



Third Party and Employee Benefits

**Oscar Brohm, Manager - Tax Processing
Louisville Revenue Commission**

THIRD PARTY AND EMPLOYEE BENEFITS

- I. Third Party Benefits
- II. Employee Benefits Subject To The License Fee
- III. Employee Benefits Not Subject To The License Fee
- IV. HB 107 And 458 Changes

THIRD PARTY AND EMPLOYEE BENEFITS

A. Third Party Benefits

- 1) Insurance Payments
- 2) Unemployment Compensation
- 3) Workers Compensation
- 4) Death Benefits From Third Party Source

THIRD PARTY BENEFITS

1. **Insurance Payments** - Payments made by a third party under a disability, sickness or accident insurance plan; (not subject to the license fee)
2. **Unemployment Compensation** - Unemployment Compensation payments made by any governmental agency; (not subject to the license fee)
3. **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; (not subject to the license fee)
4. **Death Benefits** - Death benefits payable by a third party to the beneficiary of an individual or to his estate, whether payable in a single sum or otherwise. (not subject to the license fee)

THIRD PARTY AND EMPLOYEE BENEFITS

II. **Employee Benefits Subject To The License Fee**

- 1) Vacation, Sick Leave, Holiday Payments
- 2) Employee Contributions To Qualified Federal Tax Deferral Plans
- 3) Employer Contributions To A Qualified Plan Arising From Employee Elections
- 4) “Picked-up” Employee Contributions
- 5) Contributions To Non-qualified Plans
- 6) Non-cash Fringe Benefits
- 7) Separation Benefits
- 8) Expense Accounts
- 9) Payments For Services Rendered By Students
- 10) Early Retirement And Similar Benefits
- 11) Property And Services As Compensation

Employee Benefits Subject To The License Fee

1. **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.
2. **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".
3. **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.
4. **"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.
5. **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.
6. **Non-Cash Fringe Benefits** - Fringe benefits received by any employee to the extent that such benefits are taxable for federal income tax purposes.

Employee Benefits Subject To The License Fee

7. **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.
8. **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.
9. **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.
10. **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.
11. **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.

THIRD PARTY AND EMPLOYEE BENEFITS

III. **Employee Benefits Not Subject To The License Fee**

- 1) Insurance payments Made to Employees
- 2) Death Benefits payable By An Employer To The beneficiary Of An Employee
- 3) Allowances And Reimbursements For Expenses
- 4) Strike Benefits
- 5) Kentucky National Guard
- 6) Flexible Benefit Plan Payments
- 7) Fringe Benefits Not Taxable For Federal Income Tax Purposes
- 8) Employer Contributions To Qualified Plans Not Arising From Employee Election
- 9) Employer Payments For Employee Benefits
- 10) Amounts Paid From Qualified And Non-qualified Plans
- 11) Student Grants
- 12) Exemption Afforded By Treaty
- 13) Payments To Non-resident Military Personnel

Employee Benefits Not Subject To The License Fee

- 1. Insurance Payments** - Payments made to employees under a disability, sickness or accident insurance plan;
- 2. 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;
- 3. 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;
- 4. 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;
- 5. 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**)

Employee Benefits Not Subject To The License Fee

6. 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.

Employee Benefits Not Subject To The License Fee

- 7. 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;
- 8. Employer Contributions to Qualified Plans Not Arising From Employee Election** - 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;
- 9. 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;
- 10. 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;

Employee Benefits Not Subject To The License Fee

- 11. 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;
- 12. 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;
- 13. 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).

House Bills 107 And 458

HB 107 and 458 changes (effective 01/01/2008)

“AN ACT relating to local taxation ...enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 67.750 is amended to read as follows:.....

(2) "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;

Summary

I. Third Party Benefits

- 1) Insurance Payments
- 2) Unemployment Compensation
- 3) Workers Compensation
- 4) Death Benefits From Third Party Source

II. Employee Benefits Subject To The License Fee

- 1) Vacation, Sick Leave, Holiday Payments
- 2) Employee Contributions To Qualified Federal Tax Deferral Plans
- 3) Employer Contributions To A Qualified Plan Arising From Employee Elections
- 4) "Picked-up" Employee Contributions
- 5) Contributions To Non-qualified Plans
- 6) Non-cash Fringe Benefits
- 7) Separation Benefits
- 8) Expense Accounts
- 9) Payments For Services Rendered By Students
- 10) Early Retirement And Similar Benefits
- 11) Property And Services As Compensation

III. Employee Benefits Not Subject To The License Fee

- 1) Insurance payments Made to Employees
- 2) Death Benefits payable By An Employer To The beneficiary Of An Employee
- 3) Allowances And Reimbursements For Expenses
- 4) Strike Benefits
- 5) Kentucky National Guard
- 6) Flexible Benefit Plan Payments
- 7) Fringe Benefits Not Taxable For Federal Income Tax Purposes
- 8) Employer Contributions To Qualified Plans Not Arising From Employee Election
- 9) Employer Payments For Employee Benefits
- 10) Amounts Paid From Qualified And Non-qualified Plans
- 11) Student Grants
- 12) Exemption Afforded By Treaty
- 13) Payments To Non-resident Military Personnel