

Effective July 1, 2008, Section 110 of the Louisville/Jefferson County Metro Code of Ordinances relating to the Occupational License Tax was amended. The Regulations of the Metro Revenue Commission are currently being revised to reflect the changes in the Ordinance. As always, any interpretation of the Regulations which is inconsistent with the Ordinance is to be resolved in favor of the Ordinance.

## **REGULATIONS OF THE LOUISVILLE/JEFFERSON COUNTY METRO REVENUE COMMISSION**



*The rules and procedures of municipal taxation used in the collection and administration of:*

- *Occupational License Fees on Wages and Net Profits imposed by and/or on behalf of the following:*
  - *City of Louisville, Kentucky*
  - *Jefferson County, Kentucky*
  - *Jefferson County and City of Anchorage School Boards*
  - *Transit Authority of River City Mass Transit Trust Fund*
- *City of Louisville Insurance Premiums Tax*
- *City of Louisville Truck, Taxi and Coin Operated Amusement Taxes and Regulatory Permit Fees*
- *The Jefferson County Transient Room Tax*

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## INTRODUCTION

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

The present document assembles the Regulations used by the Commissioners of the Louisville/Jefferson County Metro Revenue Commission in its collection and administration of: (1) the Occupational License Fees on wages and net profits imposed by and/or on behalf of the City of Louisville, Kentucky, Jefferson County, Kentucky, the Jefferson County and City of Anchorage School Boards and the Transit Authority of River City Mass Transit Trust Fund; (2) the City of Louisville Insurance Premiums Tax (See Section 5.2 of these Regulations); (3) the City of Louisville Truck, Taxi and Coin Operated Amusement Taxes and Regulatory Permit Fees (See Section 5.3 and 5.4 of these Regulations); and (4) the Jefferson County Transient Room Tax (See Section 5.3 of these Regulations). It is therefore earnestly hoped and expected that these Regulations will codify and simplify, insofar as is presently practicable, the rules and procedures of taxation in the City of Louisville and Jefferson County.

However, persons who work, have employees, or who otherwise are engaged in business inside Jefferson County, but outside the City of Louisville should be aware that several Jefferson County cities, other than the City of Louisville, have enacted license fees which are not collected by the Louisville/Jefferson County Metro Revenue Commission. Such persons should contact the City government of the city in which they work, where their employees work, or where they otherwise are engaged in business for information concerning whether they have any liability for occupational license fees not discharged by compliance with these Regulations of the Commissioners of the Louisville/Jefferson County Metro Revenue Commission.

The Louisville/Jefferson County Metro Revenue Commission was established in 1851 as a municipal corporation by act of the Kentucky General Assembly as the bond servicing agency for the City of Louisville's general obligation debt. Pursuant to the requirements of Section 159 of the Kentucky Constitution and of numerous applicable sections of the Kentucky Revised Statutes and pursuant to City of Louisville Code of Ordinances 32.110-32.114 the Louisville/Jefferson County Metro Revenue Commission continues to service the City of Louisville's general obligation bonded indebtedness; but the most important function of the Louisville/Jefferson County Metro Revenue Commission is to collect the occupational license fees on wages and net profits for the City, the County, the Boards of Education (Jefferson County and Anchorage), and the Mass Transit Trust Fund for the Transit Authority of River City ("TARC"). After applying the credit for license fees paid the City to the sum due the County, after deducting a contractually agreed sum for the cost of administration, and (in the case of the City only) after subtracting from the revenues collected the sum necessary to pay the annual principal, and interest on all

general obligation bonded indebtedness, the Louisville/Jefferson County Metro Revenue Commission remits the proper sums to the jurisdictions to which it is responsible. In summary the “Louisville/Jefferson County Metro Revenue Commission” wage/net profit license fee is really four separate license fees subject to one common administration.

The Kentucky Constitution expressly provides for three types of municipal taxation for revenue purposes. First, the Constitution provides at Section 157 for municipal taxation of property. Property taxes are imposed by Jefferson County and by the many municipalities, including the City of Louisville, located within Jefferson County, but property taxes are not collected by the Louisville/Jefferson County Metro Revenue Commission and are not the subject of these Regulations. (Readers interested in information concerning property tax in Jefferson County, including City of Louisville property taxes, should contact the Property Valuation Office, 504 Fiscal Court Building, Louisville, Kentucky 40202 or call (502) 574-6380 (concerning real estate assessments) or (502) 574-6860 (concerning business property assessments).)

Secondly, the Constitution provides at Section 181 that the General Assembly may “by general laws, delegate the power to counties, towns, cities and other municipal corporations, to impose and collect license fees on stock used for breeding purposes, on franchises, trades, occupations and professions.”

Thirdly, Section 181 also provides that the General Assembly may authorize local governments “to provide for taxation for municipal purposes on personal property, tangible and intangible, based on income, licenses or franchises in lieu of an ad valorem tax thereon”. This last authorized additional form of municipal taxation, is, with the notable exception of public service corporations subject to such a tax imposed by [KRS 136.120](#), not widely utilized. The license fee on “franchises, trades, occupations and professions”, on the other hand, has emerged as the primary mechanism of producing revenues for local government, surpassing, though by no means supplanting, the property tax.

Originally the license fee on “franchises, trades, occupations and professions” was levied on the privilege of engaging in particular businesses or professions. The breadth of the Constitution’s language, however, permitted the City of Louisville in 1948, upon authorization by the Kentucky General Assembly (See [KRS 91.200](#)), to enact a universal license fee applicable to all earned income and measured by a percentage of “(a) salaries, wages, commissions and other compensations earned by every person within the city and (b) the net profit of all businesses, professions or occupations from activities conducted in the city.” The constitutionality of this license fee was upheld in *City of Louisville et. al. v. Sebree et.al. Ky.*, 214 S.W. 2<sup>nd</sup> 248 (1948).

By a Resolution and Order originally adopted June 28, 1961 the Jefferson County Fiscal Court, pursuant to [KRS 68.180](#) enacted a like license fee and provided that County residents who reside inside the City of Louisville who paid the City wage/net profit license fee were to receive a credit against the sum due the County for license fees paid to the City of Louisville. The constitutionality of this and the validity of the credit due licensees for work within the City were upheld in *Kupper v. Fiscal Court of Jefferson*

*County, Ky., 346 S.W. 2<sup>nd</sup> 766 (1961)*. A like license fee was imposed by the Jefferson County Fiscal Court on behalf of the Boards of Education and this license fee is imposed pursuant to *KRS 160.483 et. seq.* by the Jefferson County Fiscal Court Resolution and Order of June 28, 1974, as amended by *Ordinance 11, Series 1986 on June 24, 1986* (as amended) The current county tax ordinance is *Ordinance 13, Series 1989*. The constitutionality of such a School Boards license fee previously had been upheld in *Sims v. Board of Education of Jefferson County, Ky., Ky. 290 S.W. 2<sup>nd</sup> 491 (1956)*. This Boards of Education license fee, unlike the other wage/net profit license fees, is not imposed on individuals working in Jefferson County who are not residents of Jefferson County.

In 1970 the General Assembly adopted legislation, codified at *KRS Chapter 96A*, authorizing the formation of Mass Transit Authorities, and providing as one alternate method of funding such Authorities, a wage/net profit license fee, but only if such a license fee were approved by referendum. In 1974 the voters of Jefferson County did approve a referendum enacting an additional wage/net profit license fees to support the Transit Authority.

The Transit Authority license fee was imposed by Jefferson County Fiscal Court *Ordinance 6, Series 1974*. Currently, the tax is imposed by *Jefferson County Ordinance 13, Series 1989* on all persons who are employed in Jefferson County, whether or not they are residents of Jefferson County.

On June 24, 1986 the City of Louisville and Jefferson County amended their respective license fee ordinances by codifying more precisely the types of earned income which, administratively and by prior Regulation, had been held to be subject to the license fee on “wages” and “net profit”.

The occupational license fees are imposed solely for revenue purposes. There is no “license” in the literal sense that a right is conferred on a person to do something which otherwise he would not have a right to do. No physical license is issued, no certificate is required to be displayed, no regulations are imposed and there is no provision for revoking a licensee’s privilege to do business.

Thus, the occupational license fees on wages and net profits are in reality taxes imposed on persons who work and/or are engaged within the City of Louisville and/or Jefferson County, Kentucky in any business, profession, trade or occupation. *Hopson v. Commissioners of the Louisville/Jefferson County Revenue Commission, Ky., 613 S.W. 2d 619 (1981)*. The only practical distinction between a “tax” and these occupational “license fees” is that whereas taxes are generally imposed on all income, the City/County license fees are imposed only on earned income. Thus, for example, the interest earned on an individual’s personal bank savings account is not subject to the license fee. For persons other than individuals, however, most income is deemed to be earned income and except as expressly provided in the City and County Ordinances and herein, “passive” income of corporations and partnerships is subject to the license fee.

In addition to the wage/net profit license fee, the Louisville/Jefferson County Metro Revenue Commission collects for the City of Louisville and Jefferson County other

various taxes imposed upon particular classes of items and activities as expressly authorized by statute and imposed by ordinance. These are:

- A the City's license tax on coin operated amusement machines authorized by **KRS 137.410 and imposed by Ordinance 111.421**;
- B the City's license tax on motor trucks, truck tractors and trailers authorized by **KRS 186.270 and imposed by Ordinance 73.07**;
- C the City's license tax on fire, life and other insurance premiums covering property and other risks within the City, and the lives of residents of the city, on companies selling fire, life and other insurance; this tax is authorized by **KRS 91A.080** and imposed by **Sections 111.290 - 111.295 of the City of Louisville Code of Ordinances (See Section 5.2 of these Regulations)**.
- D the City's license tax on taxi cabs authorized by **KRS 186.281** and imposed by **Section 73.01 - 73.07 of the City of Louisville Code of Ordinances**;
- E the Jefferson County transient room tax. (See Section 5.3 of these Regulations).

Responsibility for collection of the following City of Louisville regulatory permit fees is assigned by ordinance to the Louisville/Jefferson County Metro Revenue Commission: (1) dance hall permit, (2) detective permit, (3) fortune teller permit, (4) peddler/solicitor permit and (5) pawn shop permit. However, the City of Louisville department of Inspections, Permits and Licenses is now administering these licenses and collecting the license fees for the Louisville/Jefferson County Metro Revenue Commission. Unlike the wage/net profit license fee, a regulatory permit is issued pursuant to the police powers of the municipality and is required of the licensee not as a revenue producing matter but to protect the public health and safety and to reimburse the municipality for the costs incurred in the reasonable regulation of the particular licensed activity.

Written inquiries concerning license fee liability and written requests for inspection, or copies of these Regulations should be addressed to the Secretary-Treasurer, P.O. Box 35410, Louisville, Kentucky 40232-5410, or to 617 West Jefferson Street, Louisville, Kentucky 40202. Inquiries and requests also may be directed to employees of the Louisville/Jefferson County Metro Revenue Commission by phone, (502) 574-4860, or by visiting the Louisville/Jefferson County Metro Revenue Commission office at 617 West Jefferson Street, Louisville, Kentucky. Office hours are 8:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, excluding City of Louisville legal holidays.

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*Editor's Note:*

*Ord. 258-1993 changed the name of the Sinking Fund to the Louisville/Jefferson County Revenue Commission. This change has been made in Section 1.1 through Section 6.11 of these Regulations by the Editor.*



## SECTION 1. GENERAL PROVISIONS

### SECTION 1.1 AUTHORITY.

The Louisville/Jefferson County Metro Revenue Commission is authorized by **Louisville Ordinance No. 20, Series 1989** and by **Ordinance No. 13, Series 1989 of the Jefferson County Fiscal Court** “to make and enforce bylaws, rules and regulations, not contrary to law, for the conduct of the business of the Louisville/Jefferson County Metro Revenue Commission...” and to “do everything necessary to execute the duties and powers conferred upon them by law”. The Regulations contained herein are promulgated pursuant to these powers.

### SECTION 1.2 APPLICABILITY.

Except as otherwise provided by law, these Regulations shall be generally applicable to all persons required by law, to pay any license fee or tax which the Louisville/Jefferson County Metro Revenue Commission is duly designated to collect, whether said license fee is required to be paid on his own wages or net profits, on his employee’s wages, or pursuant to one or more of the special licenses discussed in Section 5 hereof.

### SECTION 1.3 EFFECTIVE DATE.

These Regulations shall be effective on and after January 1, 1987 except as otherwise expressly provided.

### SECTION 1.4 DEFINITIONS.

When used in these Regulations, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the terms in this section shall have the meanings hereinafter given. Throughout these Regulations, unless the context shall clearly indicate otherwise, the singular shall include the plural, and the masculine shall include the feminine and the neuter.

- A. “BUSINESS, PROFESSION OR OCCUPATION”** shall mean an enterprise, activity, trade, profession, occupation or undertaking of any nature conducted for gain or profit, whether conducted by a natural person, partnership, association, corporation, fiduciary or any other entity. However, this term shall not include the usual activities of boards of trade; chambers of commerce; trade associations or unions, or other associations performing the services usually performed by trade associations or unions; community chest funds or foundations; corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes, or for the prevention of cruelty to children or animals; or clubs or fraternal organizations operated exclusively for social, literary,

educational, or fraternal purposes where no part of the earnings, income, or receipts of such units, groups, or associations inures to the benefit of any private shareholder or individual.

- B. **“CITY”** shall mean the City of Louisville, Kentucky.
- C. **“CITY/COUNTY”** shall mean the City (as defined in subpart B. hereof) and/or the County (as defined in subpart F. hereof).
- D. **“COMMISSIONERS”** or **“LOUISVILLE/JEFFERSON COUNTY METRO REVENUE COMMISSION”** shall mean the Commissioners of the Louisville/Jefferson County Metro Revenue Commission of the City of Louisville.
- E. **“CORPORATION”** shall mean an entity created or denominated as a corporation under the laws of any state, territory or dependency of the United States or of any foreign nation, or otherwise existing under color of law as a corporation, including a non-profit corporation and a joint stock company and recognized as such for federal income tax purposes.
- F. **“COUNTY”** shall mean the geographical area in Jefferson County, Kentucky outside the City including all incorporated cities other than the City of Louisville, and all unincorporated areas inside Jefferson County.
- G. **“EMPLOYEE”** generally shall mean any natural person who renders services to another person for a financial consideration or its equivalent, under an express or implied contract, and who is under the control and direction of the latter both as to what services shall be performed and as to how they shall be performed; and such term shall include anyone engaged in temporary, provisional, or part-time employment. In determining whether an individual is an “Independent Contractor” or an “Employee”, the Secretary-Treasurer shall apply the definitions of these terms found at Official Treasury Regulations 31.3401(c)-1 (as same was in effect on January 1, 1989) and shall consider the following factors:
  - 1. Whether the person receiving the benefit of the service has the right to control the manner and method of performance;
  - 2. Whether the person rendering the service has a substantial investment in his own tools or equipment.
  - 3. Whether the person rendering the service undertook substantial costs to perform the services;
  - 4. Whether the person performing the service had an opportunity for profit dependent on his managerial skill;
  - 5. Whether the service rendered required special training and skill;
  - 6. The duration of the relationship between the parties;

7. Whether the service performed is an integral part of the recipient's business rather than an ancillary portion;
8. Whether the person rendering the service had a risk of loss;
9. The relationship which the parties believed they created;
10. Whether or not the person who performed the services offered such services publicly and practiced an independent trade;
11. Whether the custom in the trade or industry was for the service to be performed on an independent contractor or employee basis;
12. Whether the person who received the benefit of the service held the right to discharge without cause the person who performed the services;
13. Whether the person who performed the services had the right to delegate his duty to others.

**H. "EMPLOYER"** shall mean any natural person, governmental agency, corporation, fiduciary, partnership, association, joint venture or other unincorporated organization, group or entity which is deemed by the Internal Revenue Service (Official Treasury **Regulation 31.3401(d)-1** as same was in effect on January 1, 1989) to be an "employer" by federal law for purposes of withholding federal income tax on its "employees", regardless of whether such employer is engaged in a business, profession or occupation as defined above. Thus, an employer is any person or organization for whom an individual performs or performed any services as an employee. The fact that services may have been performed in the past and may not be continuing at the time the wages are paid shall not prevent the person or organization paying from being considered the employer. Thus, duties imposed upon employers by ordinance and hereunder are required even though at the time the wages are paid the employer-employee relationship no longer exists.

**I. "GOVERNMENTAL AGENCY"** shall mean any administration, agency, arm, authority, board, body, branch, bureau, department, division, section, unit of any government (federal, state or local) or political subdivision thereof, or any corporation created and owned or controlled by any government or political subdivision thereof.

**J. "INDEPENDENT CONTRACTOR"** shall mean a person who is subject to the control and direction of another only as to the result of his work, and not as to means, and who is therefore not an "Employee". See definition of "Employee".

**K. "INDIVIDUAL"** shall mean a natural person.

**L. "INTERNAL REVENUE CODE"** with respect to occupational license fees for taxable years ending on or after December 31, 2000 shall mean the Internal Revenue Code as amended and in effect on December 31, 2000 (including any amendments prior thereto which shall be effective after December 31, 2000); and with respect to occupational license fees for taxable years ending prior to December 31, 2000 shall

mean the Internal Revenue Code as amended and in effect on December 31 of the licensee's taxable year. (Amd. Reg. Approved Nov. 20, 1996; Amd. Reg. Approved July 21, 1999; Amd. Reg. Approved March 21, 2001)

- M. "LICENSEE" shall mean any person required to file a return with or to pay a license fee to the Commissioners.
- N. "OCCUPATIONAL LICENSE" or "LICENSE" tax or fee shall mean the employee license fee, and/or the net profit license fee as the context shall indicate.
- O. "NET PROFIT" shall mean the income from the operation of a business, profession, occupation or enterprise after provision for all costs and expenses incurred in the conduct thereof as more precisely defined in Sections 3.7 through 3.13 of these Regulations.
- P. "PARTNERSHIP" shall mean any unincorporated enterprise of two or more persons engaged in any business, profession or occupation recognized as a partnership for federal income tax purposes.
- Q. "PEDDLER/SOLICITOR" shall mean a natural person who engages in selling or soliciting for the sale of goods, wares, periodicals, merchandise or personal property of any sort (hereafter "goods") from a fixed location on public property or on the public right of way or open space or who engages in selling or soliciting for sale of such goods while moving from place to place, whether as a door to door salesperson or otherwise, provided that a person who engages in selling or soliciting for the sale of goods in the City only while participating with ten or more other persons similarly engaged in a fair of three (3) days or less sponsored by a neighborhood association or other non-profit organization shall not be deemed a "peddler/solicitor" on the basis of such activity alone, and shall not solely on the basis of such activity alone be deemed to be engaging in a business, profession or occupation for which a license is required under [City of Louisville Code of Ordinances Chapter 112](#).
- R. "PERSON" shall mean every natural person, fiduciary, partnership, association or corporation, resident or non-resident, of the City/County. Whenever this term is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, it, as applied to partnerships and associations, shall mean the partners or members thereof and as applied to corporations, the officers.
- S. "RESIDENT" shall mean an individual domiciled in the City/County, except that for purposes of the imposition of occupational license fees on payments received for military service by full time members of the armed services, no individual shall be viewed as domiciled in the City/County unless said individual was domiciled in the City/County at the time of his induction or said individual declares himself to be a resident of the City/County.

- T. **“SALES”** shall mean gross sales less returns and allowances from the sale of merchandise, services, or both, computed by the method of accounting properly utilized by the licensee for federal income tax purposes.
- U. **“SALES OR SERVICES RENDERED WITHIN THE CITY/COUNTY”**, for the purposes of calculating the numerator of the gross receipts factor of Section 3.14(B), shall include the gross receipts from sales for which: (1) with respect to sales of tangible personal property, the property is delivered to a purchaser within the City/County regardless of F.O.B. point or other conditions of sale; or (2) with respect to sales other than sales of tangible personal property the receipt is deemed to have arisen from the licensee’s activity within the City/County as determined by Section 3.14(B)2(d), provided, however, that with respect to certain classes of persons, the numerator of the gross receipts factor shall be calculated as provided in Section 3.14(B)2(e).
- V. **“SECRETARY-TREASURER”** shall mean the Secretary-Treasurer of the Commissioners.
- W. **“SOLE PROPRIETOR”** shall mean a natural person engaged in any business, profession or occupation, but not as an employee.
- X. **“WAGES”** shall include all salaries, wages, commissions, and other compensation earned by an employee as more precisely defined by the provisions of Section 2.3 and 2.4 of these Regulations.

**SECTION 1.5 LICENSE FEE ON “WAGES” AND “NET PROFITS” DISTINGUISHED.**

The occupational license fee is measured by 2.2% of the “wages” of a resident who is an employee (1.45% for a non-resident of the City/County). The license fee is measured by 2.2% of the “net profit” of a business, partnership, other association, or resident sole proprietor and the earned income of a resident natural person performing services as an independent contractor. The license fee is measured by 1.45% of the “net profit” of a non-resident sole proprietor and the earned income of a non-resident performing services as an independent contractor.

Thus, in summary the license fee is measured as indicated in Table 1 below:

**TABLE 1**

<b>CLASS OF LICENSEE</b>	<b>LICENSE FEE IMPOSED</b>
Resident employees	<b>2.2% of “wages”</b>
Non-resident employees	<b>1.45% of “wages”</b>
All corporations, partnerships, or other associations regardless of residency status	<b>2.2% of “net profits”</b>

Resident sole proprietors/independent contractors

**2.2% of “net profits”**

Non-resident sole proprietors/independent contractors

**1.45% of “net profits”**

Although this wage/net profit license fee is authorized by statute as a single fee, there are important distinctions between the license fee on “wages” and the license fee on “net profits”. A clear understanding of these distinctions is important to every licensee and every accountant or attorney who has dealings with the Louisville/Jefferson County Metro Revenue Commission. The reader who bears in mind the following points will be greatly aided in understanding these Regulations.

- A. The license fee on “wages” is imposed on “employees” only. All others pay the license fee on “net profits”.
- B. The burden of obtaining the Louisville/Jefferson County Metro Revenue Commission License and the identification number is on all persons engaged in a business, trade, profession or occupation in any capacity other than that of an “employee” (whether or not such persons actually earn “net profits”). Employers are required to file with the Louisville/Jefferson County Metro Revenue Commission on behalf of their employees. The employee is not required to file with the Louisville/Jefferson County Metro Revenue Commission, unless (1) the employer fails to properly withhold the license fee from the employee’s wages or (2) the employee has earned income other than “wages”.
- C. There is no license fee on “wages” which are not attributable to work done in the City/County, or on “net profit” which is not attributable to activities conducted in the City/County. However, to determine the sum attributable to the City/County for purposes of imposition of license fee, the licensee’s total “wages” as defined in Section 1.4 (X) or net profit as defined in Section 3.7 et. seq. are subjected to an apportionment formula. For a discussion of apportionment of wages when an employee’s services are performed both inside and outside the City/County, see Section 2.6 of these Regulations. For a discussion of the required designation of wages earned in the City and wages earned in the County (outside the City), see Section 2.7 of these Regulations. For a discussion of the apportionment formula applicable to the net profits of businesses, professions and occupations which operate both inside and outside the City/County and of the required separate apportionment of net profits earned in the City and in the County (outside the City) see Section 3.14 of these Regulations. The treatment afforded license fees on “wages” is generally considered in Section 2 and the treatment afforded license fees on “net profit” is generally considered in Section 3 of these Regulations.

#### **SECTION 1.6 INSPECTION, COPIES/REGULATIONS.**

These Regulations, together with all amendments and supplements thereto and all changes therein, shall be on file with the Secretary-Treasurer and shall be open to public inspection. Copies thereof, so far as possible, will be available upon request to all licensees and their representatives.

**SECTION 2. OCCUPATIONAL LICENSE FEE ON WAGES**

**SECTION 2.1 INTRODUCTION.**

Pursuant to the authority invested in them by **Section 181 of the Kentucky Constitution, KRS 91.200, KRS 67.083, KRS 68.180, KRS 83.520, KRS 96A.320 and KRS 160.482** et. seq., the City of Louisville and Jefferson County have imposed an occupational license fee measured in the aggregated by 2.2% (1.45% for non-residents of the City/County) of wages, earned by persons within Jefferson County for work done or services performed in the City/County. The rate of 2.2% represents the sum of a 0.75% license fee supporting the Jefferson County and Anchorage School Boards, (not imposed on non-resident employees) a 0.2% license fee supporting the Transit Authority of River City (hereafter “TARC”) and a 1.25% license fee which supports the general budgets of the City of Louisville and Jefferson County. The 1.25% fee is credited entirely to the City if the work done or services performed was entirely within the City, is credited entirely to Jefferson County if the work done or services performed was entirely in the County, and is otherwise apportioned between the City and Jefferson County by the Louisville/Jefferson County Metro Revenue Commission as more particularly set forth in Section 2.7 hereof. In summary, then, licensees are required to pay the license fee rate indicated in Table 2 below:

**TABLE 2**

<b>TYPE OF LICENSE FEE</b>	<b>RATE</b>
City of Louisville or Jefferson County	1.25%
School Boards (Residents Only)	0.75%
Transit Authority (“TARC”)	0.20%
<b>TOTAL RATE (RESIDENTS)</b>	<b>2.20%</b>
<b>TOTAL RATE (NON-RESIDENTS)</b>	<b>1.45%</b>

**SECTION 2.2 EMPLOYER’S DUTY TO WITHHOLD LICENSE FEE ON WAGES.**

Employers are required to withhold from their employee’s wages the license fee on wages due by their employees to the Louisville/Jefferson County Metro Revenue Commission and otherwise to comply with the requirements set forth at Section 6 of these Regulations.

## SECTION 2.3 COMPENSATION SUBJECT TO THE OCCUPATIONAL LICENSE FEE.

- A. The license fee on an employee's "wages" includes a license fee on all payments paid to employees for employment, which would be includable as wages in accordance with the Internal Revenue Code including the following:
1. **Salaries** - Salaries, bonuses or incentive payments earned by an individual, whether directly or through an agent:
    - a) As an officer or employee, or both, of a corporation;
    - b) As an officer or employee (as distinguished from a partner or member) of a partnership or other association;
    - c) As an employee (as distinguished from the proprietor) of a business conducted by an individual owner;
    - d) As an officer or employee (whether elected or appointed, enlisted or commissioned) of a governmental agency; or
    - e) As an officer or employee of any business or other entity.
  2. **Wages** - Wages, bonuses, or incentive payments received by an employee, whether directly or through an agent or services rendered:
    - a) Whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece-meal rates; and
    - b) Whether paid by an individual, non-profit association, corporation, partnership, fiduciary, governmental agency, or any business or other entity.
  3. **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.
  4. **Fees** - Fees received by an employee, whether directly or through an agent, for services rendered regardless of how computed.
  5. **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.



6. **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. With regard to 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 “wages”.
7. **Employer Contributions to a Qualified Plan Arising from Employee Elections** - Amounts contributed by an employer to a qualified plan or a 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 amount to said plan.
8. **“Picked Up” Employee Contributions** - Employee contributions to 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.
9. **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, subject to the application for refund described in Section 6.2(D).
10. **Non-Cash Fringe Benefits** - Fringe benefits received by any employee to the extent that such benefits are taxable for federal income tax purposes. (See Section 6.2 (C) of these Regulations.)
11. **Separation Payments** - Including (a) payments made by an employer to an employee at the time of retirement to the extent that said payments represent accrued vacation pay, unused sick pay, severance pay and, if such benefits would be subject to the license fee if they were paid to an active employee, other benefits accrued pursuant to any employment contract between the employee and the employer; and (b) payments which are made in lieu of any payment which the employer is obligated to make to or on behalf of the employee arising from the employment to the extent that such payments would be subject to the license fee if they were made to an active employee.
12. **Expense Accounts** - Sums allowed and paid by employers to employees for expenses, which sums are required to be recognized as wages for federal income tax purposes.
13. **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.

14. **Early Retirement and Similar Inducements** - Payments made in consideration for early retirement or other inducements paid by employers to employees arising from the employee's service to the employer. [However, see **Commissioners of the Sinking Fund v. South Central Bell Tel. Co.**, 809 S.W. 2d 380 (KY 1991); regulation to be amended.]
  15. **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.
  16. **Other Income** - All other income paid by an employer and received by an employee for the performance of any activity subject to the license fee, not expressly exempt (see below) unless such income is to be reported and a net profit license fee paid thereon under the provisions of Section 3 of these Regulations.
- B. Compensation which is not subject to the license fee on wages includes the following:
1. **Insurance Payments** - Payments made to employees under a disability, sickness or accident insurance plan;
  2. **Unemployment Compensation** - Unemployment Compensation payments made by any governmental agency;
  3. **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;
  4. **Workmen's Compensation** - Amounts received by employees under the Workmen's Compensation Act as a compensation for disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability;
  5. **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;
  6. **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;
  7. **Kentucky National Guard** - Compensation paid members of the Kentucky National Guard for active duty training, unit training assemblies and annual field

training (because the imposition of the license fee on such income is expressly forbidden by **KRS 91.200** and **KRS 68.180**);

8. **Flexible Benefit Plan Payments** - Payments by employers to Section 125 Plans, sometimes referred to 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 non-taxable benefits such as hospitalization, group term life insurance, group disability insurance, etc., not otherwise paid for by the employer; provided, however, that to the extent which any such Section 125 flexible benefit plan includes a qualified retirement plan with an Internal Revenue Code Section 401(k) arrangement, any amount deferred into the 401(k) plan pursuant to the employee's election will be subject to the license fee, even though the amount reduced for the Section 125 portion of the plan otherwise would not be subject to the license fee;

**EXAMPLE:** An employer establishes a Section 125 plan which allows an employer to reduce compensation to pay the employee's portion of the company's health care premium and/or to defer a portion of the employee's compensation into a 401(k) plan. The amount of the compensation reduction used to pay the employee's portion of the health care premium would not be subject to the occupational license fee. However, the portion of the compensation reduction which went into the 401(k) plan would be subject to the license fee.

9. **Fringe Benefits Not Taxable for Federal Income Tax Purposes** - Non-cash fringe benefits which pursuant to Section 132 of the Internal Revenue Code qualify as (a) no additional cost services, (b) qualified employee discounts, (c) working condition fringes, and (d) de minimus fringes and are therefore not taxable for Federal income tax purposes;
10. **Employer Contributions to Qualified Plans Not Arising From Employee Election** - Except as expressly provided in Subparagraph 8 of Subsection A of this Section 2.3, 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;
11. **Employer Payments for Employee Benefits** - Employer's payments for employee's life insurance premiums not treated as wages for federal income tax purposes, employer's payments for employee's health insurance benefits;
12. **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;

13. **Student Grants** - Stipends, honorariums, grants and other payments made to students to the extent that such payments are conditioned only upon the recipient's pursuit of studies and/or participation in athletic or other intercollegiate competition, and scholarships and other non-cash fringe benefits received by duly registered students from the school, college or university in which they are enrolled;
  14. **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;
  15. **Payments to Non-Resident Military Personnel** - Payments to non-resident military personnel exempt from state and local taxation under the Soldiers and Sailors Federal Relief Act (50 USCA 574).
- C. Compensation which is not "wages" for purposes of the imposition by ordinance or hereunder of a duty on the employer to withhold and remit a license fee thereon, but which nevertheless is subject to the license fee which must be paid by the employee if not withheld and remitted by the employer includes, but is not limited to, the following:
1. Tip Income (See Section 4.4);
  2. Corporations are permitted but not required to withhold and remit fees paid to directors, provided that such corporations submit the 1099 information required by Section 6.7 of these Regulations, indicate that such payments are directors fees, and state the amount of the license fee withheld.
- D. 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 in the City/County, and if (i) the option is not a stock option as defined by Section 421(a) of the Internal Revenue Code or (ii) the option was a stock option as defined by said Section 421(a) at the time it was granted but was subsequently exercised or otherwise disposed of in a way that disqualifies the option pursuant to Section 421(b) of the Internal Revenue Code from treatment under Section 421(a), then the fair market value of the option so granted shall be subject to occupational license fees on the wages of said employee. The fair market value of the option so granted shall be includable in the employee's wages at the time it is granted if the option had a readily ascertainable fair market value at the time it was granted. The fair market value of the option shall be deemed readily ascertainable at the time it was granted if it was actively traded on an established market, in which case its value shall be determined by the Secretary-Treasurer in the same manner as is prescribed in Section 20.2031-2 of the Internal Revenue Code Regulations. If the option does not have a readily

ascertainable fair market value at the time it was granted the employee shall include in his wages the value of the option at the time the employee disposes of the option for value or at the time that (i) the employee exercises the option and (ii) the employee acquires an additional right to receive the property subject to the option. The value of the option thus included in the employee's wages shall be the difference between the fair market value of the property at the time and the amount payable for the property pursuant to the option. The employee has an unconditional right to receive the property subject to the option when his right to receive such property is not subject to any conditions, other than conditions which may be performed by him at any time.

For purposes of determining the extent, if any, to which compensation paid to an employee in the form of an option has been paid for work done or services performed within the City/County, the full amount of the said compensation shall be multiplied by the fraction determined pursuant to Section 2.6 of these Regulations applicable for the year in which the option was granted.

**EXAMPLE:** In 1985 Employee receives a stock option to which Section 421 of the Internal Revenue Code does not apply which gives Employee the right to purchase 1000 shares of Employer's stock in 1990 for \$10 per share. In 1985 Employee spent 60% of his work time in the City/County. In 1985 options to purchase Employer's stock in 1990 were not actively traded on an established market. Employee exercised his option and received the stock in 1990 at which time Employer's stock traded for \$25 per share. In 1990 Employee spent 80% of his total time within the City/County. Employee received \$15,000 compensation in 1990 (\$25,000 stock value less \$10,000 purchase price pursuant to option). This \$15,000 is multiplied by 60% (the Section 2.6 fraction for the year the option was granted) and the result (\$9,000) is the sum deemed to be paid Employee by Employer for work done within the City/County as a result of the grant and subsequent exercise of the option. This \$9,000 is subject to occupational license fees to be withheld by Employer and remitted to the Commissioners of the Louisville/Jefferson County Metro Revenue Commission in 1990 at the time the option is exercised and the stock transferred. (The percentage of Employee's work time spent in the City/County during the year the compensation is exercised is not used in this calculation).

## **SECTION 2.4 PERSONS EXEMPT FROM EMPLOYEE OCCUPATIONAL LICENSE FEE.**

- A. Compensation received by domestic servants is exempt from the license fee on wages imposed by the City, the County, and TARC but is not exempt from the 0.75% School Boards license fee on wages. For purposes of this section a domestic servant is defined as an individual employed to drive his employer as a chauffeur or employed on the grounds or in the home of his employer, to cook, clean, wash, garden, transport, or otherwise care for or wait upon the employer, the employer's family and guests or to care for the person, home, grounds, and/or vehicles of the employer, the employer's family and guests, including but not limited to maids, butlers, nurses, nursemaids, gardeners, cooks, launderers and chauffeurs engaged to serve the employer, the employer's family and guests, but not including such individuals who are employed by a cleaning service, personal nursing service, chauffeuring service or other entity which offers the services of its employees to the public.
- B. Compensation received by ministers taxable for federal income tax purposes pursuant to the Internal Revenue Code is exempt from the license fee on wages imposed by the City, the County, and TARC but is not exempt from the 0.75% School Boards license fee on wages. Compensation received by ministers not taxable for federal income tax purposes pursuant to the Internal Revenue Code is not subject to any license fee imposed by the City, the County, TARC or the School Boards. For purposes of this section a minister is defined as a natural person who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or other religious organization, to teach and preach its doctrines or to administer rites in public worship, and who regularly performs one or more of these duties, provided, that no such person is exempt from the payment of an employee license fee on compensation earned in activities not connected with the regular functions of a religious organization. Thus, compensation earned by ordained persons employed as chaplains, teachers, administrators, musicians or counselors whose employment is connected with the regular functions of a religious organization is exempt. Compensation earned by persons who are not ordained is not exempt regardless of the religious nature of such individual's work.

## **SECTION 2.5 WHEN WAGES DEEMED TO HAVE BEEN EARNED IN CITY/COUNTY.**

Wages are deemed to have been earned in the City/County when the services for which they are paid were performed in the City/County regardless of where the payment was made or received.

## **SECTION 2.6 APPORTIONMENT OF WAGES WHEN SERVICE PERFORMED BOTH INSIDE AND OUTSIDE THE CITY/COUNTY**

Where wages are earned for work done or services performed or rendered both within and without the City/County, the license fee shall be measured by such part of the wages as is earned as a result of work done or services performed or rendered in the City/County. The license fee shall be computed by obtaining the percentage which the compensation for work performed or services rendered within the City and County bears to the total compensation earned.

The duties imposed on employers pursuant to **Section 3 of Jefferson County Ordinance 13, Series 1989 (Section 112.06 of the Louisville Code of Ordinances)** shall apply with respect to wages paid employees who work both within and without the City/County if the employee is physically located within the City/County while on the job for more than five percent (5%) of the time said employee is on the job in any calendar year. Employers shall multiply the total wages paid each said employee by a fraction whose numerator is the days spent on the job in the City/County and whose denominator is the total days spent on the job by the employee within and without the City/County and shall treat the result as the wages subject to the license fees imposed by the City and the County. Provided, however, that no employer shall be permitted to apportion wages of an employee who is physically located within the City/County during ninety-five (95%) or more of his time on the job and no such employee shall be permitted to claim a refund for overpayment of occupational license fees based on apportionment of wages. Employees who are physically located within the City/County during five percent (5%) or less of their time on the job shall not be required to file an employee net profit license fee return or to pay a license fee pursuant to Section 6.6 hereof arising from the portion of their wages earned within the City/County.

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.

Every employer with one or more employees employed both within and without the City/County shall require each said employee to keep accurate records of time spent within and without the City/County, and with respect to each such employee whose time spent on the job in the City/County exceeds five percent (5%) of the total time said employee is on the job in any calendar year shall remit quarterly or, if applicable, monthly the license fees withheld. For purposes of the required withholding license fees and of the required quarterly (or monthly) remittance of license fees withheld, employers are permitted to estimate the portion of the employee's time spent within the City/County on the basis of the employee's prior year experience. Provided, however, that if there is a substantial and continuing change in assignment respecting the place of the employee's job performance, the employer shall revise its estimate of the portion of the employee's time spent within the City/County to conform with the employee's current performance. Provided, further, that the employer shall annually reconcile the license fee actually due

on each said employee's wages based upon the employee's actual time spent on the job within and without the City/County.

## **SECTION 2.7 APPORTIONMENT OF WAGES BETWEEN CITY AND COUNTY**

If an employee spends a portion of his time employed in the City and a portion of his time in the County (outside the City), the employer shall designate the proportion of the employee's time spent in the City and the proportion of the employee's time spent in the County (outside the City). The employer shall use his best efforts to be as accurate in this estimate as practicable, but may round the proportion spent in the jurisdictions to the nearest ten percent.

**EXAMPLE:** An employer believes that an employee spends between 25% and 35% of his time in the City and between 65% and 75% of his time in the County (outside the City), but cannot readily make a better estimate. The employer may designate the City portion at 30% since that is accurate to the nearest 10%. If an employer believes that 95% or more of an employee's time is spent in either the City or the County (outside the City), the employer may designate that 100% of that employee's time is spent in that jurisdiction.

## **SECTION 2.8 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 for the employee employed within and without the City/County according to the percentage of time spent on the job in the last year which is spent by said employee on the job within the City/County.

## **SECTION 3. OCCUPATIONAL LICENSE FEE ON NET PROFITS**

### **SECTION 3.1 IMPOSITION OF NET PROFIT LICENSE FEE.**

The City of Louisville and Jefferson County impose a license fee measured by a percentage of the net profits of corporations, partnerships, fiduciaries, sole proprietors and other enterprises engaged in any business, profession, occupation or other activity in the City/County. The net profit of an enterprise which conducts activities both inside and outside the City/County is apportioned as provided in Section 3.14 hereof. Sole proprietors and other individual independent contractors who are not residents of Jefferson County are not required to pay the 0.75% School Boards license fee and hence pay a fee measured by 1.45% of their net profit. All other licensees are required to pay a license fee measured by 2.2% of their net profit. All corporations, partnerships, fiduciaries and associations with a nexus in Jefferson County pay the full 2.2% net profit



license fee regardless of whether individual officers, directors, partners or associates are residents of Jefferson County. If an individual is a resident of the City/County for a part of the licensee’s fiscal year, the School Boards portion of the license fee shall be paid for the portion of the year that the individual was a resident of the City/County. In summary, licensees are required to pay the license fee rate on net profit indicated in Table 3 below.

**TABLE 3**

<b>CLASS OF LICENSE</b>	<b>TAX RATE</b>
Corporations with Nexus in the City/County	2.2%
Partnerships with Nexus in the City/County	2.2%
Resident Sole Proprietors/Independent Contractors	2.2%
Non-Resident (of the City/County) Sole Proprietors/Independent Contractors	1.45%

**SECTION 3.2 SUFFICIENT NEXUS TEST.**

A person practicing a business, profession, trade or occupation shall be deemed to be subject to the net profit license fee if the person has a nexus with Louisville and/or Jefferson County sufficient to justify the imposition of the license fee in a manner consistent with the commerce clause and the due process clause of the Fourteenth Amendment to the Constitution of the United States and other applicable federal law. See, for example, *Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 272-273, 98 S. Ct. 2340, 2344, 57 L.Ed.2d 197 (1978); see *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753, 756, 87 S. Ct. 1389, 1391, 18 L.Ed.2d 505 (1967); *Norfolk & Western R. Co. v. Missouri Tax Comm’n*, 390 U.S. 317, 325, 88 S. Ct. 995, 1000, 19 L.Ed.2d 1201 (1968). If the person has a sufficient nexus with the City/County, but also has a sufficient nexus with other counties of Kentucky, other states of the United States, and/or other nations, then the net profit derived from activities conducted within the City/County shall be determined by the apportionment formula set out in Section 3.14.

The term “nexus” shall be defined in the context of applicable case law. In general a “nexus” shall be defined as a minimum connection between a person/business entity and the taxing jurisdiction brought about when the person/business entity purposefully avails itself of the privileges and protections of the jurisdiction while doing business or practicing a trade, occupation or profession.

Without excluding by implication other activities which may create a nexus, the following connections between a person/business entity in the City/County shall normally establish a sufficient nexus:

- A. Location of a place a business in the City/County;

- B. Frequent and continuing entry into the City/County in the course of business by an officer or employee of a business;
- C. Delivery of goods to residents in the City/County other than through the mails or by common carrier;
- D. Contracting to sell goods in the City/County;
- E. Conducting substantial business activity in the City/County leading to a contract to buy or sell goods.

Notwithstanding the provisions of this Section 3.2 to the contrary, any person engaged in the business of transporting people, stock, goods or documents both inside and outside the City/County will be deemed to be subject to the license fees imposed on net profits if the person has a nexus with Louisville and Jefferson County sufficient to justify the imposition of the license fee in a manner consistent with the commerce clause and the due process clause of the Fourteenth Amendment to the Constitution of the United States and other applicable federal and state law and if:

- (i) the person has maintained at any time during the fiscal year for which the license fee is imposed a place of business within the City/County; or
- (ii) the person has one or more employees who during the fiscal year for which the license fee is imposed have been engaged in work within the City/County during more than 100 hours of the time such employee was on the job; or
- (iii) during the fiscal year for which the license fee is imposed the person picked up people, stock, goods or documents from a location within the City/County or delivered people, stock, goods or documents to any location within the City/County more than fifty (50) times in the aggregate.

Notwithstanding the provisions of this Section 3.2 to the contrary, any self-employed individual who is a non-resident of the City/County whose only nexus with the City/County is the performance of personal services within the City/County during any part of three (3) or fewer days within a calendar year and whose receipts for such personal services during the calendar year are less than Three Thousand Dollars (\$3,000.00) shall not be deemed to have a nexus with the City/County for purposes of the imposition of the license fee on net profits earned by said non-resident self-employed individual. For purposes of this paragraph a “day” shall be defined as a twenty-four hour period commencing at 12:01 a.m. and ending at 12:00 midnight, and a “self-employed

individual” shall include a professional individual doing business as a professional services corporation if the professional services corporation has no nexus with the City/County other than the performance of services by the said professional individual within the City/County during any part of three (3) or fewer days within a calendar year.

### **SECTION 3.3 SUFFICIENT NEXUS/UNITARY BUSINESS CONSIDERATIONS.**

If the licensee has a sufficient nexus with the City/County to justify the imposition of the net profit license fee, apportioned to the provisions of Section 3.14 hereof, the entire net profit of the licensee as defined in Section 3.7 et. seq. of these Regulations is so apportioned. It shall not be necessary that there be an independently established nexus between the City/County and each activity from which the licensee has derived income subject to apportionment. *Exxon Corp. v. Wisconsin Dept. of Revenue*, 447 U.S. 207, 100 S. Ct. 2109, 65 L. Ed. 2d 66 (1980); *General Motors Corp. v. Washington*, 377 U.S. 436, 84 S. Ct. 1564, 12 L. Ed. 2d 430 (1964); *Armco, Inc. v. Hardesty W. Va.*, 303 S.E. 2d 706 (1983).

Consequently, the “net profit” of the corporation, fiduciary, partnership or other association shall be subject to apportionment and taxation based on unitary business principles. To the extent that the licensee submits satisfactory proof that any income is not from a unitary source, such income may be excluded.

### **SECTION 3.4 EXEMPTIONS TO NET PROFIT LICENSE FEE.**

The following classes of business are exempt from payment of the net profit license fee:

No net profit license fee is imposed upon or collected from and no filing is required of any bank, trust company, combined bank and trust company or combined trust, banking and title business in Kentucky, or upon any state or federally chartered savings and loan association because these entities are expressly exempted from the license fee by **KRS 91.200**, **KRS 68.180**, **KRS 160.483**, and **KRS 96A.320**, the statutes which authorize the imposition of the City, County, School Boards and TARC net profit license fee respectively.

No net profit license fee is imposed by the City on insurance companies, but a net profit license fee is imposed by the County on insurance companies other than domestic life insurance companies. The license fee on insurance premiums authorized by **KRS 91A.080** and imposed by **City Ordinance 111.290 - 111.299** is imposed on the “privilege of engaging in the business of insurance” and is thus imposed in lieu of and not in addition to the City’s net profit license fee. The credit on the County’s net profit return for license fees paid the City is applied to fees paid the City pursuant to the City license fee on insurance premiums.

No net profit license fee is imposed on and no filing is required of persons engaged in the business of conducting a race track because this is prohibited by **KRS 137.190**.

No net profit license fee is imposed on and no filing is required of the activities of boards of trade, chambers of commerce, trade associations or unions, community chest funds or foundations; corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes, or for the prevention of cruelty to children or animals; or clubs or fraternal organizations operated exclusively for social, literary, educational, or fraternal purposes where no part of the earnings, income, or receipts of such units, groups or associations inures to the benefit of any private shareholder or individual, because such entities are not defined as “businesses” under the ordinances which impose the net profit license fee and are therefore exempt.

No net profit license fee is imposed and no filing is required of companies (doing business in the City) “that pay an ad valorem tax and a franchise tax” because this is forbidden by **KRS 91.200**, nor on “public service companies that pay an ad valorem tax” (doing business in the County) because this is forbidden by **KRS 68.180**. Actually the exemption from the City license fee for companies that “pay an ad valorem tax and a franchise tax” and the exemption from the County license fee for “public service companies that pay an ad valorem tax” both refer to companies and only to companies that are subject to the public service corporation property tax as set forth at **KRS 136.120**. This tax is applied only to utility companies and to certain common carrier companies. As of January 1, 1984 bus line companies, regular and irregular route common carrier trucking companies and taxicab companies are expressly excluded from the definition of “public service corporation” at **KRS 136.120 (1)**. Such companies therefore are now and since January 1, 1984 have been subject to the net profit license fee.

To be entitled to this exemption, companies are required to show that they are actually assessed as public service companies by the Kentucky Revenue Cabinet and that they in fact pay an ad valorem tax based on this assessment. Licensees whose business is predominantly non-public service who are also engaged in public service activity are required to pay a license fee on their net profit derived from the non-public service activities apportioned to the City/County.

### **SECTION 3.5 COMMON CARRIERS AND OTHERS ENGAGED IN INTERSTATE COMMERCE NOT EXEMPT FROM NET PROFIT LICENSE FEE.**

Common Carriers are not excluded from the net profit license fee even though engaged in interstate commerce. Common carriers and others engaged in interstate commerce are subject to taxation on a fairly apportioned share of their net profit if they have a sufficient nexus with the City/County to support the imposition of the license fee. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076, 51 L. Ed. 2d 326 (1977). The

provisions of this Section are subject to the limitations of Public Law 86-272 (15 U.S.C.S. 381) which prohibits states and political subdivisions thereof from attributing taxable nexus to persons who do not maintain an office within the jurisdiction and whose sole activity within the jurisdiction consists of solicitations of sales by employees or agents not empowered to enter binding contracts within the jurisdiction. See also Section 4.11 which excepts certain “public services corporations” from the license fees. For an explanation of the apportionment method utilized to determine the portion of a licensee’s total net profit which is subject to the license fee, see Section 3.14 of these Regulations.

### **SECTION 3.6 PASSIVE OR UNEARNED INCOME/UNITARY BUSINESS CONSIDERATIONS.**

Income of a corporation or a partnership arising from the licensee’s investments in another legal entity is subject to the net profit license fee unless the separate legal entity is not part of a “unitary business” with the licensee. The meaning of the term “unitary business” shall be defined as required by applicable case law. See, for example, *Mobil Oil Corporation v. Commissioner of Taxes of Vermont*, 100 S. Ct 1223; 445 U.S. 425; 63 L. Ed. 2d 510 (1980); *Exxon Corporation v. Wisconsin Department of Revenue*, 100 S. Ct. 2109; 447 U.S. 207; 65 L. Ed. 2d 66 (1980); and *Container Corp. of America v. Franchise Tax Board*, 103 S. Ct. 2933; 463 U.S. 159; 77 L. Ed. 2d. 545 (1983). A corporation with a nexus in the City/County is required to pay a license fee on the share of its net profits attributable to the City/County as provided by the apportionment formula of Section 3.14 and may not segregate its net profits reported for federal income tax purposes into two or more “divisions” or “profit centers” and pay a license fee only on the division and/or profit center with the City/County nexus. However, for taxable years beginning on or after July 1, 1986 dividend income received from sources outside the United States and its territories is not subject to apportionment and such income less any expenses attributable thereto are to be deducted from the taxable income of a corporation before apportionment. For taxable years beginning on or after July 1, 1987 foreign source interest, rentals, royalty and capital gain income less any expenses and losses attributable thereto are to be deducted from the taxable income of a corporation before apportionment. (See definition of “net profit” at Section 3.7 et. seq. of these Regulations.)

### **SECTION 3.7 DETERMINATION OF NET PROFIT.**

The “net profit” of a licensee shall be determined and administered as provided in this Section 3.7, and, with respect to particular classes of licensees, as provided in Section 3.8 Sole Proprietors, Section 3.9 Partnerships, S Corporations and Other Associations, Section 3.10 Corporations and Section 3.11 Fiduciaries.

- A. For corporations (other than S Corporations), “net profit” shall mean the licensee’s “taxable income” for federal income tax purposes plus

1. any sum deducted for federal income tax purposes as net operating loss carryforwards or carrybacks; plus
2. any deductions for federal income tax purposes for state or local taxes based on income; less
3. interest on U.S. obligations after deducting from such interest any expenses definitely related thereto; less
4. to the extent not otherwise excluded the amount of foreign dividend gross-up under Section 78 of the Internal Revenue Code; less
5. to the extent not otherwise excluded the amount of Subpart F income included under Section 951 of the Internal Revenue Code but not actually received; less
6. for taxable years beginning on or after July 1, 1986, the amount of dividend 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); less
7. 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 thereby as provided in Section 862(b) of the Internal Revenue Code; plus
8. for taxable years beginning on or after July 1, 1987 any deductions 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; plus
9. 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 (a) (5) and Section 862(a) (6) of the Internal Revenue Code; less
10. any sum elected by the licensee as a credit against its federal income tax liability in lieu of a deduction for business expenses otherwise available to the licensee; and

11. subject to such other adjustments as may be required by City of Louisville or Jefferson County Ordinance or otherwise by law.
- B. For partnerships and S corporations “net profit” shall mean the licensee’s gross receipts or sales from its trade, business, profession or occupation including but not limited to interest, dividends, rents, royalties, ordinary and capital gains or losses and other income as defined for federal income tax purposes; less
1. except as more expressly provided ordinary and necessary expenses of the trade, business, profession or occupation such as are defined for federal income tax purposes in the Internal Revenue Code including but not limited to depreciation and interest expenses; plus
  2. any deductions for federal income tax purposes for local taxes based on income; plus
  3. income passed through separately on the federal income tax return from the partnership to the partners; less
  4. expenses which are passed through separately on the federal income tax return from the partnership to the partners except 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 to any other self-employment retirement plan; less
  5. “professional expenses not reimbursed by the partnership” which for federal income tax purposes are claimed on the partner’s federal tax returns; less
  6. interest on U.S. obligations after deducting from such interest any expenses definitely related thereto; less
  7. any sum elected by the licensee as a credit against its federal income tax liability in lieu of a deduction for business expenses otherwise available to the licensee; and
  8. subject to such other adjustments as are applicable pursuant to the immediately preceding Subsection 3.7(A) hereof with respect to corporate licensees pertaining to dividends, interest, rents, royalties, gains, and profits or losses described in Sections 861 and 862 of the Internal Revenue Code; and
  9. subject to such other adjustments as may be required by City of Louisville or Jefferson County ordinance or otherwise by law.

Notwithstanding the foregoing, for purposes of these Regulations, S corporations and partnerships shall be considered separate entities. No licensee shall be required or permitted to include in its income subject to the net profit license fee its share of any item of income or deduction from partnerships or S corporations.

- C. For sole proprietors “net profit” shall mean the licensee’s gross receipts or sales from his trade, business, profession or occupation including, but not limited to rental income, royalties, nonemployee compensation (including commissions, fees, or other compensation for services rendered); less
1. (except as more expressly provided) ordinary and necessary expenses of the trade, business, profession or occupation, such as are defined as deductions for federal income tax purposes under the Internal Revenue Code including but not limited to depreciation and interest expenses; less
  2. any sum elected by the licensee as a credit against his federal income tax liability in lieu of a deduction for business expenses otherwise available to the licensee; plus
  3. ordinary gains and capital gains from the sale of property used in the trade, business, profession or occupation, less ordinary losses and capital losses from the sale of property used in the trade, business, profession or occupation; plus
  4. any deductions for federal income tax purposes for state or local taxes based on income; and
  5. subject to such other adjustments as may be required under City of Louisville or Jefferson County ordinance or otherwise by law.

Contributions on behalf of the individual licensee to a Keogh (HR-10) Retirement Plan 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 deductible for federal income tax purposes shall not be deductible for purposes of determining the sole proprietor’s “net profit”, but all such contributions by the licensee on behalf of his common law employees shall be deductible.

- D. The provisions in the definitions of “net profit” discussed in this Section 3.7(D) have general application to all types of licensees.
1. **Internal Revenue Code** - For a taxable year which ended before December 31, 1988 “taxable income”, “gross receipts”, “expenses” and other items of income and deductions shall be computed in accordance with the Internal Revenue Code as amended from time to time and in effect for the licensee’s taxable year. For tax years ending on or after December 31, 1988, the applicable Internal Revenue



Service Code in effect on December 31, 1988 has been adopted by the City of Louisville and County of Jefferson. Unless changed by the Fiscal Court or Board of Aldermen, for future years the Code in effect on December 31, 1988 shall be applicable.

2. **Interest on U.S. Obligations** - Corporations and partnerships are allowed to exclude from net profit the amount of interest on U.S. obligations reduced by any expenses definitely related thereto. The word “definitely” contemplates an exclusive connection between the expenses and the interest earned. Thus, for example, fees charged by an investment advisor to manage an account consisting of only U.S. obligations would be “definitely” related to interest earned on the U.S. obligations. However, if the account consisted of other investments in addition to the U.S. obligations, there would be no definite relationship between the fee and the U.S. obligations. The word “definitely” does not contemplate any allocation of expenses among various types of income.
3. **Credit in Lieu of Deduction** - Where licensees may, for federal income tax purposes, elect a credit in lieu of a deduction for business expenses, they may exclude from net profit the sum of the credit. Some examples of these types of credits are the investment tax credit, foreign tax credit, jobs credit, and the credit for rehabilitation expenses. The deduction for the credit is allowable in the year(s) the expense would have been deductible for federal income tax purposes had the credit not been taken. Thus, for example, the credit for rehabilitation expenses is not excluded from net profit in the year the credit is allowed for federal tax purposes, but in the year the amount of the basis reduction would otherwise have been allowed as a depreciation expense had the credit not been taken. The foreign tax credit may only be excluded from net profit where the related foreign income is included in determining net profit.
4. **State and Local Taxes** - Corporations, partnerships and sole proprietors are not allowed to deduct local taxes based on income. Likewise, corporations (other than S corporations) and sole proprietors are not allowed to deduct state taxes based on income. State or local franchise, license or gross receipts taxes or other taxes not based on income are allowed as a deduction in determining net profit. Common examples of deductible taxes not based on income are the Kentucky Corporate License tax and the Indiana Gross Income tax. A tax not based on income that is paid or payable is deductible even though it is in lieu of an income tax. A minimum tax not based on income tax is deductible while a deposit or advance minimum payment to be credited against a tax on income is not deductible.
5. **Types of Foreign Income Excluded from Net Profit** - The following items of foreign income may be excluded from a licensee’s net profit:

- a) **IRC Section 78 Foreign Dividend Gross-up.** Where a domestic corporation elects to take the foreign tax credit for federal income tax purposes, an amount equal to certain foreign taxes deemed paid by such corporation must be included in income as a dividend received from the foreign corporation. The amount of the foreign dividend gross-up so included for federal tax purposes is excluded from net profit to the extent not excluded as foreign dividends under subparagraph (c) below.
- b) **Subpart F Income Included Under IRC Section 951.** A shareholder owning stock in a controlled foreign corporation who must include in income, for federal income tax purposes, his pro rata share of certain foreign income items (Subpart F income) may exclude this income from net profit to the extent it is not excluded as foreign dividends under subparagraph (c) below.
- c) **Dividends Described in IRC Section 862(a) (2).** For taxable years beginning on or after July 1, 1986, the amount of dividends derived from sources without the U.S. as described in IRC Section 862(a) (2) after deducting from such dividends the expenses and other deductions properly apportioned or allocated thereto as provided under IRC Section 862(b) may be excluded.
- d) **Other IRC Section 862 Items Excluded.** For taxable years beginning on or after July 1, 1987, the following items of income received from sources outside the U.S. are excluded from net profit: interest income described in IRC Section 862(a) (1), rental or royalty income from property or any interest in property located without the U.S. as described in IRC Section 862(a) (4), gains, profits and income from the sale or exchange of real property located without the U.S. as described in IRC Section 862(a) (5), gains and profits derived from the purchase of personal property within the U.S. and its sale or exchange without the U.S. as described in IRC Section 862(a) (6), after deducting from such interest, rent, royalty, gain or profit the expenses, losses and other deductions properly apportioned or allocated thereto. For taxable years beginning on or after July 1, 1987, the following losses deducted by the licensee on its federal income tax return shall not be recognized and such amounts must be added back to federal taxable income for purposes of determining the licensee's net profit:
- (i) Any loss arising from the sale of an interest in a foreign corporation or corporation with certain foreign activities (a corporation other than a corporation described in IRC Section 861(a) (2)); and
  - (ii) Any loss arising from default under any bond, note or other interest-bearing obligation bearing interest derived from sources outside the U.S., or any loss from any property described in the paragraph (5).

6. **IRC Section 862 Items Not Excluded from Net Profit** - The following types of income are not excluded from net profit.
  - a) Compensation for labor or personal services performed without the U.S. as described in IRC Section 862(a) (3);
  - b) Underwriting Income derived from sources without the U.S. as described in IRC Section 862(a) (7); and
  - c) Gains, profits and income from the disposition of real property when the real property is located in the Virgin Islands as described in IRC Section 862(a) (8).
7. **Capital Gain Income** - Capital gain income which is subject to the license fee shall receive the same treatment as for federal income tax purposes.

### **SECTION 3.8 DETERMINATION OF NET PROFIT (SOLE PROPRIETORS).**

- A. **Definition of Net Profit for Sole Proprietors** - The net profit of an individual sole proprietor shall be determined by adjusting the licensee's gross receipts or sales from his trade, business, profession or occupation as provided in Section 3.7 (C). Gross receipts or sales include, but are not limited to, rental income, royalties, and all nonemployee compensation (including commissions, fees and other compensation for services rendered) as defined for federal income tax purposes.
- B. **Business Expenses** - Gross receipts or sales of a sole proprietor are reduced by ordinary or necessary business expenses of the trade, business, profession or occupation which are properly deductible for federal income tax purposes in computing the net profits of a sole proprietor.
- C. **Gains and Losses** - Ordinary gains and capital gains from the sale of property used in the trade, business, profession or occupation must be added to gross receipts and ordinary losses and capital losses from the sale of such property are deducted from gross receipts or sales in computing the net profit of a sole proprietor. This includes, for example, gains or losses under Section 1231 of the Internal Revenue Code and depreciation recapture pursuant to Sections 1245 and 1250 of the Internal Revenue Code. See Section 3.12.
- D. **Retirement Plan Expenses** - Contributions by the licensee to a Keogh retirement plan, Simplified Employee Pension Plan or other self-employment retirement plans are deductible from gross receipts of sales of a sole proprietor in computing net profits to the extent that they are on behalf of his common law employee, but not to the extent that they are on behalf of himself.

- E. **Single Return for Two or More Business; Exception** - A natural person who engages in two or more activities, businesses, trades, professions or occupations in the City/County as sole proprietorships, may offset against a profit shown in one such activity, business, trade, profession or occupation a loss shown in another such activity, business, trade, profession or occupation. However, if a natural person engages in one or more activities, business, trades, professions or occupations as a sole proprietor in the City/County and in addition engages in one or more distinct and separate business activities, trades, professions or occupations as a sole proprietor wholly outside the City/County, only the net profits and/or losses from the business activities, trades, professions or occupations engaged in by the natural person in the City/County are subject to the net profit license fee; no fee is due and no offset is permitted with respect to any profit or loss arising from the natural person's activity outside the City/County.
- F. **Requirements for Filing a Return** - Sole proprietors must file an annual net profit license fee return (Form OL-3) whether or not they earn net profits from the activity, business, trade, occupation or profession, in which they are engaged during the year. Sole proprietors must personally sign the Louisville/Jefferson County Metro Revenue Commission Return reporting said net income and attach thereto copies of applicable federal schedules or their equivalent as evidence supporting the licensee's statement of income and expenses.

### **SECTION 3.9 DETERMINATION OF NET PROFIT (PARTNERSHIPS AND S CORPORATIONS).**

- A. **Definition of Net Profit for Partnerships and S Corporations** - The net profit of a partnership or S corporation shall be determined by adjusting the licensee's gross receipts or sales from its trade, business, profession or occupation as provided in Section 3.7 (B). "Gross receipts or sales" include, but are not limited to, interest, dividends, rents, royalties, ordinary and capital gains or other income as defined for federal income tax purposes, and are adjusted to determine net profit as follows:
- B. **Business Expenses** - Gross receipts and sales are reduced by the ordinary and necessary business expenses of the partnership and S corporation that are properly deductible for federal income tax purposes, except those expenses expressly not allowed as a deduction by City of Louisville and Jefferson County ordinances.
- C. **Income Passed Through to Partners or Shareholders of S Corporations** - Income passed through separately on the federal income tax return from a partnership to the partners or an S corporation to its shareholders must be added to the gross receipts or sales of a partnership or an S corporation in computing net profits. These items include guaranteed payments to partners, dividends qualifying for the exclusion, net capital gains, gains from casualty or theft, IRC Section 1231 gains, and other income

including special allocations passed through separately by the partnership to the partners or by the S corporation to its shareholders.

- D. Expenses Passed Through to Partners or Shareholders of S Corporations** - Business expenses passed through separately on the federal tax return from a partnership to its partners or from an S corporation to its shareholders, are deducted from gross receipts and sales in computing the net profit of a partnership or an S corporation. These expenses include charitable contributions, expense deduction from recovery property pursuant to IRC Section 179, and special allocations passed through separately by the partnership to its partners or by the S corporation to its shareholders. For purposes of this paragraph contributions to a Keogh retirement plan, simplified employee pension plan and other self-employment retirement plan and health insurance premiums paid by a partnership on behalf of a partner or by an S corporation on behalf of a shareholder shall not be deemed business expenses and shall not be deducted from gross receipts and sales in computing the net profit of a partnership or an S corporation.
- E. Professional Expenses Not Reimbursed by the Partnership** - In computing its net profit, the gross receipts or sales of a partnership are reduced by professional expenses not reimbursed by the partnership which, for federal income tax purposes, are claimed on the partner's federal tax returns. In order to reduce gross receipts or sales by these expenses, they must be of the type which would have been deductible by the partnership for federal income tax purposes had those expenses been paid by the partnership and they must actually have been deducted by the partner on his federal income tax return. These expenses would, for example, include professional liability expenses and automobile expenses.
- F. S Corporations and Partnerships Considered as Separate Entities** - S corporations and partnerships are considered separate entities for purposes of filing license fee returns. No licensee is required or permitted to include in its income subject to the license fee its share of any item of income or deduction from partnerships or S corporations. Thus, for example, a corporation which owns an interest in a partnership must exclude the net profit or loss of the partnership from its net profit or loss since the partnership would already have paid a license fee on its net profit.
- G. Requirements for Filing a Return** - One annual net profit license fee return is required from a partnership on behalf of all individual partners. The partnership OL-3 return must be signed by a general partner and the name of the general partner must be printed legibly underneath the signature. Copies of applicable federal schedules or their equivalent must be attached as evidence supporting the licensee's statement of income and expenses.

### **SECTION 3.10 DETERMINATION OF NET PROFIT (CORPORATIONS OTHER THAN S CORPORATIONS).**

#### **A. Definition of Net Profit Pertaining to Corporation (Other than S Corporation).**

The “net profits” of a corporation shall be determined by adjusting the licensee’s “taxable income” for federal income tax purposes as provided in Section 3.7(A) of these Regulations. Consequently, corporations may not attribute income to one or more sources within the City/County and one or more sources outside the City/County but must apportion all net profit as required by Section 3.14.

#### **B. Requirement For Filing A Return.**

The Corporation’s annual net profit license fee return (Form OL-3) must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or other authorized officer. The name and title of said officer must be printed legibly or typed underneath the signature. Copies of applicable federal schedules or their equivalent must be attached as evidence supporting the licensee’s statement of income and expenses. Each corporation engaged in an activity in the City/County is required to file a license fee return based on the net profit of that corporation. Consolidated or combined license fee returns are not permitted.

### **SECTION 3.11 DETERMINATION OF NET PROFIT (FIDUCIARIES IN BUSINESS).**

The net profit of a fiduciary (estate or trust) which is engaged in a business activity is subject to the net profit license fee as is the net profit of any other business. The rule of Section 4.2 of these Regulations applicable to individuals engaged in renting real property is also applicable to trusts and estates engaged in the management of real property and in the event the trust or estate is deemed thereby to be in the business of renting real property, the profit derived therefrom shall be subject to the license fee. Income distribution deductions arising from distributions to beneficiaries of a trust or estate shall not be included in the trust’s or estate’s costs and expenses deducted from its income in determining the taxable income of the trust or estate subject to the net profit license fee.

### **SECTION 3.12 CAPITAL GAIN ARISING FROM SALE OF BUSINESS.**

Gains realized from the sale of a business are subject to the license fee if the person receiving the gain has been engaged in the business within the City/County at any time; the license fee on the gain shall be included in the net profit of the person receiving the gain for the year in which the gain is recognized regardless of whether the person receiving the gain was otherwise engaged in that business within the City/County during that year and regardless of whether or not the business was active during the year the gain was recognized.

### **SECTION 3.13 DEDUCTION FOR PROFITS DERIVED FROM KENTUCKY SALE OF ALCOHOLIC BEVERAGES.**

There is no license fee on the net profit earned from the sale of alcoholic beverages in Kentucky and to the extent that a licensee's net profit is derived from the sale of alcoholic beverages within Kentucky, a deduction may be taken from the licensee's total net profit derived from all sources (as determined by applicable Sections 3.7 through 3.12 hereof). This deduction shall be calculated by dividing receipts from Kentucky alcoholic beverage sales by receipts from total sales (whether of alcoholic beverage products or otherwise). This percentage is then multiplied by the licensee's net profit or loss as defined in Section 3.7 et. seq. to determine the deduction available to the licensee for sale of alcoholic beverages in Kentucky.

Provided, however, that a sole proprietor who is engaged in one or more businesses which sell alcoholic beverages and one or more distinct businesses which do not sell alcoholic beverages shall not be permitted to include in the denominator of the fraction thus used to determine the alcoholic beverage deduction any receipt which arose from his business or businesses which do not sell alcoholic beverages. Further, the alcoholic beverage deduction of said sole proprietor shall apply only to profits derived from his business or businesses which sell alcoholic beverages. For purposes of this paragraph a business which does not sell alcoholic beverages shall be considered distinct from a business which does sell alcoholic beverages if the two businesses are conducted from separate business locations.

### **SECTION 3.14 NET PROFIT APPORTIONED.**

A. **Introduction and Overview.** If the operations of a licensee are conducted both inside and outside the City/County, then the extent to which its net profit shall be considered as having been derived from activities within the City/County (and hence subject to the license fees imposed by the City/County) shall be determined by application of the Apportionment Percentage, calculated in accordance with the formula set forth in subsection (B) of this Section. In the event that the licensee's business activity in the City/County is conducted both within the City and within the County, then separate Apportionment Percentages shall be calculated for the City and the County. (The reader is reminded that the term "City" is defined as the City of Louisville, that the term "County" is defined as that portion of Jefferson County located outside of the City of Louisville and that the term "City/County" is defined as the "City" and/or the "County".)

**Example I:** V Company reported a net profit of \$1,000,000. Its Apportionment Percentage, calculated in accordance with subsection (B), was 17.5%. V Company's net profit upon which the net profit license fee is measured is \$175,000.

Total Net Profit x Apportionment Percentage = Subject Net Profit

$$\$1,000,000 \times 17.5\% = \$175,000$$

The net profits of a business, profession or occupation from activities conducted in the City/County shall be computed by multiplying the entire net profits from all sources by a business apportionment percentage to be determined by the following two factor formula:

1. Ascertaining the percentage which the gross receipts of the licensee from sales or services rendered within the City and County bears to the total gross receipts from sales or services rendered wherever made.
2. Ascertaining the percentage which the wages shown as expenses by the licensee for the period covered by the report for services performed or rendered within the City and County bears to the total wages shown as expenses by the licensee for such period to all the licensee's employees for services performed or rendered within and without the City and County.
3. Adding together the percentages determined in accordance with divisions (1) and (2) above and dividing the total so obtained by two.
4. If either factor under divisions (1) or (2) above is absent, then the business apportionment percentage shall be equal to the remaining percentage determined under divisions (1) or (2) above. A factor is not deemed to be absent merely because none of the licensee's receipts arose inside the City/County or because none of the wages paid by the licensee were for services rendered inside the City/County.

#### **B. Determination of Apportionment Percentage.**

NOTE: This Section 3.14(b) describes the method by which a licensee engaged in business both inside and outside the City/County is to apportion its net profit. As Discussed in Section 3.14(B)1, the Apportionment Percentage is determined by a two part formula using a "Receipt Factor" and a "Payroll Factor". The determination of the "Receipt Factor" is discussed at Section 3.14(B)2 hereof and the determination of the "Payroll Factor" is discussed at Section 3.14(B)3 hereof. The following outline, of this Section 3.14(B), is provided for the convenience of the reader.

1. Computation of Apportion Percentage.
  - a) Factors.



- b) Apportionment Percentage Formula.
  - c) Effect of Absent Factor.
2. Determination of Receipts Factor.
- a) Definition of “Receipt”.
  - b) Computation of Receipt Factor (Percentage).
  - c) Which Receipts Arising From Sale of Tangible Personal Property Are Deemed Local (City/County) Receipts.
  - d) Which Receipts Arising Other Than From The Sale of Tangible Personal Property Are Deemed Local (City/County) Receipts.
  - e) Determination of Receipts Factor - Particular Classes of Persons.
    - (i) Persons Engaged in Transportation of People or Documents
    - (ii) Persons Engaged in Transportation of People
    - (iii) Persons Engaged in Furnishing Advertising
    - (iv) Loan Companies
3. Determination of Payroll Factor.
- a) Definition of “Payroll”.
  - b) Computation of Payroll Factor.
  - c) What is Included in Local (City/County) Payroll

**1. COMPUTATION OF APPORTIONMENT PERCENTAGE.** Licensees shall utilize a two factor formula to compute their Apportionment Percentage.

- a) **Factors.** Except as provided in paragraph (c) of this Section 3.14(B) 1, a licensee doing business both within and without the City/County during a fiscal period, shall determine its Apportionment Percentage on the basis of the following two factors:
  - (i) Receipts Factor determined as provided in Section 3.14(B)2; and
  - (ii) Payroll Factor determined as provided in Section 3.14(B) 3.

- b) **Apportionment Percentage Formula.** The Apportionment Percentage is determined by adding together the Receipts Factor and the Payroll Factor, then dividing the total by two (2). (However, see paragraph (c) below in the event one factor is absent.)

**Example II:** W Company, a corporation operating in four states, reported a total of \$2,000,000 of receipts and a total of \$1,000,000 of payroll for the year 1986. \$500,000 of such receipts were derived from operations in Louisville. In addition, payroll expenses within Louisville were \$100,000 for 1986. The City of Louisville Apportionment Percentage is 17.5%, calculated as follows:

$$\text{Receipts Factor: } \frac{\$ 500,000}{\$2,000,000} = 25\%$$

$$\text{Payroll Factor: } \frac{\$ 100,000}{\$1,000,000} = 10\%$$

$$\text{Total Receipts \& Payroll Factors} = 35\%$$

City Apportionment Percentage:

$$\frac{35\% \text{ (Total Receipts \& Payroll Factor)}}{2 \text{ (The Number of Factors Used)}} = 17.5\%$$

**Example III:** X Company reports \$2,000,000 of receipts of which \$400,000 are derived from activity conducted in the “City” and \$600,000 are derived from activity in the “County”. X Company reports \$1,000,000 payroll for the fiscal year and payroll expenses in the “City” are \$250,000 while payroll expenses in the “County” are \$360,000. Separate Apportionment Percentages are calculated for the “City” and “County” as follows:

City Receipts Factor:	$\frac{400,000}{2,000,000}$	= 20%
City Payroll Factor:	$\frac{250,000}{1,000,000}$	= 25%
City Apportionment Percentage:	$\frac{20\% \& 25\%}{2}$	= 22.5%
County Receipts Factor:	$\frac{600,000}{2,000,000}$	= 30%
County Payroll Factor:	$\frac{360,000}{1,000,000}$	= 36%
County Apportionment Percentage:	$\frac{30\% + 36\%}{2}$	= 33%

- c) **Effect of Absent Factor.** If either the Receipts factor or the Payroll Factor is missing, the remaining percentage is the Apportionment Percentage. The Receipt Factor is deemed missing only if the licensee reports no receipts either inside or outside the City/County and the Payroll Factor is missing only if the licensee reports no payroll either inside or outside the City/County.

**Example IV:** Mr. Y, a sole proprietor, conducts activities in both Indiana and Kentucky. He has no employees; the owner performs all the services. Y reported a total of \$1,000,000 of receipts for, of which \$200,000 were made in the City. Y’s Apportionment Percentage is 20%, calculated as follows:

Receipts Factor:	$\frac{\$ 200,000 \text{ City Receipts}}{\$1,000,000 \text{ Total Receipts}}$	= 20%
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There being no employees, the Payroll Factor is absent; accordingly, the Apportionment Percentage is the same as the Receipts Factor, that is 20%.

**Example V:** Z Company operates a factory within the County which processes certain items which are shipped to another factory operated by the company outside the County for completion of the finished product. There are no receipts from sales or services rendered within the County. In 1986, the payroll at the County plant was \$400,000. Z Company's total payroll for 1986, including the County plant's payroll was \$4,000,000. Its sales for the year was \$5,000,000. The Apportionment Percentage is 5%, calculated as follows:

Receipts Factor:	$\frac{\$ - 0-}{\$5,000,000}$	$\frac{\text{County Receipts}}{\text{Total Receipts}} = 0\%$
Payroll Factor:	$\frac{\$ 400,000}{\$4,000,000}$	$\frac{\text{County Payroll}}{\text{Total Payroll}} = 10\%$

Total Receipts and Payroll Factors=10%

Both Factors are present. The mere fact that the Receipts Factor is zero because receipts are found to be situated entirely outside the County does not exclude the factor from the formula.

Apportionment Percentage:

$$\frac{10\% \text{ (Total Receipts and Payroll Factors)}}{2 \text{ (Number of Factors used)}} = 5\%$$

## 2. DETERMINATION OF RECEIPTS FACTOR.

- a) **Definition of "Receipt".** For Purposes of Calculating their Apportionment Percentage, licensees shall include in their reported "Receipts" all payments in cash, the fair market value of all property and services received and all receivables deriving from transactions and activities in the course of the licensee's regular trade or business operations allocated to the fiscal period covered by the report, computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire taxable income of the licensee, for sales of tangible and intangible property and for services rendered, provided, however, that "Receipts" shall not include interest income, service charges, carrying charges, and time-price differential charges incidental to such sales and provided further that "Receipts" shall not include any item of income which is excluded from the licensee's net profit.
- b) **Computation of Receipt Factor (Percentage).** The Receipt Factor is a percentage of the licensee's receipts computed by (i) ascertaining the licensee's receipts from sales of tangible and intangible property and services

rendered within the City/County during the period covered by the report, and (ii) dividing the sum of such receipts by the licensee's total receipts from sales of tangible and intangible property and services rendered within and without the City/County during such period.

c) **Which Receipts Arising From Sale of Tangible Personal Property Are Deemed Local (City/County) Receipts.** For Purposes of determining the numerator of the Receipts Factor, receipts within the City/County shall include the gross receipts from sales for which, with respect to sales of tangible personal property, the property is delivered to a purchaser within the City/County regardless of F.O.B. point or other conditions of sale.

(i) Property shall be deemed to be delivered or shipped to a purchaser within the City/County if the recipient is located in the City/County, even though the property is ordered from outside the City/County.

**Example VI:** The Corporation, with inventory in Covington, Kentucky, sold \$100,000 of its products to a purchaser with branch stores in several locations including the City of Louisville. The purchase order was placed by the purchaser's central purchasing department located in Lexington, Kentucky. Twenty-five thousand dollars of the purchase order was shipped directly to purchaser's branch store in the City of Louisville. The branch store in the City is the "purchaser within the City/County" with respect to \$25,000 of the corporation's sales.

(ii) Property is delivered or shipped to a purchaser in the City/County if the shipment terminates in the City/County, even though the property is later transferred by the purchaser to another location.

**Example VII:** The corporation makes a sale to a purchaser who maintains a central warehouse in the County where all merchandise purchases are received. The purchaser reships the goods to its branch stores in other localities for sale. All products shipped to the purchaser's warehouse in the County are property "delivered or shipped to a purchaser with the City/County".

(iii) The term "purchaser within the City/County" includes the ultimate recipient of the property if the corporation in the City/County, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient in the City/County.

**Example VIII:** A corporation in the City of Louisville sold merchandise to a purchaser in Owensboro, Kentucky. The corporation directed the manufacturer of the merchandise in Cincinnati, Ohio to ship the merchandise to the purchaser's customer in the City of Louisville pursuant to purchaser's instruction. The sale by the corporation is "in the City/County".

- (iv) When property being shipped by a seller from the location of origin to a consignee in another location is diverted while en route to a purchaser in the City/County the sales are in the City/County.

**Example IX:** The corporation, a produce grower in Edmonton County, begins shipment of perishable produce to the purchaser's place of business in Indianapolis, Indiana. The shipment is diverted to a purchaser's place of business in the City of Louisville. The sale is in the City/County.

- (v) A licensee whose only place of business is in the City/County and all of whose property, plant and payroll are situated within the City/County shall nevertheless be entitled to apportion his net profits for occupational license fee purposes, to the extent the licensee sells and ships good to purchasers outside of the City/County, such that the receipts from such sales are not deemed local under the foregoing provision of this Section 3.14, even if (i) such goods are delivered by mail or common carrier and (ii) the licensee is not subject to an income, franchise or privilege tax outside of the City/County by virtue of Public Law 86-272 (15 U.S.C. Section 381) or otherwise. **(Reg. Approved July 19, 1995)**

d) **Which Receipts Arising Other Than From the Sale of Tangible Personal Property Are Deemed Local (City/County) Receipts.** Receipts from sales, other than sales of tangible personal property, are attributed to the City/County as follows:

- (i) Gross receipts from the sale, lease, rental or other use of real property are in the City/County if the real property is located in the City/County.
- (ii) Gross receipts from rental, lease, licensing or other use of tangible personal property shall be assigned to the City/County if the property is in the City/County during the entire period of rental, lease, license or other use. If the property is within and without the City/County during such period, gross receipts attributable to the City/County shall be based upon the ratio which the time in the City/County bears to the total time or use of the property everywhere during such period.

- (iii) Gross receipts for the performance of personal services are attributable to the City/County to the extent that such services are performed in the City/County. If the services are performed partly within and partly without the City/County, such receipts shall be attributed to the City/County based upon the ratio which the time spent in performing such services in the City/County bears to the total time spent in performing such services everywhere. Time spent in performing services includes time spent in performing contracts or other obligations which gave rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, such as time spent in negotiating the contract, is excluded from the computations.
- (iv) Gross receipts from the sale of intangible personal property of persons whose principal business is the sale of intangible personal property shall be attributed to based upon the ratio which the payroll factor in the City/County bears to the payroll factor everywhere for the taxable year.

**e) Determination of Receipts Factor - Particular Classes of Persons.**

- (i) Persons Engaged in Transportation of Goods or Documents - Notwithstanding the provisions of this Section 3.14 to the contrary, the receipts of any licensee which arise from the service of transporting goods or documents shall be deemed to have arisen in the City/County if: (1) the party contracting with licensee for the provision of such services is located within the City/County; and (2) such goods or documents are placed in the hands of the licensee or its agents at such location in the City/County or such goods or documents are delivered to such location in the City/County. With respect to goods or documents transported "C.O.D.", the "party contracting with the licensee" shall be deemed to be the party who placed the goods or documents in the hands of the licensee.
- (ii) Persons Engaged in the Transportation of People - Notwithstanding the provisions of this Section 3.14 to the contrary, the receipts of any licensee which arise from the service of transporting people shall be deemed to have arisen in the City/County if the fee for the provision of such service is received by the licensee within the City/County.
- (iii) Persons Furnishing Advertising - Notwithstanding the provisions of this Section 3.14 to the contrary, the receipts of any licensee which arise from the service of providing advertising shall be deemed to have arisen in the City/County:
  - with respect to printed media advertising according to the licensee's proportion of circulation within the City/County;

- with respect to billboard advertising if the billboard is located within the City/County;
  - with respect to radio and television broadcast advertising, 100% of sales of advertising revenues received from customers whose principal place of business is in the City/County and a percentage of advertising revenues received from customers whose principal place of business is outside the City/County equal to the proportion of the licensee's viewing audience which is within the City/County.
- (iv) Loan Companies - Notwithstanding the provisions of this Section 3.14 to the contrary, the Receipt Factor of any licensee doing business as a loan company shall be a fraction of the numerator of which is all the licensee's receipts derived from loans or other sources negotiated through offices in the City/County and the denominator of which is the total of all such receipts.

### **3. DETERMINATION OF PAYROLL FACTOR.**

- a) Definition of "Payroll". For purposes of calculating their Apportionment Percentage, licensees shall include in their reported "Payroll" the total of all wages, salaries, and other personal service compensation paid or payable during the tax period covered by the report, computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire taxable income of the licensee.
- b) Computation of Payroll Factor (Percentage). The payroll factor is a percentage of the licensee's payroll computed by (i) ascertaining the licensee's payroll within the City/County (see subparagraph (c) of this paragraph) during the period covered by the report, and (ii) dividing such payroll within the City/County by the licensee's total payroll inside and outside of the City/County during such period.
- c) What is Included in Local (City/County) Payroll. Payroll inside the City/County means the total of all employee compensation subject to the license fee on employee's wages in accordance with the provisions of Section 2.3.

#### **C. Request for Apportionment Variance**

Ordinance Section 112.03(C) of the City of Louisville and Ordinance Sections 110.02(E) of Jefferson County Fiscal Court, permits a departure from the business net profit tax apportionment methodology set forth in 3.14 of these regulations only in limited and



specific cases. It may be invoked by the licensee only in those cases where unusual fact situations produce incongruous results under the standard allocation and apportionment provisions. If a licensee feels that the prescribed apportionment methodology does not fairly represent the extent of the licensee's business activity in the city/county, the licensee may petition the Metro Revenue Commission, through the Secretary-Treasurer, for an Administrative Determination authorizing an alternative apportionment methodology.

1. Any licensee that desires to petition the Commission for a variance from the normally prescribed apportionment formula must make a written request to the Secretary-Treasurer before the original due date of the return for which the variance is being requested. The original due date of the license fee returns on net profits is set forth in regulation section 6.4(A). Licensees are encouraged to file the petition as early as possible before the original due date. The filing of the return or an amended return shall not be considered a petition for the purpose of this section.
2. The Secretary-Treasurer is authorized to accept formal petitions under this regulation from any licensee for any tax period(s) that the licensee may have initiated apportionment protests prior to the existence of this regulation. Such requests from the licensee must have been made before the original due date of the return.
3. The initial request must clearly state all relevant facts and a full and precise statement of the specific reasons that the licensee believes the normal apportionment formula does not fairly represent the extent of the licensee's business activity in the city/county. The request must be in the form of an affidavit, under penalties of false statement, and must be signed by an individual (but not by the tax practitioner, if any) who has personal knowledge of the facts. The individual who must sign for a licensee that is a corporation, trust or estate, or partnership must be a corporate officer, fiduciary or general partner, respectively.
4. The licensee shall have the burden of establishing, by clear and cogent evidence, that the standard allocation and apportionment provisions contained in 3.14 does not fairly represent the extent of the licensee's business activity in the city/county.
5. Licensees filing a petition must propose an alternate apportionment formula(e) and state the specific reasons that the licensee believes the alternate formula(e) will provide a more equitable apportionment of income. Petitioners may request deleting or adding factors, changing the weight granted to a factor, adding new factors, or any other method that the licensee believes will fairly address the alleged problem created by the normal formula.
6. The Secretary-Treasurer, or staff that he or she may designate, may require the licensee that files the petition to provide additional information that is deemed necessary to evaluate the petition. The Secretary-Treasurer will send a letter to the

licensee, identifying the items that must be submitted and requesting those items within 20 days from the date of such letter. Failure of the petitioning licensee to timely supply additional information may be grounds for denying the petition.

7. The Secretary-Treasurer, or his/her designees, are authorized to determine if such petitions are frivolous or do not merit serious consideration. Any petitions that are determined to be covered by this paragraph do not have to be subjected to the full review process. Summary reporting of such instances shall be submitted monthly to the Commissioners.
8. If the Secretary-Treasurer determines that the review of the petition may require a substantial amount of time, a special extension of time for filing the return may be granted, while the petition is under consideration. Furthermore, if the Secretary-Treasurer makes a determination that a) the amount of taxes that would be owed under the normal apportionment formula would be substantially greater than under the alternate formula requested by the petitioner, and b) the initial review of the petition indicates that the petitioner's claim is likely to have merit, the Secretary-Treasurer may, in his sole discretion, allow the payment of tax that is less than the amount that would be due under the normal apportionment formula, while the petition is under review. Upon a final determination by the Commission, the petitioner must file the return and pay within 45 days of notice, the full amount of tax owed, as determined by formula set forth in the Commissioners' Determination. If the petitioner files the return and pays any additional tax due within the 45 day period, no interest or penalty shall be charged for any amount owed above the amount allowed by the Secretary-Treasurer during the petition review. If the petitioner fails to file the return and pay the full amount due as determined by the Commissioners' Determination within the 45 day period, the amount of interest and penalty shall be calculated upon the full tax due under the Commissioner's Determination from the original due date.
9. The Secretary-Treasurer shall have a staff report made of the petition. This report shall document the case as presented by the petitioner, and may offer alternative methodologies in addition to those presented by the licensee.
10. The Tax Policy Committee, which is a staff level review body established by the Secretary-Treasurer, shall consider the petition and staff report. The licensee filing the petition may request the opportunity to present its case in person to the Committee before the Committee meets to make a recommendation on the case.
11. The Tax Policy Committee shall make a recommendation to the Secretary-Treasurer, who shall make a formal recommendation to the Commissioners. After review, the Commissioners shall make a final Determination in the matter. The recommendations submitted to the Commissioners may recognize the "unfairness" of the normal apportionment formula but propose another option for addressing the issue other than the formula proposed by the licensee.

12. The Secretary-Treasurer shall prepare and submit to the Commissioners 1) a summary of the petition and other materials submitted by the petitioner, 2) a clear classification of licensee that is being addressed by the Secretary-Treasurers' proposal, 3) a summary of the recommendation by the Tax Policy Committee, and 4) a proposed determination. Such material shall not name the licensee.
13. If the Secretary-Treasurer determines that a recommendation can not be submitted to the Commissioners within 90 days of receipt of the petition, the Secretary-Treasurer shall inform the Commissioners, as part of the "Secretary-Treasurer shall inform the Commissioners, as part of the "Secretary-Treasurers Report" at the next regular meeting after the 90 days has elapsed. In which case the licensee requesting the alternative apportionment will be notified of the extension and the reason therefor.
14. The Commission shall consider the material submitted to it and make a final determination. The Commission may ask for additional material which it deems necessary to allow it to make a determination.
15. After considering the material presented to them, the Commissioners shall make a written Administrative Determination. The Commissioners may recognize the "unfairness" of the normal apportionment formula for the licensee, but are not required to issue a Determination that simply ratifies what was either requested by the licensee or recommended to the Commissioners. The Commissioners will make an independent Determination as it deems appropriate, after considering all material presented to the Commission. Such Administrative Determination will be precedent setting for any other similar licensee that petition for apportionment variance. Other licensees must petition for the use of the alternate formula and have the burden of establishing that the facts and circumstances involved in their case are substantially the same and are not materially different from the facts and circumstances involved in a previous Administrative Determination.
16. Administrative Determinations or alternate formulae under this provision shall be made readily available to the public in writing. Documentation shall not include the name of the petitioner.
17. Unless a licensee has a major structural change in it's business, that would result in gross inequities, any alternative formula approved must be used by the licensee for five full tax years before being eligible for reconsideration.
18. Once Administrative Determinations have been approved by the Commissioners, the Secretary-Treasurer is authorized to review other petitions and grant the use of alternate apportionment formulae set forth in such Determinations if new petitioners fall into the class of licensees covered by an existing Determination. The Secretary-

Treasurer shall report such inclusion, as part of the “Secretary-Treasurers Report” at the next regular meeting of the Commissioners.

19. If at any time, the Commission determines that Administrative Determination under this section should be automatically granted to an entire class of licensees, a new formula for that class of licensees shall be set forth in an amendment to the Regulations, following the normally prescribed Regulation amendment process. **(Reg. Approved January 19, 2000)**

## **SECTION 4. SPECIFIC CLASSES OF PERSONS**

### **SECTION 4.1 INTRODUCTION.**

The following classes of persons have presented particular questions and/or difficulties with respect to their liability for and/or collection of the occupational and net profit license fee. The provisions of this Section are established to set forth clearly the liability of some of these specific classes of persons and to outline the procedures by which the Louisville/Jefferson County Metro Revenue Commission shall collect the license fees properly due from such persons.

### **SECTION 4.2 PERSONS DERIVING INCOME FROM THE RENTAL OF REAL PROPERTY.**

Individuals and fiduciaries acting on behalf of individuals or deceased individuals who receive income from the rental of real property located in the City/County are rebuttably presumed to be engaged in an “activity” which requires a license fee to be paid and a return to be filed, unless the individual’s annual gross receipts derived from the rental of real property are less than FIFTY THOUSAND DOLLARS (\$50,000.00); provided, however, that rental income from warehouses, apartment hotels, hotel buildings, office buildings and other similar structures where payments typically are made for both the privilege of occupying the property and for services provided for the convenience of the occupant must be included in computing the net profit of an individual and fiduciary acting on behalf of an individual or deceased individual even though less than \$50,000 of gross receipts are received annually. Generally, services are considered provided for the convenience of the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. Services provided for the convenience of the occupant include, for example, (i) janitorial and maid service, (ii) furnishing linens and towels, (iii) providing laundry service and (iv) preparing and serving meals. Services not provided for the convenience of the occupant include, for example, (i) utilities, (ii) security, (iii) janitorial and maid services for the common areas, (iv) garbage and trash collection, and (v) maintenance of the leased property.

Individuals and fiduciaries who receive less than \$50,000 of gross receipts annually from the rental of real property and provide no services for the convenience of the occupant are not engaged in the business of renting real property and are not required or permitted to file a license fee return with respect to this activity. For example, an individual who leases a residence, provides no services for the convenience of the occupant, and receives less than \$50,000 of annual gross rental receipts would not include rental income in determining his net profit. The \$50,000 test is based on aggregated gross rental receipts from properties located in Louisville and Jefferson County.

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

In determining whether an individual has presented evidence sufficient to rebut the presumption of Section 4.2, the Secretary-Treasurer shall consider all relevant evidence including:

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

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

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

### **SECTION 4.3 INDEPENDENT CONTRACTORS.**

The distinction between an individual who is an “independent contractor” and an individual who is an “employee” for purposes of determining whether income received by the individual should be subject to the license fee on “wages” or on “net profit” shall be governed by Section 1.4 hereof. Income received by persons deemed to be independent contractors shall be governed by Section 3.8.

### **SECTION 4.4 WAITERS, WAITRESSES, BELLHOPS AND OTHERS RECEIVING TIP INCOME.**

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 a license fee, and, in addition, shall be deemed independent contractors for purposes of any tip income or other compensation received for which the employer has not withheld and remitted a license fee. An individual who receives tip income not reported by his employer is deemed to be engaged in an activity which requires him to obtain his own Louisville/Jefferson County Metro Revenue Commission license and identification number, to file an annual return as required and to remit the license fee due as shown on said return.

### **SECTION 4.5 SALESPERSONS.**

For the purpose of this paragraph, 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 the City/County by an individual engaged in the occupation of a salesperson, the license fee shall be measured by multiplying the total such income earned by the individual for federal income tax purposes after deduction for the employee business expenses while engaged as a salesperson times the time spent by the salesperson so engaged while located in the City/County divided by the total time spent by the salesperson so engaged, provided, however, that no license fee is required of a salesperson who spends less than five percent (5%) of his time engaged as a salesperson within the City/County. Persons selling their own tangible or intangible property are governed by Section 3.8. Persons engaged in selling real property shall allocate receipts from sales according to the location of the real property. (See Section 3.14)

### **SECTION 4.6 EMPLOYEES OF FEDERAL AGENCIES.**

Wages received by employees of the federal government for services performed in the City/County are subject to the license fee at the same rate and on the same basis as compensation received by other employees whether or not the employee's services are rendered on federal reservations situated within the geographical limits of the City/County. Certain federal agencies, however, citing federal regulations, do not withhold and remit to the Louisville/Jefferson County Metro Revenue Commission the full amount of their employee's license fee. All federal agencies, whether or not they withhold license fees on behalf of their employees, shall submit W-2 forms on behalf of each employee, by January 31 of each year, reflecting the previous year's wages. The Louisville/Jefferson County Metro Revenue Commission will collect any amounts not withheld by federal agencies on behalf of their employees directly from the employees. Such employees are required to file Louisville/Jefferson County Metro Revenue Commission Form I-2 (Annual Individual Occupational License Fee Return) by April 15 of the year following the calendar year in which the wages were earned. An extension of time to file not exceeding thirty (30) days will be granted by the Secretary-Treasurer upon written request therefor, which must be postmarked on or before April 15.

A federal agency desiring to withhold the full amount of occupational license fees due from its employees may request the Louisville/Jefferson County Metro Revenue Commission to agree in writing to such a withholding arrangement. After reviewing the agency's withholding procedures to assure that the full amount of license fees which the agency's employees are required to pay are to be withheld by the agency, the Louisville/Jefferson County Metro Revenue Commission shall enter into a withholding agreement with the agency and thereafter the agency's employees shall not be required to be individually licensed with the Louisville/Jefferson County Metro Revenue Commission or to file individual annual returns. While such a withholding agreement is in effect, applications for refunds for excess withholding of employee license fees must be made by the Agency pursuant to Section 6.2 hereof.

The provisions of this Section shall be subject to the provisions of Section 2.6 pertaining to apportionment of wages of employees who work both within and without the City/County.

#### **SECTION 4.7 RESIDUAL PAYMENTS.**

Residual payments received by insurance agents, authors, performers, salespersons and others are subject to the license fee to the extent that such payments were earned in the City/County. Such payments shall be rebuttably presumed to have been earned in the entirety in the City/County and all recipients of such payments are required to report them to the Commissioners and, in the event a claim is made that such income was earned, in part, outside the City/County, to furnish evidence sufficient to establish such claim.

#### **SECTION 4.8 INCOME DERIVING FROM A COVENANT NOT TO COMPETE.**

Payments deriving from a covenant not to compete are excluded from a licensee's net profit subject to the license fees imposed by the City and County to the extent that the recipient does not perform services in consideration for such payments. Licensees are required to report income deriving from a covenant not to compete to the Commissioners and to show that such income is entitled to the exclusion hereunder by attaching a copy of the covenant from which the income is derived. To the extent that income paid pursuant to such an agreement or covenant is paid in consideration for the present value of a business or professional practice said income shall be included in the licensee's net profit subject to capital gains treatment as provided by law.

#### **SECTION 4.9 COMMISSIONS OR FEES RECEIVED BY TRUSTEES, EXECUTORS AND ADMINISTRATORS.**

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

#### **SECTION 4.10 RECEIPT OF INCOME FROM ANY ACTIVITY.**

Except as provided in Section 2.6 hereof, any earned income not subject to employee withholding that is derived from any activity not heretofore mentioned as subject to the net profit license fee, nor herein exempted therefrom, is subject to the net profit license fee, if the earned income derives from an activity conducted, in whole or in part, in the City/County. Retainers or other payments received for being available to render or provide services are subject to the license fee.

#### **SECTION 4.11 PUBLIC SERVICE CORPORATIONS.**

No public service activity of a public service corporation, which has been classified as such by the Kentucky Revenue Cabinet, whose property is valued and assessed by the Revenue Cabinet pursuant to **KRS 136.120**, and which pays an ad valorem tax and a franchise tax shall be subject to the license fee hereunder, and no license fee shall be imposed upon or collected from any bank, trust company, combined bank and trust company, or combined trust, banking and title business in this state, or in other cases where the City and Jefferson County are prohibited by statute from imposing a license fee.



## **SECTION 5. MISCELLANEOUS SPECIAL LICENSE FEES; REGULATORY PERMIT FEES**

### **SECTION 5.1 INTRODUCTION.**

In addition to the wage/net profit license fee, the Louisville/Jefferson County Metro Revenue Commission collects various special license fees authorized by statute, including the transient room tax collected on behalf of Jefferson County, and the taxes on trucks and trailers, taxi cabs, coin operated amusement machines, and insurance companies collected on behalf of the City of Louisville.

Special license fees formerly imposed by Louisville Ordinance on amusements (112.15(a)), collection agencies (112.15c), rooming houses (112.15(o)), loan companies (112.15(k)), and jockeys and trainers (112.15(j)), have been repealed by the City of Louisville, but persons engaged in these activities remain responsible to withhold and remit the license fee on behalf of their employees and to pay net profit license fee on all profit arising from these activities. Special license fees formerly imposed in itinerant merchants (112.15(f)), and peddlers and solicitors (112.15(m)), also have been repealed, but persons engaged in these occupations must now comply with the provisions of the **City of Louisville Code of Ordinances 112.12** and Section 5.4 and other applicable Sections of these Regulations.

### **SECTION 5.2 INSURANCE PREMIUMS LICENSE FEE.**

By **Louisville Codified Ordinance 111.290 - 111.295** the City of Louisville has imposed and has authorized the Louisville/Jefferson County Metro Revenue Commission to collect a license fee on each insurance company for the privilege of engaging in the business of insurance within the corporate limits of the City of Louisville. This ordinance does not apply to domestic life insurance companies which are exempted from the tax by **KRS 136.320(3)** nor to hospital, medical or dental service companies which are exempted from the tax by **KRS 136.395**.

The license fee imposed upon each insurance company which issues life insurance policies on the lives of persons residing within the corporate limits of the City of Louisville shall be five percent of the first year's premium actually collected within each calendar quarter by reason of the issuance of such policies. "Premiums actually collected within a calendar quarter" means premiums which have been received at an insurer's home, administrative, or regional offices within a calendar quarter. Agency contracts which allow agents a period of time in which to forward premium payments to insurers shall not allow an unreasonably long period of time. an agency contract which allows an agent more than ninety (90) days to forward premium payments to an insurer is presumed to allow an unreasonably long period of time. This presumption may be rebutted by appropriate evidence. The license fee imposed upon each insurance company which issues any insurance policy which is not a life insurance policy shall be five percent of

the premiums actually collected within each calendar quarter by reason of the issuance of such policies on risks located within the corporate limits of the City of Louisville on those classes of business which such company is authorized to transact, less all premiums returned to policy holders; however, any license fee or tax imposed upon premium receipts shall not include premiums received for insuring workers against liability for personal injuries to their employees, or death caused thereby, under the provisions of the Worker's Compensation Act and shall not include premiums received from policies of group health insurance provided for state employees under **KRS 18A.225(2)**.

All license fees described in this Section shall be due and payable to the Louisville/Jefferson County Metro Revenue Commission and shall be paid at the address indicated in the insurance premiums tax return no later than thirty (30) days after the end of each calendar quarter. License fees which are not paid to the Louisville/Jefferson County Metro Revenue Commission in the manner prescribed above or before the due date shall bear interest at the tax interest rate prescribed in **KRS 131.183**.

Every insurance company subject to the license fees imposed by this Ordinance shall annually, by March 31, furnish to the Louisville/Jefferson County Metro Revenue Commission at the address indicated in the insurance premiums tax return a written breakdown of all collections in the preceding calendar year for the following categories of insurance: (a) casualty; (b) automobile; (c) inland marine; (d) fire and allied perils; (e) health; and (f) life.

The reasonable collection fee authorized by the Department of Insurance pursuant to **KRS 91A.080(4)** is in addition to the aforesaid premiums tax.

Unpaid insurance premium taxes for any year prior to January 1, 1985 shall be paid in accordance with **Sections 111.290-111.297 of the Louisville Code of Ordinances** with the interest and penalties specified therein, if applicable, as if such Ordinances had not been repealed by **Ordinance 219, Series 1984**.

## **SECTION 5.3 MISCELLANEOUS SPECIAL LICENSE FEES.**

### **A. Transient Room Tax**

The Jefferson County transient room tax is an aggregate tax of seven and one half percent (7.5%) of the rent for every occupancy of a suite, room or rooms, charged by all persons, companies, corporations or other like or similar persons doing business as motor courts, motels, hotels, inns or like or similar accommodations businesses, consisting of (i) a three percent (3%) transient room tax authorized by **KRS 91A.390** (the proceeds of which are to benefit the Louisville and Jefferson County Convention Bureau), (ii) a one percent (1%) transient room tax authorized by **KRS 153.440** (the proceeds of which are to benefit the Kentucky Center for the Performing Arts), (iii) a two percent (2%) transient room tax authorized by **KRS 91A.392** (the proceeds of which are to be used to retire Dedicated Tax Revenue Bonds issued by the Louisville and Jefferson County Tourism and Convention Commission doing business as the

Louisville and Jefferson County Convention and Visitor Bureau.) and (iv) a one and one half percent (1.5%) transient room tax authorized by KRS 91A.390(4) (the proceeds of which are to benefit additional promotion of tourist and convention business). The tax has been levied by **Jefferson County Fiscal Court Ordinance 25, Series 1988**, as amended by **Ordinance 21, Series 1989** and by **Ordinance 31, Series 1995**, and by **Ordinance 21, Series 2002**.

Tenancies of greater than thirty (30) days duration shall not be subject to the transient room tax. The tax is imposed on the proprietor of the motel, hotel, motor court, or inn, not the guest-occupant thereof, and therefore must be remitted to the Louisville/Jefferson County Metro Revenue Commission for occupancies by tax-exempt organizations as for all other occupancies. (*Second St. Properties, Inc. v. Fiscal Court, Ky.*, 445 S.W.2d 709 (1969)).

In November 1989, the filing and payment requirement was changed from a quarterly to a monthly basis. For quarters ending September 1989 and earlier, the due date was the last day of the month following the end of the quarter. For the transition months of October and November 1989, the return and payment due date is January 2, 1990. Beginning with the month of December 1989, all taxes must be filed and paid by the last day of the month that follows the month of the tenancy.

Any person who fails to pay the tax on or before the due date shall be assessed a penalty of five percent (5%) of the unpaid amount of the tax, whether or not the required return has been timely filed; and in addition shall pay simple interest at the rate of twelve percent (12%) per annum from the date the payment was due until the date of the payment. In addition, any person who fails to file the required return shall be charged a penalty of five percent (5%) per month, or fraction of month, of the unpaid transient room tax which said return, if properly completed and filed, would have shown to be due; provided, however, that said penalty shall not exceed twenty-five percent (25%) of the amount of said unpaid tax. (**Amd. March 21, 2001, Amd. August 21, 2002, Resolution August 2002 #3.**)

- B. The tax on trucks and trailers which use the city streets is based on the tonnage capacity of each such truck, truck tractor, or trailer. There is no fee for trucks whose declared gross weight is less than five (5) tons. For trucks of declared gross weight of more than five (5) tons, the fee is as follows:

<b>DECLARED GROSS WEIGHT</b>	<b>FEE</b>
Five to Nine Tons	\$15.00
Nine to Thirteen Tons	\$22.50
Thirteen to Nineteen Tons	\$30.00
Nineteen to Twenty-two Tons	\$37.50
Twenty-two to Thirty-one Tons	\$45.00

More than Thirty-one Tons

\$60.00

The license fees are purchased for years beginning May 1 of each calendar year, and fees for a portion of the year may be purchased for one-twelfth of the amount specified above times the number of months or portions of months remaining from the effective date of the license until May 1. The tax on trucks and trailers is authorized by **KRS 186.270** and imposed by **Louisville General Ordinance 73.01 through 73.07**. Trucks, truck tractors and trailers which use the city streets only on an occasional basis are not required to purchase this license. Entry onto the city streets five times per year or less shall be deemed occasional use of the city streets.

- C. The owner or operator of every taxi cab operated in the City must purchase an annual license for each vehicle so operated and must pay to the Louisville/Jefferson County Metro Revenue Commission a fee of \$30.00 annually for said license. The license runs from July 1 of each year until June 30 of the succeeding year. Licenses acquired after January 1 of any year are \$15.00. Licenses acquired before January 1 are \$30.00. The license fee on taxicabs is authorized by **KRS 186.281** and imposed by **Louisville Ordinance 73.01 through 73.07 and 112.12(f)**.
- D. A license fee on coin operated amusement machines of \$20.00 for each coin operated music machine and \$20.00 for each coin operated amusement device is required of every person, owner or lessee operating such machines in the City. Coin operated pool tables are not considered "Coin operated amusement devices" and are not subject to this fee. (The \$25.00 license fee formerly imposed by **Louisville Ordinance 112.15(n)** on "pool and billiard tables" has been repealed.) These licenses run from November 1 of each year through October 31 of the succeeding year. Licenses may be transferred during the year when a substitute machine or device replaces a machine or device taken out of service. Licenses may be purchased for a period of six (6) months by paying one-half of the annual license fee for each machine. The license fee on coin operated amusement machines is authorized by **KRS 137.410** and imposed by **Louisville Ordinance 111.421**.

#### **SECTION 5.4 REGULATORY PERMIT FEES.**

In addition to the above revenue producing license fees, the Louisville/Jefferson County Metro Revenue Commission is charged by ordinance with collecting certain regulatory permit fees imposed under of the City of Louisville's police powers. These fees are designed only to defray the costs incurred by the City incident to regulating activity deemed to require such regulation in the public interest. The City's regulatory permit fees, all of which are payable annually on or before July 15, include: (1) the \$62.00 permit fee imposed on dance halls by **Louisville Ordinance 112.12(A)**; (2) the \$25.00 permit fee imposed on detectives by **Louisville Ordinance 112.12(B)**; (3) the \$25.00 permit fee imposed on fortunetellers by **Louisville Ordinance 112.12(c)**; (4) the \$10.00 permit fee imposed by **Louisville Ordinance 112.12(D)** on peddlers and solicitors; (5) the

\$250.00 permit fee imposed by **Louisville Ordinance 112.12(E)** on persons engaged in the operation of a pawn shop. These must be paid in full for each year or portion thereof for which a permit is issued. The City of Louisville Department of Inspections, Licenses and Permits administers these licenses and is now collecting the license fees on behalf of the Louisville/Jefferson County Metro Revenue Commission.

## **SECTION 6. PROCEDURE AND ADMINISTRATION**

### **SECTION 6.1 INITIAL LICENSING.**

Corporations, partnerships, sole proprietorships, estates and trusts, and individuals subject to the occupational and net profit license fee and all employers must apply for an occupational license fee reporting number (account number) and in such process shall complete and execute the questionnaire prescribed by the Louisville/Jefferson County Metro Revenue Commission. Each separate legal entity conducting business in the City/County requires a separate questionnaire and will be supplied a separate identifying number. Therefore, when a corporation becomes a new legal entity, as when it dissolves and incorporates again, a new questionnaire must be completed and executed. However, an individual engaged in more than one business activity as a sole proprietor is permitted to use the same account number for the two or more activities in which the individual is engaged.

Identifying account numbers are assigned and licenses are processed on the basis of the information supplied by the completed questionnaire. Licensees are required to notify the Louisville/Jefferson County Metro Revenue Commission of changes of address, of the cessation of business activity and of other significant changes which render inaccurate the information previously supplied in the completed questionnaire. Failure of the licensee to notify the Louisville/Jefferson County Metro Revenue Commission of such changes may result in the initiation of costly legal action by the Louisville/Jefferson County Metro Revenue Commission based on erroneous or out of date information.

Licensees must complete the questionnaire and obtain their identifying account number prior to engaging in the business, trade, profession, or occupation licensed.

### **SECTION 6.2 RESPONSIBILITY OF EMPLOYERS TO WITHHOLD AND REPORT EMPLOYEE LICENSE FEE; CIVIL PENALTIES AND LIABILITIES.**

A. Each employer who employs one or more persons within the City/County shall deduct at the time of payment of wages to any employee the license fee, measured by such wages, due from each employee. In the case of compensation deferred for federal income tax purposes under Section 403(b), Section 401(k), Section 414(h) or Section 457 of the Internal Revenue Code the employer shall deduct the license fee at the time such compensation is earned by the employee. The employer shall report for

the quarterly periods ending March 31, June 30, September 30, and December 31 of each year the wages from which license fees have been so withheld on or before the last day of the month following the end of each such quarter, and shall make the payment required to be made on account of such employee withholding of occupational license fees on or before the time required for the filing of the quarterly returns.

- B. Notwithstanding the provisions of Paragraph (A) hereof, each employer who employs persons within the City/County for which the aggregate Jefferson County, City of Louisville, Mass Transit Trust Fund and School Boards occupational license fees required to be withheld from all employee wages for any one (1) of the preceding four (4) quarters shall have exceeded the sum of Three Thousand Dollars (\$3,000.00) shall remit the occupational license fees required to be withheld from employees monthly on or before the fifteenth (15<sup>th</sup>) day of the month following the month in which the wages shall have been paid by said employer, or, in the case of deferred compensation subject to the license fee, on the fifteenth (15<sup>th</sup>) day of the month following the month in which such compensation is deemed to have been earned by the employee. This requirement is effective for license fees required to be withheld on wages paid in January, 1987 and thereafter as follows:

<b>LICENSE FEE REQUIRED TO BE WITHHELD:</b>	<b>PAID BY (POSTMARKED OR HAND DELIVERED):</b>
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 15
December	January 15

Payment Stubs will be provided by the Louisville/Jefferson County Metro Revenue Commission and no return is required to be submitted with monthly payments. Employers are required only to record the amount of the payment on the monthly payment stub and to enclose a check for the amount required to be withheld from employee wages.

- C. Each employer who employs one or more persons within the City/County shall also deduct from each employee who 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 occupational license fee arising from the employee's receipt of such compensation; and the employer shall remit to the Commissioners with the deposit made for the period in which such non-cash benefits are so reported the occupational license fee due on such non-cash fringe benefits. All fringe benefits except those which pursuant to Section 132 of the Internal Revenue Code qualify as: (i) no additional cost services; (ii) qualified employee discounts; (iii) working condition fringes; and (iv) de minimus fringes; are subject to the license fee. The employer may report the value of fringe benefits provided during any period commencing no earlier than November 1 of any year as having been paid by the employer and received by the employee during the following year provided that the reporting for occupational license fee purposes is consistent with the reporting for federal income tax purposes. For the year 1986 and after occupational license fees shall be paid on the non-cash fringe benefits subject to federal income tax as provided by the Internal Revenue Code and by the Code of Federal Regulations; and such non-cash fringe benefits shall be valued for purposes of the imposition of the occupational license fee as provided by the Internal Revenue Code and by the Code of Federal Regulations.

- D. Each employer who employs one or more persons within the City/County who participate in any non-qualified deferred compensation plan (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) shall withhold from employee's wages and deposit with the Louisville/Jefferson County Metro Revenue Commission the license fee on the amounts contributed or assigned to any such plan on behalf of any said employee. Such employers may, however, apply (and upon request of the employee, shall apply) for a refund of all such license fees withheld and deposited on behalf of any employee whose employment is terminated before he becomes eligible to receive benefits under such a non-qualified plan and who in fact does not receive such benefits and loses all right to future benefits arising from the non-qualified plan upon termination from employment. Such application for refund may be filed at any time within (1) year after the employee terminates his employment. All license fees required to be withheld from employee's wages and paid to or deposited with the Louisville/Jefferson County Metro Revenue Commission pursuant to subparagraphs 6-10 of Section 2.3(A) of these Regulations shall be withheld, and paid or deposited, at the time when the compensation on which the license fee is imposed is earned irrespective of the time that the contribution or assignment to the qualified or non-qualified plan is made.
- E. Each employer who employs one or more persons within the City/County shall annually on or before January 31 of each year make a return to the Commissioners in which is set forth the name, address and Social Security number of each employee of said employer employed during the preceding calendar year, stating the amount of

gross wages earned during such preceding year by each such employee and the amount of occupational license fees withheld, together with a form prescribed by the Commissioners reconciling the sum total of license fees withheld as disclosed by the information return with the aggregate amount previously reported on the quarterly returns and with aggregate remittances paid for the calendar year, and such other pertinent information as the Commissioners may require. If the employer has contributed or assigned into a non-qualified plan, the amount and date of such contributions or assignments on behalf of each employee must be reported.

- F. Each employer who employs one or more persons within the City/County shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation earned and the license fee deducted and paid by said employer during the preceding calendar year.
- G. Each employer who employs one or more persons within the City/County, in the event of overpayment by the employer of the employee license fee, shall upon request by the employee and may on its own initiative apply to the Commissioners for a refund on behalf of the employee, correcting the previously submitted return(s) which had shown the excess withholding, and submitting such records of the payments made and amounts withheld from the employee(s) on whose behalf a refund is sought (including proof that the employee is not a resident and/or certification of the employee's time spent inside and outside of the City/County) as the Secretary-Treasurer or his designee may reasonably require. Provided, however, that no employer shall be required to make an application hereunder on behalf of an employee if the employer remits the overpayment directly to the employee and unless a refund of \$1.00 or more is due that employee.
- H. Each employer who employs one or more persons within the City/County who is notified of or discovers an underpayment by the employer of the employee license fee, shall correct the previously submitted returns which had shown the under withholding and shall remit payment of the employee license fee not previously paid, together with any applicable penalty and interest.
- I. Each employer who employs one or more persons within the City/County shall be liable jointly and severally with the employee(s) to the Louisville/Jefferson County Metro Revenue Commission for failure to make payment of any license fee arising from wages earned from the employer within the City/County, and any interest and penalty thereon; provided that no employee shall be liable to the Louisville/Jefferson County Metro Revenue Commission for any license fee actually withheld from the employee's wages by the employer. The Secretary-Treasurer may proceed civilly against any employer to collect said license fee, and any interest and penalty thereon whether or not employees are joined as co-defendants.



- J. Any licensee required to remit monthly any occupational license fee deducted from an employee's wages as provided in Paragraph (B) of this Section shall pay a penalty of Two and One Half Percent (2 ½%) of the deposit due but not paid and in addition shall pay simple interest at the rate of Twelve Percent (12%) per annum calculated on a daily basis from the date said payment was due until the date of payment. If the licensee has not remitted the entire sums due to be deposited for each month of the quarter by the due date of the quarterly return an additional penalty of Two and One Half Percent (2 ½%) of the total monthly deposits for said quarter due but not paid shall be assessed.
- K. Any licensee who is required to remit occupational license fees deducted from an employee's wages quarterly as provided in Paragraph (A) hereof, but not monthly as provided in Paragraph (B) hereof, who fails to remit on or before the date due occupational license fees due on employee's wages shall be assessed a penalty of Five Percent (5%) of the unpaid amount of said license fee and in addition shall pay simple interest at the rate of Twelve Percent (12%) per annum calculated on a daily basis from the date said payment was due until the date of payment.
- L. Any licensee who fails to file within thirty (30) days after notice that the quarterly return required under this Section 6.2 is past due, but who has made payments shall be charged a penalty of Two and One Half Percent (2 ½%) of the license fee liability for which payments have been made for the period covered by such returns times the number of months or fraction thereof said return is filed past the aforesaid thirty (30) day grace period, provided that the maximum penalty thus imposed shall not exceed Ten Percent (10%) of the paid license fee for the period covered by the return. The penalty provided in this Paragraph (L) shall be applied in addition to the penalties provided in Paragraphs (J), (K) or (M) of this section.
- M. Any person who fails to file the Employer's Quarterly Return of Occupational License Fees Withheld (Form W-1) required by Paragraph (A) hereof on or before the date due shall be charged a penalty of Five Percent (5%) per month or fraction of a month of the amount of the unpaid occupational license fee which said return, if properly completed and filed, would have shown to be due, provided, however, that said penalty shall not exceed Twenty Five Percent (25%) of the amount of said unpaid license fee.
- N. The interest provision of Paragraph (J) and (K) hereof and the penalty provisions of Paragraph (K), (L) and (M) hereof shall be applied cumulatively and the imposition of these interest and penalty provisions shall not prevent the assessment of any additional criminal penalties provided by law.

**SECTION 6.3 LIABILITY OF EMPLOYERS WHO FAIL TO COMPLY WITH  
LOUISVILLE/JEFFERSON COUNTY METRO REVENUE COMMISSION  
REQUIREMENTS**

Every employer is deemed to be a trustee of the Louisville/Jefferson County Metro Revenue Commission who by employing persons within the City/County undertakes an obligation to collect and hold the employee license fee, and the funds so collected are deemed to be trust funds. Every such employer required to deduct and withhold the employee license fee is liable directly to the Louisville/Jefferson County Metro Revenue Commission for failure to file the Employer's Quarterly Return of Occupational License Fees Withheld (Form W-1) and for failure to make payment of such fees, whether actually withheld by such employer or not. If the funds are actually withheld by the employer and not remitted to the Louisville/Jefferson County Metro Revenue Commission, the employer may be criminally prosecuted for theft by failure to make required disposition (**KRS 514.070**).

Any corporate officer or other individual required to withhold, or truthfully account for and remit to the Louisville/Jefferson County Metro Revenue Commission any license fee required to be withheld from employee wages, who willfully fails to withhold such fee, or truthfully account for and remit such fee or willfully attempts in any manner to evade or defeat the payment of any such fee, in addition to the administrative and criminal penalties provided by the City and County ordinances and by any other penalties provided by law, shall be civilly liable for the total amount of the fee evaded, or not collected, or not accounted for and remitted, plus applicable penalties and interest. Neither the corporate dissolution or withdrawal of the corporation from the State of Kentucky nor the cessation of holding any such corporate office shall discharge the foregoing liability of any such person.

**SECTION 6.4 RESPONSIBILITY OF PERSONS ENGAGED IN BUSINESS, OCCUPATION OR PROFESSION TO FILE NET PROFIT RETURN FOR FISCAL YEAR; ACCELERATED PAYMENT OF LICENSE FEE ON BUSINESS NET PROFIT.**

- A. **Filing Requirements for License Fee on Net Profit** - Every entity (including an individual who is a sole proprietor or who is an employee on part or all of whose wages no license fee has been withheld by the employer) who has income which is subject to the license fee on net profits, regardless of whether or not such income is sufficient to result in a license fee liability exceeding the threshold for quarterly estimated payments, is required to file a return with the Louisville/Jefferson County Metro Revenue Commission each year and attach thereto copies of applicable federal schedules or their equivalent as evidence supporting the licensee's statement of income and expenses. This return should be filed on a form available from the Louisville/Jefferson County Metro Revenue Commission by the 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of the licensee's fiscal year as shown on the Schedule below.

**SCHEDULE FOR FILING LICENSE FEE RETURNS ON NET PROFIT**

<b>For Fiscal Years Ending</b>	<b>Due Date (Postmarked or Hand Delivered)</b>
December 31	April 15
January 31	May 15
February 28	June 15
March 31	July 15
April 30	August 15
May 31	September 15
June 30	October 15
July 31	November 15
August 31	December 15
September 30	January 15
October 31	February 15
November 30	March 15

The person making the return shall, at the time of the filing thereof, pay to the Commissioners the amount of the license fees shown as due thereon; provided, however, that where any portion of the license fee so due shall have been deducted at the source, credit for such amount shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of the filing of said return, as hereinabove provided.

**B. Threshold Required for Quarterly Estimated Payments** - Effective for fiscal years beginning on or after January 1, 1987, businesses whose aggregate net profit license fee liability due the City of Louisville, Jefferson County, TARC and the School Boards (hereafter, "license fee liability") exceeds \$5,000 for any fiscal year are required to submit advance estimated payments of their license fee liability each quarter if the business reasonably should have expected to earn a profit sufficient to trigger a license fee liability in excess of the threshold. Since these estimated payments are based on profit projections the following rules have been promulgated by ordinance to determine irrebuttably whether the licensee reasonably should have expected to earn a threshold level profit and has met the quarterly estimated payment requirements.

**Classification I.** Licensees whose current year license fee liability is more than \$5,000, but whose license fee liability for each of the preceding three tax years was \$20,000 or less will be required to submit estimated payments equal to the lesser of:

- a) 90% of current year license fee liability submitted in four (4) equal payments (22-½ % per payment).

OR

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- b) 100% of the prior whole year (12 months) license fee liability submitted in four (4) equal payments (25% per payment).

**Classification II.** Licensees whose current year license fee liability is more than \$5,000, and who have had a license fee liability of more than \$20,000 for any one of the preceding three whole fiscal years will be required to submit estimated payments equal to the lesser of:

- a) 90% of current year license fee liability submitted in four (4) equal payments (22-½ % per payment).

OR

- b) The greater of (1) 100% of the prior year (12 months) license fee liability submitted in four (4) equal payments (25% per payment) or (2) 100% of the average license fee for the past three whole (12 months) tax years.

**SCHEDULE FOR QUARTERLY NET PROFIT LICENSE FEE PAYMENTS**

For Fiscal Years Ending	1 <sup>st</sup> Deposit Due	2 <sup>nd</sup> Deposit Due	3 <sup>rd</sup> Deposit Due	4 <sup>th</sup> Deposit Due
Dec 31	April 15	June 15	Sept 15	Dec 15
Jan 31	May 15	July 15	Oct 15	Jan 15
Feb 28	June 15	August 15	Nov 15	Feb 15
March 31	July 15	Sept 15	Dec 15	Mar 15
April 30	August 15	October 15	January 15	April 15
May 31	Sept 15	Nov 15	Feb 15	May 15
June 30	October 15	Dec 15	March 15	June 15
July 31	Nov 15	January 15	April 15	July 15
August 31	Dec 15	Feb 15	May 15	Aug 15
Sept 30	January 15	March 15	June 15	Sept 15
October 31	Feb 15	April 15	July 15	Oct 15
Nov 30	March 15	May 15	August 15	Nov 15

The first group of licensees required to make quarterly estimates are those licensees whose fiscal years end December 31, 1987 and the first quarterly estimated payment for such licensees will be due April 15, 1987. Licensees who do not meet the threshold license fee liability are not required to make quarterly estimated payments but any licensee who believes there is a realistic possibility that the threshold license fee liability will be met and who wishes to avoid the interest charges described in paragraph C below should submit quarterly estimated payments.

For years of less than twelve (12) months (hereafter “stub years”), licensees are required to file estimated net profit returns and to remit estimated payments totaling 90% of their stub year liability, or in the alternative, estimated payments based on the licensee’s prior year’s liability as determined in this Section 6.4(B) and multiplied by a fraction whose numerator is the number of months in the stub year and whose

denominator is twelve (12). Licensees whose stub year is three (3) months or less are required to remit the entire amount of the estimated payment on or before the 15<sup>th</sup> day of the fourth month following the beginning of the stub year (three and one-half (3 ½) months after the first day of the stub year which begins on the first day of a month). Licensees whose stub year is six (6) months or less, but more than three (3) months are required to remit one-half of the total estimated payments due for the stub year on the 15<sup>th</sup> day of the fourth month following the beginning of the stub year and the remaining one-half of such total estimated payment on the 15<sup>th</sup> day of the sixth month following the beginning of the stub year. Licensees whose stub year is nine (9) months or less, but more than six (6) months are required to remit one-third of the total estimated payments due for the stub year on the 15<sup>th</sup> day of the fourth month, one-third of said total estimated payments on the 15<sup>th</sup> day of the sixth month and the remaining one-third of said total estimated payments on the 15<sup>th</sup> day of the ninth month following the beginning of the stub year. Licensees whose stub year is more than nine (9) months are required to remit one-fourth of the total estimated payments due for the stub year on the 15<sup>th</sup> day of the fourth month, one-fourth of the total of such payments on the 15<sup>th</sup> day of the sixth month, one-fourth of the total of such payments on the 15<sup>th</sup> day of the ninth month and the remaining one-fourth of said payments on the 15<sup>th</sup> day of the twelfth month following the beginning of the stub year. Any licensee who fails to remit an estimated payment required hereby shall pay by the due date of the annual return simple interest of Twelve Per Cent (12%) per annum calculated on a daily basis commencing on the date said estimated payment was due and ending on the earlier of (i) the time when the aggregate quarterly payments submitted for the stub year shall equal the minimum aggregate estimated payments required hereby for the payment periods then elapsed, or (ii) the due date of the annual net profits return as provided in Section 6.4(A).

- C. **Failure to Submit Quarterly Estimated Payments** - Any licensee who fails to submit a required minimum quarterly estimated payment shall pay by the due date of the annual return simple interest of Twelve Per Cent (12%) per annum calculated on a daily basis commencing on the date said quarterly payment was due and ending on the earlier of (i) the time when the aggregate quarterly payments submitted for the current year shall equal the minimum aggregate payments then due under Paragraph (B) hereof for the quarters then elapsed, or (ii) the due date of the annual net profits return as provided in Paragraph (A) hereof.
- D. **Penalties For Failure to File License Fee Return on Net Profit** - Any person who fails to file an annual return on or before the date required by Paragraph (A) of this Section 6.4 shall owe and be charged a penalty equal to the sum of five percent (5%) of the amount of the license fee which the return would have shown to be due, assuming the return had been accurately and properly completed, which was not paid on or before the date such return was due, plus five percent (5%) of the amount of such license fee remaining unpaid as of the close of business on the fifteenth (15<sup>th</sup>) day of each calendar month after the month in which the return should have been

filed, provided, however, that (i) such penalty shall not exceed twenty-five percent (25%) of the amount of the license fee due on the filing of the return which was not paid on or before the date the return should have been filed, and (ii) in instances where the taxpayer has obtained an extension of time in which to file the return as provided in Section 6.5, the due date of the return for purposes of this Section 6.4 (D) shall be the last day of the last extension so obtained by the taxpayer and the taxpayer will not incur any penalty under this section unless the taxpayer fails to file the return prior to the expiration of the last extension obtained with respect to the return.

**Example:**

A taxpayer's occupational license fee return on net profits is due on April 15. If properly completed, this return would show the taxpayer to owe \$4,000 in occupational license fees. The taxpayer does not file the return on April 15, but on or before such date has paid the Commission \$2,500 for credit against the license fees due for the year covered by such return. As a result of not filing on April 15, the taxpayer incurs an initial penalty under this section of \$75 (5% of \$1,500, the difference between \$4,000 and \$2,500).

On May 10, the taxpayer makes a \$400 payment to the Commission. Upon the close of business on May 15, the taxpayer incurs an additional penalty under this section of \$55 (5% of \$1,100, the remaining balance due after the \$400 payment), bringing the total penalty incurred under this section to \$130.

If the taxpayer makes no further payments and does not file the return, the taxpayer will incur an additional penalty of \$55 after the 15<sup>th</sup> of each of the next four (4) months (June through September), resulting in a total penalty of \$350 due after the close of business on September 15.

The maximum penalty payable by the taxpayer under this section is \$375 (25% of \$1,500). Accordingly, if the taxpayer still does not file the return or make any additional payment, the taxpayer will, after October 15, incur an additional penalty of \$25 (the difference between \$375 and \$350), instead of \$55 (5% of the \$1,100 in occupational license fees still due). Since the taxpayer will then owe a penalty of \$375, 25% of the license fees not paid when the return was due and the maximum accruable under this section, the taxpayer will thereafter incur no further penalty under this section. **(Amd. Reg. Approved July 15, 1998; Effective March 19, 1999)**

**E. Penalty For Failure to Pay License Fees On Net Profits** - Any person who fails to pay on or before the date due (including any extension under Section 6.5) the amount of the occupational license fee as shown on the prescribed return shall be assessed a penalty of five percent (5%) of the unpaid amount of said license fee whether or not the return has been timely filed. 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 Commissioners within Fifteen (15) days after said assessment becomes final shall be assessed a penalty of five percent (5%) of the unpaid amount of said license fee. Provided, however, that the aforesaid five percent (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 twelve percent (12%) per annum from the date originally due until paid in full.

**F. Cumulative Application of Penalty And Interest Provisions** - The interest provision of Paragraphs (C) and (E) and the penalty provisions of Paragraphs (D) and (E) of this Section 6.4 shall be applied cumulatively and the imposition of these interest and administrative penalty provisions shall not prevent the assessment of any additional penalties provided by Section 6.10.

#### **SECTION 6.5 EXTENSION OF FILING REQUIREMENT.**

The Secretary-Treasurer, subject to these Regulations and to any rules or general instructions promulgated by the Commissioners, shall have the authority to extend the time for filing any return in his discretion. Such extension shall be upon the written request of the licensee or his designated representative made on or before the date upon which the return is due. No extension of time for filing an occupational license fee return shall be granted for more than six months, except in the case of a licensee who is outside the United States on the due date of the return, in which case the extension shall not exceed one year.

A standard extension request form is available from the Louisville/Jefferson County Metro Revenue Commission (Form OL-3E). However, any written communication for the applicant, or his attorney or accountant, which clearly states the request will be acceptable. Also acceptable will be a copy of the licensee's application to the Internal Revenue Service for an automatic extension of time for filing his federal income tax return for the same year, provided that the applicant's occupational license reporting number is plainly noted thereon. However, merely sending a tentative or estimated payment is not an acceptable request for an extension and the written request for the extension must be on a separate paper from the check by which any estimated payment is made. Upon receipt of a request for extension of time for filing a return, the Secretary-Treasurer shall notify the licensee in writing of his approval, or disapproval, keeping a record thereof. Requests for extensions unless otherwise noted by the licensee are deemed by the Louisville/Jefferson County Metro Revenue Commission as an indication that the licensee is continuing to actively do business.

If the Secretary-Treasurer grants an extension of time for filing a return, any balance unpaid when payment is due, without regard to the extension granted, shall be assessed interest at the rate of twelve percent (12%) per annum from the date first due until paid and a late payment penalty of one percent (1%) per month, or fraction of a month, to a maximum penalty of five percent (5%) shall also be assessed upon the balance of the

license fees, as finally determined, not paid when originally due, unless the extension granted is for no more than thirty (30) days or unless the application for extension is accompanied by payment of an estimated license fee in an amount equal to ninety percent (90%) or more of the total license fee as finally determined.

#### **SECTION 6.6 EMPLOYEE RETURNS.**

The burden for payment of the occupational license fee is imposed only secondarily on the employee and primarily on the employer who is required to withhold the proper amount of the license fee from the employee's wages and to remit same to the Louisville/Jefferson County Metro Revenue Commission. Accordingly, employees whose total City/County wages have been subject to withholding by their employers are not required to file a return. However, an employee upon whose wages occupational license fees have not been fully withheld by the employer is required to file a return and to pay the occupational license fee due. "Wages" subject to employee's license fees may be reduced by employee business expenses reported for federal income tax purposes.

Where any portion of the employee license fee otherwise due shall have been deducted at the source and shall have been paid to the Secretary-Treasurer by the person making the deduction, a credit equal to the amount so paid shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of the filing of the said return. If the employer has withheld the license fee from the employee wages, the employee shall not be liable to the Commissioners to the extent of the license fee withheld. If the employer has not withheld the license fee, the employer and the employee shall be jointly and severally liable thereafter to the Commissioners.

#### **SECTION 6.7 RESPONSIBILITY OF PERSONS WHO MAKE FEDERAL 1099 "NON-EMPLOYEE COMPENSATION" PAYMENTS TO RESIDENTS OF THE CITY/COUNTY.**

All licensees and all corporations, partnerships and sole proprietors whether or not deemed licensees hereunder who make payments of \$600.00 or more to natural persons other than employees (that is, non-employee compensation payments) for services performed within Louisville and Jefferson County, Kentucky are required to maintain records of such payments and to report such payments to the Louisville/Jefferson County Metro Revenue Commission on Form 1099-SF or its equivalent by February 28 of the year following the close of the calendar year in which the non-employee compensation was paid. The information required to be reported by said licensees shall include:

- A. Payer's name, address, federal identification number and Louisville/Jefferson County Metro Revenue Commission account number.
- B. Recipient's name and address.
- C. Recipient's identifying number (social security or federal identification number).



- D. Amount of non-employee compensation paid in the calendar year.
- E. Amount of non-employee compensation earned in Jefferson County (including Louisville) for the calendar year.

Provided, however, that any corporation, partnership, sole proprietor or licensee that makes non-employee compensation payments in excess of \$600 to more than one hundred (100) natural persons may comply with the requirements of this Section 6.7 by submitting copies of Federal Form 1099 reporting non-employee compensation paid to natural persons at an address in Jefferson County, Kentucky. Such corporation, partnership, sole proprietor or licensee, therefore, is not required to identify services performed within the City/County. For purposes of this paragraph payment may be deemed to have been made to natural persons at an address in Jefferson County, Kentucky if the payment is mailed to an address in "Louisville, Kentucky", to any incorporated city within Jefferson County, Kentucky or to any zip code encompassing area included within Jefferson County.

#### **SECTION 6.8 EXAMINATION AND INVESTIGATION POWERS; COLLECTION WHEN INVESTIGATION SHOWS UNDERPAYMENT**

- A. Examination By the Secretary-Treasurer - The Secretary-Treasurer personally and his designated agents or employees are authorized and empowered to examine the relevant books, and records of any licensee, employer, or other person who may have liability under these regulations, and to conduct such audits and investigations, as may be necessary to determine the accuracy of any return made; or, if no return, has been made, to ascertain the occupational license fee and other amounts due.
- B. Licensee To Furnish Opportunity For Exam - Every Licensee, Employer, or other person who may have liability under these regulations is required after notice of not less than ten (10) days to furnish to the Secretary-Treasurer, or his duly authorized agents or employees, the means, facilities and opportunity, including the reasonable cooperation, to conduct such examinations, investigations and audits.
- C. Power to Examine Under Oath/Compel Production of Records - The Secretary-Treasurer and his duly authorized agents or employees are authorized and empowered to examine under oath any person concerning any return filed with the Commission and any wages or net profits which were or should have been, reported to the Commission. The Secretary-Treasurer and his duly authorized agents or employees 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 any and all appropriate judicial proceedings.

- D. Identification of Agents - Agents or employees charged with the duty of inspecting or auditing of records of licensees, employers or other person who may have liability under these regulations shall carry proper identification, which shall be subject to examination by any person whose records are sought to be examined.
- E. Information To Be Kept Confidential; Exception - Occupational license fee returns, and all audits connected therewith, are confidential. Any information gained by the Secretary-Treasurer, by his agents or employees, or by any other official or agent of the City/County as a result of any returns, investigations, hearings or verifications required or authorized shall be held confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law. Provided, however, that the Secretary-Treasurer is required under Kentucky Attorney General's Opinion (OAG 85-1) to reveal the legal name, trade name, business address, business phone number and nature of business activity of licensees. Provided further, that the Commissioner may disclose to the Secretary of Revenue of the Commonwealth of Kentucky or his duly authorized agent all such information and right to inspect any of the books and records of the Commissioner if the Secretary of Revenue of the Commonwealth of Kentucky grants to the Commissioner the reciprocal right to obtain information from the files and records of the Revenue Cabinet of the Commonwealth of Kentucky and maintains the privileged character of the information so furnished to him. There is an agreement with the Internal Revenue Service for exchange of tax information.
- F. Collection of License Fee Where Investigation Shows Underpayment - If as a result of an investigation conducted by the Secretary-Treasurer a return is found to be incorrect, the Secretary-Treasurer is authorized to assess and collect any underpayment of employee license fee withheld at the source or any underpayment of occupational or net profit license fee due by any licensee. If no return has been filed and an occupational license fee is found to be due, the license fee actually due may be assessed and collected with or without the formality of obtaining a delinquent licensee fee return from the licensee. **(Amd. Reg. Approved November 20, 1996)**

#### SECTION 6.9 ADMINISTRATIVE PROVISIONS.

- A. **Fractional Parts of a Dollar** - Licensees are permitted to report items on all returns and accompanying schedules in whole dollar amounts. To do so, licensees should drop any amount less than fifty (50) cents and increase any amount from fifty (50) cents to ninety-nine (99) cents to the next highest dollar.
- B. **Automatic Extension If Due Date Falls on Saturday, Sunday or City of Louisville Holiday** - Any return required to be filed hereunder shall be considered to have been timely filed if it is postmarked or hand-delivered to the Louisville/Jefferson County Metro Revenue Commission offices on or before the due date or, in the event the due date is a Saturday, Sunday or City of Louisville legal holiday, if it is postmarked or

hand-delivered to the Louisville/Jefferson County Metro Revenue Commission Offices on the next day which is not a Saturday, Sunday or a City of Louisville legal holiday.

- C. **Limitations on Credit, Refund** - Any request for a refund, or for credit for an overpayment of any occupational license fee paid to the Commission, unless paid under protest, must be filed within one year from the date of the filing of the completed return to which the overpayment was made or within one year of the date the return was due, whichever is later. Request for a refund or credit for funds submitted in excess of the amount shown due on the return or records of the Commission must be filed within the provided in this section or one year from date of payment, whichever is later. Request for a refund or credit which result from an audit conducted by the federal government, state government or Commission must be filed within one year of the date the original occupational license return was filed or date the original return was due or within six (6) months of the conclusion of the federal, state or Commission audit, whichever is later. In cases of audit, the Commission shall only recognize a credit to the extent it offsets occupational license liability for other years covered by the audit, but no refund shall be authorized unless applied for within the one year period provided in this section. **(Amd. Reg. Approved November 20, 1996)**

#### **SECTION 6.10 PENALTIES.**

- A. Any person who shall engage within the City/County in any business, profession, occupation or other activity subject to the license fee and who shall fail to apply for an occupational license fee reporting number and to complete the questionnaire as required by **112.05 of the Louisville Code of Ordinances** (hereafter, “the City Ordinance”) (**Section 1(F) of Jefferson County Ordinance 13, Series 1989**) (hereafter, “the County Ordinance”) shall be subject to a fine of not more than One Hundred Dollars (\$100.00).
- B. Any person who shall knowingly make any incomplete, false, or fraudulent return required under **Section 112.07 of the City Ordinance (Section 4A of the County Ordinance)** or who shall willfully fail to timely make any return required under **Section 112.07 of the City Ordinance (Section 4A of the County Ordinance)** upon which filing a license fee is shown to be due shall be guilty of a misdemeanor punishable by a fine not to exceed One Hundred Dollars (\$100) or imprisonment in the County jail not to exceed fifty days or both.
- C. The Secretary-Treasurer is authorized to initiate criminal charges, when appropriate under **KRS 514.070** (Theft By Failure To Make Required Disposition of Property) or such other applicable criminal statues as may be deemed advisable against any employer who withholds occupational license fees from one or more employees

employed within the City/County and intentionally fails to remit such license fees withheld to the Commissioners.

- D. Any employer who employs one or more persons within the City/County who shall fail to deduct from any employee's wages at the time of payment thereof any license fee due from each employee as required by **Section 112.06(A) of the City Ordinance (Section 3(A) of the County Ordinance)**; who shall fail to make the annual return required under **Section 112.06(D) of the City Ordinance (Section 3(D) of the County Ordinance)**; who shall fail to furnish his employee with the statement required by **Section 112.06(E) of the City Ordinance (Section 3(E) of the County Ordinance)**; who shall fail to correct any previously submitted return upon request by the employee as required by **Section 112.06(F) of the City Ordinance (Section 3(F) of the County Ordinance)**; or who shall fail to correct a previously submitted return which had reflected an under withholding of the proper license fee due arising from wages paid an employee as required by **Section 112.06(G) of the City Ordinance (Section 3(G) of the County Ordinance)** after sixty (60) days written notice from the Commissioners of such failure or default during which said failure or default is not remedied shall be subject to a fine of not more than One Hundred Dollars (\$100.00).
- E. The failure of any employer or licensee to receive or procure forms or documents is not an excuse for failure to make any return or to pay the occupational license fee.
- F. Any person who shall willfully fail or refuse to apply for a license required by **Section 112.12 of the City Ordinance** or to pay any license fee shall be subject to a fine of \$100 or imprisoned not more than 30 days, or both.
- G. Any person who shall fail or refuse to comply with the provisions of **Section 112.10 of the City Ordinance (Section 7 of the County Ordinance)** shall be subject to a fine of not more than One Hundred (\$100) or imprisonment of not more than 30 days, or both. Each failure to appear for examination or to permit examination after proper notice shall constitute a separate offense.
- H. Any person or agent divulging any information in violation of **Section 112.13 of the City Ordinance (Section 10 of the County Ordinance)** shall be subject to a fine not exceeding \$100 or imprisonment not exceeding ten days, or both.
- I. Any person who pursuant to trial is found to have failed, neglected or refused to comply with the duty to apply for an occupational license fee reporting number as required by Section 112.05 of the City Ordinance (Section 1(F) of the County Ordinance) and punishable under Section 112.99 of the City Ordinance (Section 17 of the County Ordinance) or who is found to have failed to comply with other duties of an employer imposed by Section 112.06 of the City Ordinance (Section 3 of the County Ordinance) and punishable under Paragraph D of Section 112.99 of the City Ordinance (Section 17 of the County Ordinance) shall have thirty (30) days from the

date of entry of judgment to apply to the Louisville/Jefferson County Metro Revenue Commission for an occupational license fee reporting number and to complete the questionnaire or otherwise to remedy any default or deficiency for which the person shall have been convicted. The failure of said person to apply and to complete the questionnaire or otherwise to remedy any default or deficiency for which the person shall have been convicted within this thirty (30) day period shall be a separate offense punishable by a fine of not more than One Hundred Dollars (\$100.00) or imprisonment in the County jail of not more than fifty days or both.

- J. Any corporate officer or other individual required to withhold, truthfully account for, and remit to the Commissioners any fee imposed by the City Ordinance or the County Ordinance who willfully fails to withhold such fee, or truthfully account for and remit such fee, or willfully attempts in any manner to evade or defeat the payment of any such fee, shall, in addition to the sanctions provided by **Section 112.99 of the City Ordinance (Section 17 of the County Ordinance)** and any other penalties provided by law, be civilly liable for the total amount of the fee evaded, or not collected, or not accounted for and remitted, plus applicable penalties and interest. Neither the corporate dissolution or withdrawal of the corporation from the State of Kentucky nor the cessation of holding any such corporate office shall discharge the foregoing liability of any such person.
- K. Any person who shall knowingly make any incomplete, false or fraudulent Transient Room Tax return which is required by **Jefferson County Fiscal Court Ordinance 25, Series 1988, as amended by Ordinance 21, Series 1989**, or who shall willfully fail to timely make any return required by said Ordinance shall be guilty of a misdemeanor punishable by a fine not to exceed One Hundred Dollars (\$100.00) or imprisonment in the County Jail not to exceed fifty (50) days or both.

#### **SECTION 6.11 WAIVER OF PENALTY OR INTEREST**

- A. 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 willfull 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.
- B. “Reasonable Cause” exists if the taxpayer establishes to the satisfaction of the Commission that either ( i ) there were significant mitigating factors for the failure or ( ii ) 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.

- C. Events which will be generally considered beyond the taxpayer's knowledge or control include, but are not limited to, the following:
1. **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.
  2. **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.
  3. **Metro Revenue 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 Metro Revenue Commission. This exception will not apply if the Metro Revenue 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 by the Metro Revenue Commission.
- D. Events which will not generally be considered as establishing reasonable cause include, but are not limited to, the following:
1. **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.
  2. **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.
  3. **No tax forms.** Failure to receive or obtain tax forms.
- E. 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.

- F. 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.
- G. Circumstances which will generally be considered in evaluating collectability include, but are not limited to, the following:
1. The taxpayer is in receivership or is the subject of any proceeding under the Bankruptcy Act, taking into account the priority of the Metro Revenue Commission's claim.
  2. The taxpayer has made or is making an assignment for the benefit of creditors or other arrangement or composition with the taxpayer's creditors.
  3. The taxpayer is involved in any other insolvency or liquidation proceedings.
  4. The taxpayer is seriously ill, disabled or deceased.
  5. Any lien rights and other security the Metro Revenue Commission may possess.
  6. 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.
- H. 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 Metro Revenue 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.
- I. 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 Metro Revenue Commission and the loss incurred by the Metro Revenue 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.
- J. In order to obtain a waiver of penalty or interest, a taxpayer must submit to the Metro Revenue Commission a written request for the waiver no later than forty-five (45) days after notice of assessment of the penalty or interest from the Metro Revenue

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, acknowledged and sworn to by the taxpayer before a notary public, and contain a declaration that it is made under penalties of perjury. The taxpayer should submit to the Metro Revenue 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. **(Reg. Approved November 20, 1996)**