

COUNTY OF SIMPSON

ORDINANCE NO. 220.107

AN ORDINANCE AMENDING ORDINANCE NO. 220.99 RELATING TO THE THE IMPOSITION AND ADMINISTRATION OF AN OCCUPATIONAL LICENSE TAX UPON ALL PERSONS WHO ARE EMPLOYED BY ANOTHER IN ANY TRADE, OCCUPATION OR PROFESSION WITHIN THE COUNTY OF SIMPSON, COMMONWEALTH OF KENTUCKY

WHEREAS, the Simpson County Fiscal Court desires to comply with the requirements of KRS 67.750 to 67.790 and deems it necessary and desirable that certain changes be made to the existing ordinance imposing occupational license taxes on persons employed by another within the County of Simpson so that the assessment and payment of Occupational License Taxes can be administered more efficiently.

Now, therefore, be it ordained by the Fiscal Court of the County of Simpson, Commonwealth of Kentucky that Ordinance No. 220.99 is, effective January 1, 2005, hereby amended and shall read as follows:

§ 1 - Definitions

As used in this ordinance, the following terms and their derivatives shall have the following meanings unless the context clearly indicates that a different meaning is intended:

- (1) "Occupational license tax" shall mean a tax imposed for the privilege of exercising the right to engage in any trade, occupation or profession for compensation when employed by another within Simpson County, Kentucky. Said phrase shall not be construed to refer or apply to the right to engage in trade, occupation or profession for compensation for oneself for profit or gain.
- (2) "Person" shall mean and include all natural persons, partnerships firms, associations, governmental bodies and agencies and subdivisions thereof, and corporations and whenever used in any interpretation.
- (3) "Administrator" means the official administrator of the occupational license tax, to be appointed by the Simpson County Fiscal Court.
- (4) "County" means Simpson County, Kentucky, including the city of Franklin and all areas of the County whether incorporated or not.

- (5) "Compensation" means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:
- (a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and
 - (b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code.
- (6) "Employee" means any person who renders services to another person or any business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency of instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.
- (7) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:
- (a) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" means the person having control of the payment of such wages, and
 - (b) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" means such person.
- (8) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2003, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2003, that would otherwise terminate.

- 141
- (9) "Return" or "Report" means any properly completed and, if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with the county.
 - (10) "Tax district" means any county with the authority to levy occupational license taxes.

§ 2 - Occupational License Tax Payment Required

- (1) Except as provided in subsection (2) of this section, all persons engaged in any trade, occupation or profession within Simpson County, when employed by another, and not for themselves, and whether a resident or non-resident of the county, shall pay an occupational license tax measured by and equal to three-quarters of one (0.75%) percent of all compensation paid or payable for work done or services performed in Simpson County.
- (2) The occupational license tax imposed in this section shall not apply to the following:
 - (a) Traveling expenses actually incurred and paid by the employer, gratuities such as "tips" paid by someone other than the employer, and wages, salaries or other compensation received by domestic servants employed in a private home;
 - (b) 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;
 - (c) Payments made to employees by an employer under a disability, sickness and accident plan and unemployment compensation payments made by the State or any other agency;
 - (d) Death benefits payable by an employer to the beneficiary of an employee or to his estate, whether payable in a single sum or otherwise;
 - (e) Amounts received by employees under the Worker's Compensation Act as compensation for a disability sustained during the course of employment, together with any amount of damages received by a suit or agreement on account of the disability;
 - (f) Wages, bonuses, salaries or incentive payments to the extent that said wages, bonus, salaries or incentive payments exceed the amount of such compensation subject to Federal FICA (social security) withholding; and,

- 150
- (g) Severance pay or payments received from an employer as a result of the closing of the employer's plant or facility, or otherwise ceasing to do business within the county, resulting in the termination of the employee's position with the company.

§ 3 - Apportionment

- (1) When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without the county, the occupational license tax shall be measured by that part of the compensation paid or payable as a result of work done or service performed or rendered within the county. The occupational license tax shall be computed by obtaining the percentage which the compensation for work performed or services rendered within the county bears to the total wages and compensation paid or payable. In order for the county to verify the accuracy of a taxpayer's reported percentages under this subsection, the employer and employee shall maintain adequate records.
- (2) In all cases of occupational license taxes computed upon the basis of apportionment of compensation, as herein provided, the apportionment may be shown by sworn statements of the employee or employer, but shall not be binding upon the county. Said apportionment shall be subject to verification and determination by the Administrator through examination and audit of the books and records of the employee or employer, or both, as required by the Administrator.

§ 4 - Employers to Withhold

- (1) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation an occupational license tax calculated under Section (2) of this ordinance.
- (2) Every employer required to deduct and withhold tax under this section shall, for the quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter, make a return and report to the county, and pay to the county, the tax required to be withheld under this section, unless the employer is permitted or required to report within a reasonable time after some other period as determined by the county.
- (3) Notwithstanding subsections (1) and (2) of this section, a person engaged in agriculture business (raising crops and livestock) who employs less than five (5) employees on a regular time basis, (four hundred-fifty (450) hours during a quarter), may file a return and pay the withholding tax at the end of the taxable year.
- (4) Every employer who fails to withhold or pay to the county any sums required by this ordinance to be withheld and paid shall be personally and individually liable to the county for any sum or sums withheld or required to be withheld in accordance with the

151
provisions of this section.

- (5) The county shall have a lien upon all the property of any employer who fails to withhold or pay over to the county sums required to be withheld under this section. If the employer withholds, but fails to pay the amounts withheld to the county, the lien shall commence as of the date the amounts withheld were required to be paid to the county. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the county.
- (6) Every employer required to deduct and withhold tax under this section shall annually on or before February 28 of each year complete and file on a form furnished or approved by the county a reconciliation of the occupational license tax withheld where compensation is paid or payable to employees. Either copies of federal forms W-2 and W-3, transmittal of wage and tax statements, or a detailed employee listing with the required equivalent information, as determined by the county, shall be submitted.
- (7) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and occupational license tax deducted by the employer from the compensation paid to the employee for payment to the county during the preceding calendar year.
- (8) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.
- (9) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this section shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid or payable to one or more employees of the business entity, and neither the corporate dissolution or withdrawal of the business entity from the county, nor the cessation of holding any corporate office, shall discharge that liability; provided that the personal and individual liability shall apply to each and every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally and individually liable under this subsection unless such person had authority to collect, truthfully account for, or pay over the tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due.
- (10) Notwithstanding subsections (8) and (9) of this section, every employee receiving compensation in the county subject to the tax imposed under Section (2) of this ordinance shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this ordinance from the employee, such employee or employees shall be responsible for filing with the county each quarter in the same manner as if they were the employer.

§ 5 - Refunds

- (1) Where there has been an overpayment of tax under Section (4) of this ordinance, a refund or credit shall be made to the employer to the extent of overpayment only if a written application for refund or credit is received by the county from the employer within two (2) years from the date the overpayment was made.
- (2) An employee who has compensation attributable to activities performed outside the county, based on time spent outside the county, whose employer has withheld and remitted to this county, the occupational license tax on the compensation attributable to activities performed outside the county, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the county may confirm with the employer the percentage of time spent outside the county and the amount of compensation attributable to activities performed outside the county prior to approval of the refund.

§ 6 - Administrative Provisions

- (1) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this ordinance.
- (2) The authority to refund or credit overpayments of taxes collected pursuant to this ordinance is vested exclusively in the county.

§ 7 - Information to Remain Confidential

- (1) No present or former employee of any tax district shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the tax district or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the tax district from testifying in any court, or from introducing as evidence returns or reports filed with the tax district, in an action for violation of a tax district tax law or in any action challenging a tax district tax laws.
- (2) The county reserves the right to disclose to the Commissioner of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent all such information and rights to inspect any of the books and records of the county if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the county the reciprocal right to

172
obtain information from the files and records of the Kentucky Department of Revenue and maintains the privileged character of the information so furnished. Provided, further, that the county may publish statistics based on such information in such a manner as not to reveal data respecting compensation of any person.

- (3) In addition, the county is empowered to execute similar reciprocounty agreements as described in subsection (2) of this section with any other taxing entity, should there be a need for exchange of information in order to effect diligent enforcement of this ordinance.

§ 8 - Penalties

- (1) Every employer who fails to file a return or pay the tax on or before the time prescribed under Section (4) of this ordinance may be subject to a penalty in amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).
- (2) In addition to the penalties prescribed in this section, any or employer shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the county. A fraction of a month is counted as an entire month.
- (3) Every tax imposed by this ordinance, and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to the county.
- (4) The county may enforce the collection of the occupational license tax due under section (2) of this ordinance and any fees, penalties, and interest as provided in subsections (1), (2) and (3) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the county shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this ordinance.
- (5) In addition to the penalties prescribed in this section, any employer who willfully fails to make a return or willfully makes a false return, or who willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.
- (6) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under this ordinance of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.

- (7) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the county and required to be filed with the county by the provisions of this ordinance, or by the rules of the county or by written request for information by the county.
- (8) Any person violating the provisions of section (7) of this ordinance by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (9) Any person violating the provisions of section (7) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1000) or imprisoned for not more than one (1) year, or both.

§ 8- Use of Occupational License Tax

All money derived from the occupational license taxes under the provisions of this ordinance shall be paid to the county and placed to the credit of the county's general revenue fund.

§ 9 - Severability

Each section and each provision of each section of this ordinance is severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any person licensee, class or group, is held by a court of law to be unconstitutional or invalid for any reason, such holding shall not affect or impair the remainder of this ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of the rest.

§ 10 - Miscellaneous

With respect to any person or entity referred to herein, the singular shall include the plural, the plural shall include the singular, and the masculine or feminine shall include both and the neuter genders wherever susceptible to such.

December 14, 2004 FIRST READING

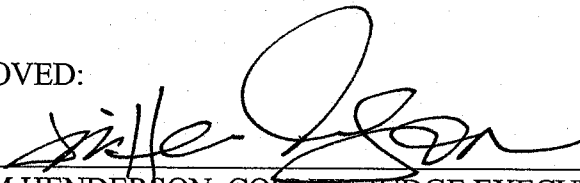
December 28, 2004 SECOND READING

199
At a meeting of the Fiscal Court of the County of Simpson, Commonwealth of Kentucky held December 28, 2004, on motion made by Honorable charlie McCutchen and seconded by Honorable Kelly Banton, the foregoing ordinance was adopted, after full discussion, by the following vote:

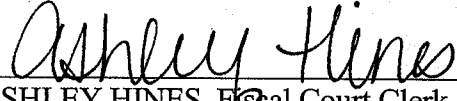
Yes LARRY RANDOLPH
Yes KELLY BANTON
Yes KENNETH UTLEY
Yes CHARLES McCUTCHEN
Yes JIM HENDERSON

APPROVED:

BY:


JIM HENDERSON, COUNTY JUDGE EXECUTIVE
COUNTY OF SIMPSON, COMMONWEALTH OF KENTUCKY

ATTEST:


ASHLEY HINES, Fiscal Court Clerk,
County of Simpson, Commonwealth of Kentucky

GSB/esp
(COATTYORDINANCE. Amending Ordinance No. 220.99 (Occup. License Tax))