

4.3

ORDINANCE NO. 9, 2012 SERIES

AN ORDINANCE RELATING TO THE INCREASE IN THE OCCUPATIONAL LICENSE TAX RATE AND THE NET PROFITS TAX RATE ON BUSINESS ENTITIES OR PERSONS CONDUCTING BUSINESS OR ENGAGING IN BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN THE CITY OF FRANKFORT.

WHEREAS, the City of Frankfort Board of Commissioners have determined that an increase in the occupational license fee rate and net profits tax rate is necessary, and amendments to Sections 110.02, 110.03 and 110.04 need to be made to accomplish this increase.

NOW THEREFORE, be it ordained by the City of Frankfort, Kentucky as follows:

Ordinance No. 9, 2012 SAWR is hereby enacted and shall read in full as follows:

Section I. Section 110.02. Levy of License Fee.

There is hereby levied and imposed an annual license fee upon all persons, fiduciaries and business entities engaged in any occupation, trade, profession or other business activity in the city for the privilege of engaging in the occupation, trade, profession or other business activity, which license fee shall be measured by and be equal to 1.95% 4.75% of all salaries, wages, commissions and other compensation, including deferred compensation, earned by every person in the city for work done or services performed or rendered in the city and of the net profits of all businesses, professions or occupations from activities conducted within the city.

Section II. Section 110.03. Employees.

(A) *Employees in general.* The license fee is imposed on both residents and nonresidents of the city at the rate of 1.95% 4.75% of all salaries, wages, commissions and other compensation, including deferred compensation, earned for work done or services performed or rendered in the city. The following are subject to the license fee:

(1) Wages, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered:

(a) As an officer, agent or employee or both of a business entity, including a non-profit business entity;

(b) As an agent or employee, as distinguished from the proprietor, of a business, trade or profession, conducted by an individual owner;

(c) As an officer, agent or employee, whether elected or appointed, enlisted or commissioned, of a governmental entity, except those enlisted or commissioned in the State National Guard for compensation received for active duty training, training assemblies and annual field training; and

(d) As an officer, agent or employee of any other entity.

(2) Wages, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered:

(a) Whether based upon hourly, daily, weekly, semimonthly, monthly, annual, unit of production or piece rates; and

(b) Whether paid by an individual, fiduciary, business entity, including a nonprofit business entity, governmental entity or any other entity.

(3) Commissions received by an employee, whether directly or through an agent, and whether in cash or in property for services rendered, regardless of how computed or by whom paid. If amounts received as a drawing account exceed the commissions earned the tax is payable on the amounts

received. If the commissions are included in the net earnings of an occupation, trade, profession or other business activity regularly carried on by the individual and, therefore, are subject to license fee under Section IV, they shall not again be separately taxed.

(4) Fees, unless the fees are properly included as part of the net profits of occupation, trade, profession or business activity regularly carried on by the individual and the net profits, are subject to tax under Section IV. A corporation is permitted but not required to withhold and remit the license fee on compensation paid to directors. If the corporation does not withhold the fees, it must submit to the city a copy of IRS Form 1099.

(5) Other compensations will be treated as follows:

(a) Subject to the license fee:

1. Tips received by waiters and others (tips received are subject to the license fee and will be reported in the same manner as regular earnings);

2. Vacation and holiday benefits (payments made to employees by an employer as vacation wages are subject);

3. Separation payments (payments made to employees by an employer at the time of voluntary or involuntary separation, or dismissal, of the employee from the service of the employer are to be regarded as subject);

4. Deferred compensation (payments made to deferred compensation funds are subject to license fee at time of payment into a fund);

5. Flexible benefit plan (payments by employees to Section 125 plans, sometimes referred to as cafeteria plans, flexible benefit plans or miniflex plans, which provide the opportunity for employees to elect to reduce their taxable compensation to pay for nontaxable benefits such as hospitalization, group term life insurance, group disability insurance and the like, not otherwise paid for by the employer);

6. Non-cash fringe benefits (fringe benefits received by an employee to the extent that the benefits are taxable for federal income tax purposes); and

7. 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 unless the income is to be reported and a net profit license fee paid thereon under the provisions of this subchapter.

(b) Not subject to the license fee:

1. Old-age or retirement payments (periodical payments, commonly recognized as old-age or retirement pensions, made to persons retired from service after reaching a specified age or after a stated period of employment are not subject to the license fee);

2. Disability, sickness, accident benefits and unemployment compensation (Payments made to employees by an employer under a disability, sickness and accident plan are not subject to the license fee. Unemployment compensation payments by the state or any other governmental agency are not subject.);

3. Death benefits (death benefits payable by an employer to the beneficiary of an employee or to his or her estate, whether payable in a single sum or otherwise, are not subject to the license fee);

4. Benefits arising under the workers compensation act (amounts received by employees under the workers compensation act as compensation for a disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of the disability are not subject to the license fee);

5. Employee under age 16 (Compensation paid to employees who have not attained age 16 on or before the date the income is earned. Earnings of employees shall be subject on the day that age 16 is attained.);

6. Domestic servants (Compensation received by domestic servants is exempt from the license fee on wages imposed by the city. For purposes of this section, a **DOMESTIC SERVANT** is defined as an individual employed to drive his or her employer as a chauffeur or employed on the grounds or in the home of his or her 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 the 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.);

7. State elected officers, who are paid on a per diem basis, as exempted by KRS 82.090. Applicability of the foregoing to employees whose compensation is not wholly subject to the City occupational license fee.

1. Individuals whose compensation is earned for services performed both within and without the City are subject to the license fee in the same proportion that services performed within the City bear to their total employment time. The occasional entry into the City of Frankfort of an employee, who (i) performs the duties for which he is employed entirely outside the City of Frankfort, but enters the City of Frankfort for the purposes of reporting, receiving instructions, testifying, accounting, etc., incidental to his duties outside the City of Frankfort, or (ii) spends a total of two eight hour work-days or less providing services in Frankfort and whose receipts for such services provided in Frankfort are less than \$1,600 annually, shall not be deemed activities for which occupational license fee is required to be paid to the City of Frankfort.

2. An employee earning not more than \$4,000 in the City of Frankfort per year or working not more than a total of 5 eight hour work days in the City of Frankfort per year for which the employee earns not more than \$4,000, may elect to pay a flat occupational license fee to the City of Frankfort in the amount of \$35.00. In order to elect this payment option, the individual's employer is required to file with the City a completed Election to Pay Flat Tax Return Form signed by the employer and employee with the required \$35.00 payment with the employer's fourth quarter occupational license tax return no later than January 31 of the following year. The filing of this completed form with the required payment on behalf of an employee qualified to elect this payment option is deemed to satisfy the requirements of Section II of this Ordinance.

(B) *Specific groups of employees.*

(1) Musicians and entertainers:

(a) *Contractor.* An individual musician through whom the purchaser and the musician negotiate the contract of services and the performance thereof. The contractor may or may not perform actual musical service under a contract which he or she has negotiated.

(b) *Purchaser of music.* The person, fiduciary, corporation or association for whom or for which the musical services are to be performed or furnished and who exercises an employer's control over the conduct of the musicians; for example, hotels, cafés, adult entertainment establishments, taprooms, restaurants, theaters, clubs, radio stations and radio sponsors.

(c) *Responsibility for withholding fee.* When a contract for the purchase of music has been executed between a purchaser and a contractor, the musician shall be deemed to be the employee of the purchaser. The purchaser shall be the person responsible for withholding the license fee from the wages paid to the musicians, and the remittal thereof to the Director of Finance.

(d) *Entertainers other than musicians.*

1. An entertainer other than a musician is usually engaged by a purchaser through a booking agent. The booking agent, once the contract of employment has been executed, does not exercise an employer's control over the entertainer. The owner of any place which furnishes entertainment to the public or to its patrons, shall be deemed the person liable as an employer of entertainers.

2. The employers must deduct the license fee from the compensation paid to the entertainer and remit the same to the Director of Finance.

(2) Individuals earning commission sales.

(a) General. Individuals engaged in the sale of products and/or services may be either employees or independent contractors.

1. Where the individual is subject to the direct control of another as to the manner of his or her conduct and is paid a fixed fee, he or she is considered an employee and the amount of the license shall be withheld at the source.

2. Where the individual is not under the direct control of another and may conduct the sale as he or she sees fit, receiving his or her payment in the form of commission from the sale, he or she is considered an independent contractor and shall file his or her own return and make payment as an independent contractor subject to the provisions hereof.

(b) Commissions subject to license fee:

1. In determining whether the commissions payable by reason of the selling of any product and/or service by an agent resulted from work done or services performed or rendered in the city, the test shall be the residence of the purchaser at the time of issuance of the product and/or service, rather than the actual place of solicitation. However, where the solicitation is in the city and the individual's established place of business is within the city, the commission is subject to the license fee regardless of the residence of the purchaser.

2. If an individual has an office outside the city as well as an office within the city, the commission on products and/or services sold to nonresidents, if handled through the outside office, are not subject to a license fee.

(C) *Withholding of license fee:*

(1) It is the duty of each employer who employs one or more persons on a salary, wage, commission or other compensation basis, to deduct at the time of the payment of the compensation, the license fee on the salary, wage, bonus, incentive payment, commission or other compensation due by the employer to the employee. The license fee shall be deducted by the employer from all compensation paid to employees for activities in the city. However, the fact that the license fee is not withheld by the employer will not relieve the employee of the responsibility of filing a return and paying the fee on the compensation received. A nonresident employer maintaining in the city an office or business address or doing business therein is subject to the withholding provisions of this section.

(2) Where an employee receives compensation for personal services rendered or performed partly within and partly outside the city, the employer shall deduct and withhold that portion of the compensation which is earned within the city in accordance with the following rules of apportionment:

(a) If the licensee is a traveling sales person, agent or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted by him or her, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the city bears to the volume of business transacted by him or her both within and outside of the city.

(b) The deducting and withholding of compensation of all other employees, including officers and directors of corporations, shall attach to the portion of the compensation of the employee which the total number of days employed within the city bears to the total number of working days employed both within and outside the city.

(c) If it is impossible to apportion the earnings as provided above because of the peculiar nature of the services of the employee, or of the usual basis of compensation, apportionment shall be made by other equitable method approved by the Director of Finance.

(d) The occasional entry into the city of an employee, who performs the duties for which he or she is paid entirely outside the city, but enters the city only for the purposes of reporting, receiving instructions

or accounting incidental to duties performed outside the city shall not be deemed to take the employee out of the class of those rendering their services entirely outside the city.

(D) *Returns of license fee withheld and payment:*

(1) The return and payment to be made on account of deductions by employees from salaries, wages and other compensation of employees shall be made on a quarterly basis.

(2) The employer shall make a return and pay to the city the full amount of the license fee so deducted or withheld with respect to compensation paid to all employees and the return shall be due on or before the last day of the month following each quarterly period.

(3) The return required to be filed under this subchapter shall be made on a form furnished by or obtainable from the Director of Finance.

(4) If the due date of a return falls on a Saturday, Sunday or legal holiday, the return due date shall be the next succeeding day, which is not a Saturday, Sunday or legal holiday. Returns submitted other than by U.S. mail must be received on or before the due date. Returns submitted by U.S. mail will be considered received when mailed.

(5) On or before January 31, unless written request for extension is made to and granted by the Director of Finance, following any calendar year in which the deductions have been made by any employer, the employer shall file with the Director of Finance in the form prescribed by the Director an information return for each employee from whom the city license fee has been withheld.

(6) For convenience of employers, the information return may be made in one of two ways at the election of each employer, as follows:

(a) May submit a copy of Form W-2 for each employee; and

(b) Furnish a list of all employees from whom the fee has been withheld, which list shall set out the employee's full name, employee's taxable federal wages subject to the license fee, wages and other compensation subject to the license fee that is not included in federal taxable wages, total compensation paid subject to the license fee, and the amount of city license fee withheld. The list may be compiled on any mechanical equipment presently used by the employer. The employee's name must be indicated on each sheet, each sheet must be numbered and the total number of sheets comprising the complete report indicated on the first page.

(7) The gross compensation to be reported for each employee should be the full 12 calendar months of the year or the portion thereof as the employee reported on was employed.

(8) In addition to the information returns, and at the time the same are filed, the employer shall file with the Director of Finance a statement to enable the Director to reconcile the sum total of compensation paid and taxes withheld as disclosed by information return, W-2 or list and prior returns and remittances made pursuant to this subchapter.

(9) The failure of any employer, either residing within or outside of the city, to collect the license fee and to make the return shall not relieve the employee from compliance with this subchapter, with regard to the filing of returns and the payment of license fees. In the event the employer fails to make the return and pay the fee, the employee is required to make the return and pay the fee.

(10) Every employer is deemed to be a trustee of the city in withholding and collecting, the license fee required under this subchapter to be withheld, and the funds so collected by the withholding are deemed to be funds held in trust for the city. Every employer required to withhold and collect the license fee is liable directly to the city for the payment of the fee whether actually collected by the employer or not.

(Ord. 19, 1999, passed 7-12-99)

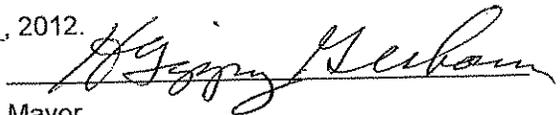
Section III. Section 110.04. Net Business Profits.

(A) (1) *General.* In the case of an individual, fiduciary, or business entity engaged in the conduct, operation or prosecution of any occupation, trade, profession or other business activity for profit there is

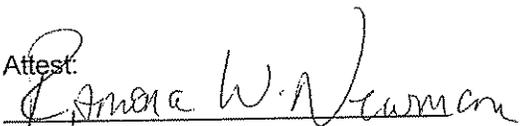
imposed an annual license fee being the greater of \$35 or ~~1.75%~~ 1.95% of the net profits of the occupation, trade, professional or other business activity conducted in or derived from activity within the city. In determining the proportion or amount of the subject net profits of the person or entity doing business within and without the city, the licensee shall use and apply a business allocation percentage formula computed on the basis of business receipts within and without the city and payrolls within and without the city.

First reading on the 13th day of June, 2012.

Final adoption on the 25th day of June, 2012.

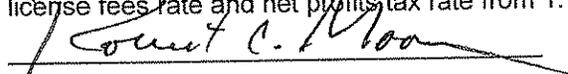


Mayor

Attest:


City Clerk

Summary: This ordinance amends sections 110.02, 110.03 and 110.04 to increase the occupational license fees rate and net profits tax rate from 1.75% to 1.95%.



City Solicitor