

COUNTY OF SIMPSON

ORDINANCE NO. 220.129

AN ORDINANCE AMENDING ORDINANCE 220.99 AND 220.107 RELATING TO THE IMPOSITION AND ADMINISTRATION OF AN OCCUPATIONAL LICENSE REQUIREMENT, AND PAYMENT OF AN OCCUPATIONAL LICENSE TAX BY PERSONS AND BUSINESS ENTITIES CONDUCTING BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN SIMPSON COUNTY, KENTUCKY.

WHEREAS, the Simpson County Fiscal Court desires to comply with the requirements of KRS 67.750 to 67.795 and deems it necessary and desirable that certain changes be made to existing ordinances imposing occupational license taxes on persons and business entities conducting businesses, occupations, and professions within Simpson County, so that the assessment and payment of Occupational License Taxes can be administered more efficiently.

Now, therefore, be it ordained by the Simpson County Fiscal Court of Simpson County, Kentucky that Ordinance No. 220.129 is hereby amended and re-adopted in full to read as follows:

Ordinance No. 220.129 is hereby enacted and shall read in full as follows:

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§ 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) “Business entity” means each separate corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (2) “County” means Simpson County, Kentucky, including the city of Franklin and all areas of the County whether incorporated or not;
- (3) “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 or the Internal Revenue Code;
- (4) “Fiscal year” means fiscal year as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (5) “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;

- (6) "Employer" means employer as defined in Section 3401(d) of the Internal Revenue Code;
- (7) "Person" shall mean every natural person, sole proprietor, partnership fiduciary, association or corporation, whether a resident or non-resident of the county. Whenever the word "person" is used in a clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to corporations, shall mean the officers and directors thereof;
- (8) "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;
- (9) "Tax district" means any county or city with the authority to levy net profits or occupational license taxes;

§ 2 – Occupational License Application Required

Every person or business entity engaged in any trade, occupation, or profession, or other activity for profit or anyone required to file a return under this ordinance in Simpson County shall be required to complete and execute the questionnaire prescribed by the Occupational Tax Office. Each person shall be required to complete a separate questionnaire for each separate business before the commencement of business or in the event of a status change, other than change of address. Licensees are required to notify the Occupational Tax Office of changes of address, or the cessation of business activity, and of other changes which render inaccurate the information supplied in the completed questionnaire.

§ 3 – Occupational License Tax Payment Required

- (1) Except as provided in subsection (2) and subsection (3) of this section, every person or business entity engaged in any business for profit and any person or business entity that is required to make a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to Simpson County an occupational license tax for the privilege of engaging in such activities within Simpson County. The occupational license tax shall be measured by 0.75% of all wages and compensation paid or payable to Simpson County for work done or services performed or rendered in Simpson County by every resident and nonresident who is an employee.
- (2) If any business entity dissolves, ceases to operate, or withdraws from Simpson County during any taxable year, or if any business entity in any manner surrenders or loses its charter during any taxable year, the dissolution, cessation of business, withdrawal, or loss or surrender of charter shall not defeat the filing of

returns and the assessment and collection of any occupational license tax for the period of that taxable year during which the business entity had business activity in Simpson County.

- (3) The occupational license tax imposed in this section shall not apply to the following persons or business entities:
- (a) Any compensation received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections;
 - (b) Traveling expenses actually incurred and paid by the employer, gratuities such as "tips" paid by someone other than the employer, wages, salaries or other compensation received by domestic servants employed in a private home;
 - (c) 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;
 - (d) 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;
 - (e) Death benefits payable by an employer to the beneficiary of an employee or to his estate, whether payable in a single sum or otherwise;
 - (f) 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;
 - (g) Wages, bonuses, salaries or incentive payments to the extent that said wages, bonuses, salaries or incentive payments exceed the amount of such compensation subject to Federal FICA (social security) withholding; and,
 - (h) 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.

§ 4 – Apportionment

When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without the county, the 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 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 taxpayer shall maintain adequate records.

§ 5 – Employers to Withhold

- (1) Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation any tax imposed against the compensation by the county. Amounts withheld shall be paid to the county in accordance with Section (3) 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) 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 provisions of this section.
- (4) 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.
- (5) 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.

- (6) 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.
- (7) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.
- (8) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this ordinance shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid to one or more employees of any 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 of any person; provided that the personal and individual liability shall apply to each or 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 that had no authority to collect, truthfully account for, or pay over any tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due.
- (9) Every employee receiving compensation in the county subject to the tax imposed under Section (3) of this ordinance shall be personally liable for the tax notwithstanding the provisions of subsections (7) and (8) of this section. 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. If an employer fails to or is not required to withhold, report, or pay the License Fee it shall become the duty of the employee to file with the county. The only employer that is not required to withhold, report, and pay the occupational license tax is the Federal Government including the United States Postal Service. The payment required to be made by an employee, can be made quarterly, for the periods ending March 31st, June 30th, September 30th, and December 31st of each year. All license fees must be received by February 28th for the preceding calendar year, together with a copy of the employee's W-2 form. Employers not required to withhold, report, or pay the license fee must annually during the month of January of each year, make a return to the Occupational Tax Administrator, in which is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving amount of salaries, wages, commissions or other compensation earned during such preceding year by each such employee. This list shall include all current full time employees, part time employees, temporary employees, and terminated employees whether it is voluntary or involuntary.

§ 6 – Returns Required

- (1) Every business entity subject to an occupational license tax governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply with rules as the county from time to time may prescribe. Whenever the county deems it necessary, the county may require a business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as the county deems sufficient to determine the tax liability the business entity.
- (2) The county may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or of any other person having knowledge in the premises.
- (3) The full amount of the unpaid tax payable by any business entity, as appears from the face of the return, shall be paid to the county at the time prescribed for filing the occupational license tax return, determined without regard to any extension of time for filing the return.

§ 7 – Extensions

- (1) The county may grant any business entity an extension of not more than six (6) months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the county and the business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the occupational license tax, requests the extension and pays the amount properly estimated as its tax.
- (2) If the time for filing a return is extended, the business entity shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due on the return, but not been previously paid, from the time the tax was due until the return is actually filed and the tax paid to the county. A fraction of a month is counted as an entire month.

§ 8 – Refunds

- (1) Where there has been an overpayment of tax under Section (5) of this ordinance, a refund of credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under Section (5) by the employer;

- (2) Unless 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, no refund or credit shall be allowed;
- (3) 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.

§ 9 – Audit Provisions

- (1) As soon as practicable after each return is received, the county may examine and audit the return. If the amount of tax computed by the county is greater than the amount returned by the business entity, the additional tax shall be assessed and a notice of assessment mailed to the business entity by the county within five (5) years from the date the return was filed, except as otherwise provided in this subsection.
 - (a) In the case of a failure to file a return or of a fraudulent return the additional tax may be assessed at any time.The times provided in this subsection may be extended by agreement between the business entity and the county. For the purposes of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day. Any extension granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.
- (2) The county may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (1) of this section.

§ 10 – 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.

§ 11 – Information to Remain Confidential

- (1) No present or former employee of the county 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 county 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 county from testifying in any court, or from introducing as evidence returns or reports filed with the county, in an action for violation of the county tax laws or in any action challenging the county 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 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 net profits or compensation of any person or business entity.
- (3) In addition, the county is empowered to execute similar reciprocity 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. The county acknowledges that it has an existing reciprocity agreement under this section with City of Franklin.

§ 12 – Penalties

- (1) Every employer who fails to file a return or pay the tax on or before the date prescribed under Section (5) of this ordinance may be subject to a penalty in an 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 business entity 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 tax due under section (3) of this ordinance and any fees, penalties, and interest as provided in subsections (1), (2), (3), and (4) of this section by civil action in a court or 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 person, business entity or employer who willfully fails to make a return, 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 to the business entity by the county.
- (8) Any person violating the provisions of section (11) 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 longer than six (6) months, or both.
- (9) Any person violating the provisions of section (11) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand (\$1000) or imprisoned for not more than one (1) year, or both.

§ 13 – Use of Occupational License Tax

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

§ 14 – Severability

Each section and each provision of each section of this ordinance are 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.

July 1, 2008 FIRST READING
July 15, 2008 SECOND READING

At a meeting of the Fiscal Court of the County of Simpson, Commonwealth of Kentucky held July 15, 2008, on motion made by Honorable Larry Randolph and seconded by Honorable Charles McCutchen, Sr., the foregoing ordinance was adopted, after full discussion, by the following vote:


Aye LARRY RANDOLPH
Aye KELLY BANTON
Aye MARTY CHANDLER
Aye CHARLES McCUTCHEN
Aye JIM HENDERSON

APPROVED:



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

ATTEST:



PAM ROHRS, Fiscal Court Clerk,
County of Simpson, Commonwealth of Kentucky

(Amending Ordinance No: 220.99 and 220.107)