with proper judicial order or as otherwise provided by law.
- B. No present or former employee of the [Commission](#) shall intentionally and without authorization inspect or divulge any information acquired as a result of the requirements of this chapter. For purposes of this subsection, information includes tax schedules, returns or reports required to be filed with the Commission 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 the following:
 - 1. information required in prosecutions for making false reports or tax returns, or any other infraction of the tax laws,
 - 2. information in any way made a matter of public record,
 - 3. information furnished to any taxpayer or the taxpayer's properly authorized [agent](#) regarding the taxpayer's own return, or
 - 4. information from returns or reports filed with the Commission used as evidence or in testimony in any court by any employee of the Commission, in an action for violation of the occupational license tax ordinances or in any action challenging the occupational license tax laws.
- C. If a reciprocal information sharing agreement exists with the State Commissioner of Revenue, the [Commission](#) reserves the right to disclose to the State Commissioner of Revenue, or a duly authorized [agent](#), all such information and rights to inspect any of the books and records of the Commission, provided that the privileged character of the information so furnished is maintained. In addition, the Commission 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](#).

- D. In addition, the [Commission](#) is empowered to execute similar reciprocity agreements, as described in subsection (C) of this section, with any other taxing [entity](#), (including but not limited to the Internal Revenue Service) should there be a need for exchange of information in order to effect diligent enforcement of this chapter. All such agreements shall require the parties to keep the exchanged information confidential.
- E. Any person who violates the provisions of subsection (B) of this subsection by intentionally inspecting confidential taxpayer information without authorization shall be fined not more than \$500 or imprisoned for not longer than six months, or both.
- F. Any person who violates the provisions of subsection (B) of this section by divulging confidential taxpayer information shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

§1.15 No Effect on Prior Taxable Years

ORDINANCE AUTHORITY: [LMCO §110.11](#); [LMCO §110.15](#)

[Taxable years](#) that occurred prior to the effective date of these Regulations are not affected by the enactment of these Regulations. The enactment of these Regulations is not intended to affect the position of either the [Commission](#) or any [business entity](#), employer or other person with respect to any administrative or judicial dispute concerning an interpretation of these Regulations, as enacted and amended, that pertains to any taxable year prior to the effective date of these Regulations.

§1.16 Rental Activities

ORDINANCE AUTHORITY: [LMCO §110.11](#); [LMCO §110.16](#)

- A. Corporations, partnerships and other associations receiving income from the rental of real property shall be deemed to be in the [business](#) of renting said property, and the rental income is subject to the occupational license tax measured by [net profits](#).
- B. Every [business entity](#) (including, but not limited to, individuals, fiduciaries acting on behalf of individuals, and deceased individuals) engaged in the rental of real property shall be deemed with respect to such rentals to be engaged in an “activity” which requires a license tax to be paid and a return filed regardless of the amount of gross rental [receipts](#) received. For purposes of this subsection, rental property includes, but is not limited to:
 - 1. improvements such as warehouses
 - 2. apartment buildings containing four or more units

3. hotel buildings
 4. office buildings
 5. restaurants
 6. other commercial structures
- C. Individuals and fiduciaries acting on behalf of individuals or deceased individuals who receive income from the rental of real property (other than rent from commercial structures under subsection (B)) located in Louisville Metro shall be deemed to be engaged in an “activity” which requires a license tax to be paid and a return to be filed, unless the annual gross [receipts](#) received from the rental of such real property in Louisville Metro is less than \$50,000.

The \$50,000 annual gross Louisville rental receipt threshold is intended as a litmus test in determining whether the individual or fiduciary acting on behalf of an individual is engaged in a [business](#) rental activity in Louisville Metro. Once any Louisville rental activity qualifies as a business activity, all Louisville rental is deemed to be a business activity requiring an occupational license tax to be paid, regardless of the amount of rental receipts received.

EXAMPLE: John Smith, an individual, owns two rental properties located in Louisville Metro. One rental property is a commercial building, which provides Mr. Smith with an annual gross rental income of \$30,000. The second rental property is a residential single-family home, which provides Mr. Smith with an annual gross rental income of \$19,000. Mr. Smith’s total annual rental receipts in Louisville is \$49,000.

CONCLUSION: Mr. Smith is required to include the income from both Louisville properties on his Occupational License tax return. Even though his total gross rental receipts are less than \$50,000, he has been deemed to be engaged in the business of real property rental due to his activity related to the commercial property rental.

EXAMPLE: Jane Doe, an individual, owns a residential rental property in Louisville. She also obtained a permit pursuant to [LMCO 115.515 – 115.521](#) and provides short-term rental arrangements involving her primary residence. Her total annual gross rental income from both properties is \$32,000: \$30,000 from the residential real property and \$2,000 from the short-term rental property.

CONCLUSION: As required by [LMCO 115.519\(B\)](#), Ms. Doe must file a return and pay an Occupational License tax on her short-term rental business. In addition to her short-term rental income, she is required to include the rental income from all Louisville properties on her Occupational License tax return. Even though her total gross rental receipts are less than \$50,000, she has been deemed to be engaged in the business of real property rental due to her activity relating to the short-term property rental.

EXAMPLE: Jack Jones, an individual, formed a separate limited liability company for each of his three single-family residential rental properties located in Louisville Metro. Each of the properties provides annual gross rental receipts of \$20,000, for a total of \$60,000.

CONCLUSION: Mr. Jones is required to include the income from all three of his Louisville rental properties on his Occupational License tax return. Although Mr. Jones formed an LLC for each property to report the rental income to the IRS, the aggregate gross rental income for all LLCs must be used to determine if he is engaged in a business activity for Occupational License tax purposes. Even though the total gross rental receipts are less than \$50,000 for each LLC, the aggregate gross rental receipts are \$60,000.

EXAMPLE: Jim and Mary White jointly own one single-family residential rental property located in Louisville Metro that grosses \$80,000 in rental receipts annually. They file a joint return for federal purposes and report their combined rental income on their federal Form 1040.

CONCLUSION: Individuals are not permitted to file joint returns for Occupational License tax purposes. Because the property is jointly owned by a married couple, each owner is assigned one-half of the rental activity reported on the federal return. Since each owner is assigned \$40,000 in gross rental receipts, neither Jim nor Mary is required to file an Occupational License tax return to report the rental activity.

EXAMPLE: Jim and Mary White transferred ownership of a single-family residential rental property located in Louisville Metro that grosses \$80,000 in rental receipts annually to an LLC where both are members of the LLC. They file a joint return for federal purposes and report the pass-through rental income from the LLC on their federal Form 1040.

CONCLUSION: Because the property is owned by an LLC and not an individual, the LLC must file an Occupational License tax return and report the entire amount of the rental activity on the return.

§1.17 Certain Persons Subject to the Occupational License Tax

ORDINANCE AUTHORITY: [LMCO §110.11](#); [LMCO §110.17](#)

- A. An individual who is an INDEPENDENT CONTRACTOR as defined in [LMCO § 110.01](#) shall pay an occupational license tax measured by [net profits](#) and an individual who is an

employee as defined in [LMCO § 110.01](#) shall pay an occupational license tax measured by compensation.

1. Independent contractors who are [residents](#) of Louisville Metro pay an occupational license tax measured by the [net profits](#) apportioned to Louisville Metro, regardless of the amount earned or time spent in Louisville.
2. Independent contractors who are non-residents of Louisville Metro pay an occupational license tax measured by the net profits apportioned to Louisville Metro if the individual works any part of four or more days in Louisville Metro during the [taxable year](#) or if \$3,000 or more of the individual's gross [receipts](#) are earned in Louisville Metro.

EXAMPLE John Smith, an individual residing within Louisville Metro, provides painting services in Southern Indiana and Louisville. Mr. Smith earned \$1,500 for services rendered in Louisville and \$10,000 for services rendered in Southern Indiana during the taxable year.

CONCLUSION: To the extent that any of his business activity is conducted in Louisville Metro, Mr. Smith is subject to the Occupational License tax because he is a Louisville resident.

EXAMPLE: Mary Jones, an individual residing in Ohio, is a college professor who also visits college campuses in surrounding states as a lecturer. During the taxable year, Dr. Jones gave lectures at the University of Louisville on two separate days and received payments totaling \$2,500 for the lectures given in Louisville.

CONCLUSION: Dr. Jones is not required to pay an occupational license tax on her work performed in Louisville because she is a non-resident and has not met the threshold to file and pay the tax.

EXAMPLE: Jane Doe, an individual residing in Oldham County, provides mobile dog grooming services in Oldham County and Louisville. Ms. Doe earned \$2,800 for services rendered in Louisville during part of 12 separate days during the taxable year.

CONCLUSION: Ms. Doe is required to file and pay an occupational license tax for the work performed in Louisville Metro, even though she earned less than \$3,000, because she worked in Louisville more than three days during the taxable year.

- B. Waiters, waitresses, bellhops and others receiving tip income shall be deemed to be employees with respect to any base wage and any tip income on which the employer withholds and remits an occupational license tax. In addition, persons receiving tip income shall be deemed independent contractors for purposes of any tip income or other compensation received for which the employer has not withheld and remitted an occupational license tax. An individual who receives tip income not reported by their employer is deemed to be engaged in an activity that requires the individual to register with the [Commission](#) and

obtain a tax reporting identification number, to file an annual return as required by [LMCO § 110.07](#) and to remit the license tax due as shown on the return.

- C. For the purpose of this chapter, a salesperson is a natural person engaged in selling any tangible or intangible property (other than real property) or any unit of services rendered on behalf of another whether for remuneration as wages or commissions. Notwithstanding any other provision herein to the contrary, where salaries, wages, commissions, and other compensation are earned both inside and outside Louisville Metro by an individual engaged in the occupation of a salesperson, the license tax shall be measured by multiplying the total such income earned by the individual for federal income tax purposes after deduction for employee [business](#) expenses while engaged as a salesperson times the time spent by the salesperson so engaged while located in Louisville Metro divided by the total time spent by the salesperson so engaged.

EXAMPLE: Joe Wilson, an individual, is an encyclopedia salesperson whose sales territory includes portions of the eastern section of Louisville Metro, Oldham County and Southern Indiana. During 2021, Mr. Wilson negotiated sales contracts for 42 clients in Louisville Metro, 28 clients in Oldham County and 16 clients in Southern Indiana. He earned total commissions of \$98,500, from which he deducted \$34,300 for travel and other employee business expenses. Mr. Wilson spent 175 days working in Louisville, 30 days working in Oldham County and 17 days working in Southern Indiana during 2021.

CONCLUSION: Mr. Wilson's net profit is apportioned to Louisville Metro as follows:

$$\frac{\text{Time spent working in Louisville (175 days)}}{\text{Time spent working everywhere (222 days)}} \times \$64,200 = \$50,608$$

§1.18 Electronic Filing

ORDINANCE AUTHORITY: [LMCO §110.11](#); [LMCO §110.18](#)

- A. Any employer, employee, [business entity](#), [third party payroll reporting agent](#), natural person or other taxpayer who files more than 25 returns or reports annually with the [Commission](#) shall [electronically file](#) the following returns or reports with the Commission on or before their respective due dates:
1. Tax withholding statements required by [LMCO § 110.05](#), including but not limited to Forms W-1, W-2 and W-3, which are due on or before the dates specified in [LMCO § 110.05\(B\)](#) and [LMCO § 110.05\(E\)](#); and
 2. Information returns or statements that reflect payment information, including, but not limited to, Commission Form 1099-SF and the IRS Forms 1099 series, which are due on or before the dates specified in [LMCO § 110.07\(K\)](#) and [LMCO § 110.07\(L\)](#).

- B. The [Commission](#) may require other returns or reports as defined in [LMCO § 110.01](#) to be electronically filed.
- C. All persons or taxpayers who are required by or pursuant to this section to file returns or reports electronically shall do so in such manner as the [Commission](#) may prescribe or require.
- D. Any person or taxpayer required to file a return or report electronically may apply for a waiver from this requirement by submitting a written request on a form prescribed by the [Commission](#). The request shall indicate the lack of one of the following:
 1. Compatible computer hardware;
 2. Internet access; or
 3. Other technological capabilities determined relevant by the Commission.

Waiver approvals are valid for one filing year only. Persons or taxpayers who are granted a waiver are expected to resolve all conditions described in the waiver request and electronically file any returns or reports as required by this section for all [taxable years](#) after the expiration of the waiver.

§1.95 Public Inspection of Regulations

ORDINANCE AUTHORITY: [LMCO §110.11](#)

These Regulations, together with all amendments and supplements thereto and all changes therein, shall be open to public inspection. The published document of these Regulations is available on the [official website](#) of the [Commission](#).

§1.98 Severability

ORDINANCE AUTHORITY: [LMCO §110.11](#); [LMCO §110.98](#)

Each section and each provision of each section of this chapter are severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any [business entity](#), employer, employee, taxpayer, 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 article, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of the rest.

§1.99 Penalty

ORDINANCE AUTHORITY: [LMCO §110.11](#); [LMCO §110.99](#)

- A. **Penalty on Net Profits Tax:** A [business entity](#) subject to license tax on [net profits](#) may be subject to a penalty equal to 5% of the license tax due for each calendar month or fraction thereof if the business entity:
1. Fails to file any return or report on or before the due date prescribed for filing or as extended by the [tax district](#); or
 2. 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 25% of the total license tax due and shall not be less than \$25.

EXAMPLE: ABC Company filed its calendar year 2019 occupational license tax return after the due date on April 23, 2020. The company showed a tax liability of \$650, which was fully paid before the due date of the return as a result of an overpayment credit carried forward from a previous tax period.

CONCLUSION: ABC Company is subject to a penalty for filing its occupational license tax after the prescribed due date. Because the tax liability was fully paid by the due date, the company is subject to the minimum penalty of \$25.

EXAMPLE: XYZ Company filed its calendar year 2018 occupational license tax on April 13, 2019. The company showed a tax liability of \$15,300 and a payment of \$10,000 was submitted with the return. The company submitted the remaining \$5,300 on May 16, 2019.

CONCLUSION: XYZ Company is subject to a penalty for paying its occupational license tax after the prescribed due date, calculated as follows:

Underpayment of Tax: \$15,300-\$10,000	\$5,300
Two calendar months unpaid at 5% per month	10%
Amount of Penalty Assessed	\$530

- B. **Penalty on Additional Assessments of Net Profits Tax** Any person who pays the full amount shown on the return but who fails to pay the amount of any additional occupational license fee due as finally assessed by the [Commission](#) within 15 days after the assessment becomes final shall be assessed a penalty of 5% of the unpaid amount of the license fee. However, the aforesaid 5% penalty on the amount due may be assessed without notice of final assessment of additional license fee due if the amount shown on the return is based on

fraud or gross negligence. In all events the unpaid amount of any license fee shall bear interest at the rate of 12% per annum from the date originally due until paid in full. Penalty shall apply on the expiration of the 15-day period.

EXAMPLE: Smith Company timely filed its calendar year 2019 occupational license tax return and paid the amount due as shown on the return. However, the company was assessed an additional \$1,000 in tax resulting from a failure to add back nondeductible state income tax expenses on July 31, 2020. The company paid the additional tax owed on August 8, 2020.

CONCLUSION: Smith Company is not subject to a penalty for paying its additional occupational license tax after the prescribed due date because the company paid the full amount due as shown on its return on or before the return due date and it paid the additional tax assessed before the expiration of the 15-day period. The company is subject to interest computed as follows:

Underpayment of Tax	\$1,000
Daily Interest (\$1,000 x .00032)	\$.32
Number of Days Late	109
Amount of Interest Assessed	\$34.88

- C. **Penalty on Withholding Tax:** Every employer who fails to file a return or pay the license tax (including monthly deposits under [LMCO § 110.05\(C\)](#) on or before the date prescribed under this section may be subject to a penalty in an amount equal to 5% of the license tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed 25% of the total license tax due.

EXAMPLE: Smith Company, an employer whose quarterly occupational tax withholding liability exceeds \$5,000 and who is required to make monthly deposits of occupational tax withheld, timely filed its 1st Quarter 2019 occupational license tax return on April 30, 2019. However, the company made its February deposit of \$18,000 on March 21, 2019, which was six days past the due date of the deposit.

CONCLUSION: Smith Company is subject to a penalty for paying its February deposit after the due date. The penalty is computed as follows:

Amount of Withholding Tax Unpaid	\$18,000
One calendar month unpaid at 5% per month	5%
Amount of Penalty Assessed	\$900

- D. **Interest on Withholding Tax:** In addition to the penalties prescribed in this section, any [business entity](#) or employer shall pay, as part of the license tax, an amount equal to 12% per

annum simple interest on the license tax shown due, but not previously paid, from the time the license tax was due until the tax is paid to the [Commission](#).

EXAMPLE: Smith Company, an employer whose quarterly occupational tax withholding liability exceeds \$5,000 and who is required to make monthly deposits of occupational tax withheld, timely filed its 1st Quarter 2019 occupational license tax return on April 30, 2019. However, the company made its February deposit of \$18,000 on March 21, 2019, which was six days past the due date of the deposit.

CONCLUSION: In addition to the penalty owed (as calculated in the example given for Subsection C in this section) Smith Company is subject to interest charges for paying its February deposit after the due date. The interest is computed as follows:

Amount of Withholding Tax Unpaid	\$18,000
Daily Interest (\$18,000 x .00032)	\$5.76
Number of Days Late	6
Amount of Interest Assessed	\$34.56

- E. **Personal Debt:** All license taxes, interest, and penalties thereon, shall become, from the time the license tax is due and payable, a personal debt of the taxpayer to the [Commission](#).
- F. **Willful Evasion of Payment of Withholding Tax:** In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return, willfully makes a false return, or willfully fails to pay the license taxes owing or collected, with the intent to evade payment of the license tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.
- G. **Willful Misrepresentation of Withholding Tax:** 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 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.
- H. **Authorization to Initiate Criminal Charges:** The [Commission](#) is authorized to initiate criminal charges, when appropriate under [KRS 514.070](#) (Theft by failure to make required disposition of property) or any other applicable criminal statutes as may be deemed advisable against any employer who withholds occupational license taxes from one or more employees employed within the [Metro Government](#) and intentionally fails to remit such occupational license taxes withheld to the Commission.
- I. **Failure to Receive Forms:** The failure of any employer or licensee to receive or procure forms or documents is not an excuse for failure to make any return or to pay the occupational license tax.

- J. **Personal Liability of Individual:** Any corporate officer or other individual required to withhold, truthfully account for, and remit to the [Commission](#) any license tax imposed by this chapter who willfully fails to withhold the license tax, or truthfully account for and remit the license tax, or willfully attempts in any manner to evade or defeat the payment of the license tax, shall, in addition to the sanctions provided by this section and any other penalties provided by law, be civilly liable for the total amount of the license tax evaded, or not collected, or not accounted for and remitted, plus applicable penalties and interest. Neither the corporate dissolution, withdrawal of the corporation from the state, nor the cessation of holding any corporate office shall discharge the foregoing liability of any person.
- K. **Third Party Payroll Reporting Agent Liability:** [Third party payroll reporting agents](#) who fail to comply with the provisions of [LMCO § 110.05\(P\)](#) shall, unless it is shown to the satisfaction of the [Commission](#) that the failure is due to reasonable cause, pay a penalty of 0.5% of the amount which should have been remitted under the provision of [LMCO § 110.05\(P\)](#), but not less than \$500, for each failure to comply.
- L. **Penalty for Failure to Electronically File:** Any person who fails to file any return, report, statement or other document electronically as required by [LMCO § 110.18](#) in a timely manner shall, unless it is shown to the satisfaction of the [Commission](#) that the failure is due to reasonable cause, pay a penalty of \$5.00 for each return, report, statement, or other document not filed electronically in a timely manner, but not less than \$500 for each failure to comply.

EXAMPLE: Jones Company, an employer having 112 employees who work within Louisville Metro, filed its annual withholding tax reconciliation return, along with the 112 employee withholding statements, on paper. The reason for the company's failure to procure an acceptable computer software program to produce the documents electronically was rejected by the Commission as not due to a reasonable cause.

CONCLUSION: Jones Company is required to pay a penalty for failing to electronically file its annual withholding tax reconciliation return and supporting documents of \$565: \$5 for the return and \$560 for the 112 employee withholding statements that are required to be filed with the return.

M. **Waiver of Penalty or Interest:**

1. The [Commission](#) shall have the authority to resolve occupational license fee controversies to the extent of waiving penalty or interest, or both, in whole or in part where it is shown to the satisfaction of the Commission that failure to file or pay timely is due to reasonable cause and not willful neglect. In exercising such authority, the Commission will consider the facts and circumstances of each particular matter and the hazards and costs of litigation. The Commission has no authority to waive any tax due.

2. “Reasonable Cause” exists if the taxpayer establishes to the satisfaction of the [Commission](#) that either (a) there were significant mitigating factors for the failure or (b) the failure arose as a result of an event, happening or circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return and in the payment of the tax due. Events which will be generally considered beyond the taxpayer’s knowledge or control include, but are not limited to, the following:
 - a. Unavoidable absence. The absence (e.g. due to death or serious illness) of the person with the sole responsibility for filing the return in issue or for payment of the tax. The duration of the absence and its proximity to the due date of the return or payment will be taken into account in the Commission’s determination.
 - b. Unavailability of relevant business records. Necessary business records must have been unavailable under such conditions, in such manner and for such period as to prevent timely compliance.
 - c. Commission advice or error. The taxpayer must show that the failure to comply was due to taxpayer’s reasonable reliance on erroneous information provided by the Commission. This exception will not apply if the Commission was not aware of all the relevant facts when it provided the information to the taxpayer. The erroneous advice must have been provided in writing or be acknowledged in writing by the Commission.
3. Events which will not generally be considered as establishing reasonable cause include, but are not limited to, the following:
 - a. Actions of [agent](#) or employee. The filing of a tax return and the payment of tax due are both personal, nondelegable duties of the taxpayer. Reasonable cause is not established by merely showing that the taxpayer relied upon an employee, accountant, attorney, payroll service or other person, who failed to file the return or pay the tax.
 - b. Ignorance of the Law. Neither ignorance of the law, nor ignorance of the necessity of filing a return or paying the tax is sufficient in and of itself to relieve the taxpayer from liability for penalty or interest.
 - c. No tax forms. Failure to receive or obtain tax forms.
4. In addition to establishing that an event beyond the taxpayer’s knowledge or control caused the failure to file or pay timely, the taxpayer must also establish that the taxpayer acted in a responsible manner both before and after the failure occurred. The taxpayer must demonstrate that the taxpayer undertook appropriate steps to avoid or mitigate the failure and that the taxpayer rectified the failure as promptly as possible once the impediment to compliance was removed or the failure discovered. In evaluating the hazards and cost of litigation, the [Commission](#) will consider waiving penalties or interest, in whole or in part, based on doubt as to collectability. To establish such doubt, a taxpayer must demonstrate lack of both present and future income and assets (inability to pay must be permanent or long-term and the taxpayer’s lack of present ability to pay is not sufficient). That the taxpayer will suffer hardship by reason of payment of penalty or interest is not in and of itself a sufficient basis to waive penalty or interest.
5. Circumstances which will generally be considered in evaluating collectability include, but are not limited to, the following:
 - a. The taxpayer is in receivership or is the subject of any proceeding under the Bankruptcy Act, taking into account the priority of the [Commission](#)’s claim.

- b. The taxpayer has made or is making an assignment for the benefit of creditors or other arrangement or composition with the taxpayer's creditors.
 - c. The taxpayer is involved in any other insolvency or liquidation proceedings.
 - d. The taxpayer is seriously ill, disabled or deceased.
 - e. Any lien rights and other security the Commission may possess.
 - f. Any court proceedings involving the taxpayer, pending substantial claims against the taxpayer outside of the ordinary course of business, and other unusual circumstances impacting the taxpayer's financial condition.
6. In considering requests for waiver of interest and penalties, the Commission will take into account the history, if any, of the taxpayer in complying with its obligations to the Commission in the past. Other evidence demonstrating a lack of willful neglect on the part of the taxpayer with respect to the taxpayer's failure to comply will also be considered.
 7. Since interest represents merely a charge for the benefit realized by the taxpayer from retaining money beyond the date it should have been paid to the Commission and the loss incurred by the Commission from not having use of the money for the same period of time, the Commission will generally be more disposed to granting waivers of penalties as opposed to waivers of interest.
 8. In order to obtain a waiver of penalty or interest, a taxpayer must submit to the Commission a written request for the waiver no later than one hundred eighty (180) days after notice of assessment of the penalty or interest from the Commission. In such request, the taxpayer shall set forth all of the facts and circumstances believed by the taxpayer to constitute reasonable cause for the non-compliance on the part of the taxpayer giving rise to the penalty or interest. Such request must be signed by the taxpayer and contain a declaration that it is made under penalties of perjury. The taxpayer should submit to the Commission with the request all documentation, affidavits, and other material the taxpayer deems necessary or relevant in support of the taxpayer's position. The Commission will not generally consider a request for waiver of interest or penalty unless the taxpayer has paid all of the tax to which the interest or penalty relates before or at the same time as the taxpayer submits the request.