

# Court Cases Affecting Occupational License Taxes

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# NOTICE

These materials and the lecture, given in conjunction with them, are intended to be authoritative and provide helpful information concerning the subject matter presented. However, before any decisions are made with regards to a particular problem or course of action, your own attorney should be consulted. Circumstances may vary from jurisdiction to jurisdiction, depending on current case law, applicable statutes and local ordinances, and your interpretation of them.

# What gives you the authority to tax me?

- Section 181 of the Constitution permits the General Assembly to delegate power to local govt.
- General Assembly passes specific statutes which give power to local govt.  
(Enabling Statutes)

## Section 181 of the Kentucky constitution provides:

- The General Assembly may, by general laws only, provide for the payment of license fees on franchises, stock used for breeding purposes, the various trades, occupations and professions, or a special or excise tax; and 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.

## ENABLING STATUTES

- The general assembly passes Statutes (KRS – Kentucky Revised Statutes)
- Confers power on counties, towns, cities and other municipal corporations to carry out the delegated power under Section 181 of the Kentucky Constitution

## Section 181 of the Kentucky Constitution + Enabling Statute = Authority to Tax

### ■ Cities:

Section 181 of the Kentucky Constitution + KRS § 92.280 & KRS § 92.281

### ■ Counties (300,000):

Section 181 of the Kentucky Constitution + KRS § 68.180

### ■ Counties (30,000):

Section 181 of the Kentucky constitution + KRS § 68.197(1)

### ■ School Boards:

Section 181 of the Kentucky Constitution + KRS § 160.482

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## KENTUCKY LEGISLATURE

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*Statutes Last Updated June 29, 2005*

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# Cities power to tax

- **KRS § 92.280**

## **General power of cities to tax**

The legislative body of each city of the second to sixth class may impose license fees on stock used for breeding purposes, and on franchises, trades, occupations and professions, and may provide for the collection of such fees

- **KRS § 92.281**

## **Levy of all taxes authorized by Constitution Section 181**

Cities of all classes are authorized to levy and collect any and all taxes provided for in Section 181 of the Constitution of the Commonwealth of Kentucky, and to use the revenue therefrom for such purposes as may be provided by the legislative body of the city.

- **See KRS § 92.281(5)**

Sixth class cities can not impose license fees on employee compensation or net profits

# Counties containing 300,000 population power to tax

- **KRS § 68.180**

## **Occupational license tax in counties containing 300,000 population --**

The fiscal court of each county having a population of three hundred thousand (300,000) or more may by order or resolution impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing.

# Counties containing 30,000 population power to tax

- **KRS § 68.197**

## **License fees in counties of 30,000 or more**

The fiscal court of each county having a population of thirty thousand (30,000) or more may by ordinance impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing.

# Fiscal courts and boards of education (counties of 300,000) power to tax.

- **KRS §160.482**

**Occupational license, policy (counties of 300,000).**

To help provide for an efficient system of common schools in any county having three hundred thousand (300,000) or more inhabitants, the General Assembly delegates to the fiscal courts and boards of education of any such county the powers and duties set forth in KRS 160.482 to 160.488. The General Assembly finds and declares that in any such county there are besetting public education special problems which can best be solved pursuant to KRS 160.482 to 160.488. Furthermore, the General Assembly declares that the public policy of the Commonwealth is not offended but is best served by the authority of KRS 160.482 to 160.488 for the imposition, payment, and collection of license fees on businesses, trades, occupations, and professions over and above license fees that may already be imposed thereon.

# Counties containing population of less than 30,000 power to tax

- No specific enabling statute granting the authority to levy and collect occupational taxes
- Authority derives from the Kentucky Supreme Court's interpretation of the KRS 67.083(2) and holding in the case of Casey County Fiscal Court v Burke, 743 S.W.2d 26 (1988).
- Kentucky Supreme Court upheld an ordinance imposing an occupational license tax in a county with less than 30,000 people, although [KRS 68.197](#) gave the power to levy such a tax only to those counties whose population exceeded that figure.
- The court concluded that [KRS 67.083](#) gave all counties, including Casey County, the authority to levy occupational taxes, and that there were no statutory or constitutional provisions applicable to limit counties with less than 30,000 people from imposing the tax

# KRS § 67.083 Additional powers of fiscal courts.

## ■ 67.083 Additional powers of fiscal courts.

(3) The fiscal court shall have the power to carry out governmental functions necessary for the operation of the county. Except as otherwise provided by statute or the Kentucky Constitution, the fiscal court of any county may enact ordinances, issue regulations, levy taxes, issue bonds, appropriate funds, and employ personnel in performance of the following public functions.....

(8) (a) The powers granted to counties by this section shall be in addition to all other powers granted to counties by other provisions of law. These powers, other than the power to tax, may be exercised cooperatively by two (2) or more counties, or by a county and a city, or by a county and a special district, or by a county and the state through, but not limited to, joint contracts, joint ownership of property, or the exchange of services, including personnel and equipment. When counties cooperate in the provision of public services, contracts shall be drawn to document the benefits and relative cost for each of the participating governments. One (1) government may pay one hundred percent (100%), or a lesser percentage, of all or any part of the cost of the joint undertaking, based upon the written contract required by this subsection.

(b) A permissive procedure authorized by this section shall not be deemed to be exclusive or to prohibit the exercise of other existing laws and laws which may hereafter be enacted but shall be an alternative or supplement thereto.

# “License” and “License Fees”

- “To license” means to confer on a person the right to do something which otherwise he would not have the right to do –
  - Special privilege rather than a right common to all persons.
  - It imports regulation.
- “License fee” implies the imposition or exaction on the right to exercise a business privilege
- In the City of Louisville vs. Sebree, 214 S.W.2d 248 (1948), the Louisville occupational license tax ordinance was upheld as a valid exercise of the power delegated to cities, under authority of [Section 181 of the Constitution](#), to impose ‘license fees’ on ‘franchises, trades, occupations and professions.’

# "License Fees" and "Occupational Taxes"

- Kentucky Constitution Section 181 refers to "license fees"
- Kentucky Revised Statutes (KRS) and case law speak in terms of "taxes" or "occupational taxes"
- The Kentucky courts have held that an "occupational tax" is a "license fee" under Constitution Section 181 and that this constitutional provision does not of itself grant any taxing powers to local governments but only authorizes the General Assembly to delegate its taxing power.  
George Wiedeman Brewing Company v. City of Newport, 321 S.W.2d. 104 (1959)
- "... The character of any tax is to be determined by its incidents, and the name by which it is described in the legislation imposing it is without significance."  
City of Louisville vs. Sebree, 214 S.W.2d 248 (1948)

# What are “Occupational Taxes”?

- They are not income taxes.
- They are not “impermissible” excise taxes.
- They are not imposed under the police power for purpose of regulation.
- They are revenue measures.

# Occupational taxes are not income taxes.

- The Court of Appeals of Kentucky (now the Supreme Court of Kentucky) in holding that the Louisville ordinance to be valid, rejected the contention that it imposed an income tax and adopted the contention of the City that the Ordinance 'lays the tax upon the privilege of working \*\*\* within the City, and only measures the value of the privilege by the amount of earnings or net profit.'
- See [City of Louisville v Sebree, 214 S.W.2d 248](#) (Upholding the right of the cities to impose occupational taxes)
- See [Kupper v Fiscal Court of Jefferson County, 346 S.W.2d 766](#) (Upholding right of counties to impose occupational taxes)
- See [Sims v Board of Education of Jefferson County, Kentucky, 214 S.W.2d 248](#) (Upholding right of school board to impose occupational taxes)

## Occupational taxes are not “impermissible” excise taxes.

- In substance a true license tax is a permissible form of excise tax which cities may be authorized to levy under [section 181 of the Kentucky Constitution](#). It is apparent that the drafters of the document, when in effect denying cities the right to impose an ‘excise’ tax, were not using the term in the broad sense which would encompass a license tax, but were using it in the narrower sense to characterize a tax upon a transaction involving the sale, use or transfer of property.
- We conclude the tax here under consideration properly may be characterized a permissible license tax which the City of Lexington could impose upon a business enterprise and is not an excise tax of the kind which cities under [section 181 of the Kentucky Constitution](#) are not empowered to levy.
- [City of Lexington v. Motel Developers, Inc., Ky., 465 S.W.2d 253 \(1971\)](#)

# Occupational taxes are not for purposes of regulation

- A “license fee” may be imposed under
  - Police power for purpose of regulation
  - Taxing power for purposes of revenue
  - Or both.
  
- License Fees under police powers for regulation
  - Where a license fee is imposed under the police power, the fee exacted must not be so large as to charge the ordinance with the imputation of a revenue-producing purpose.  
[City of Georgetown v. Morrison, Ky., 362 S.W.2d 289 \(1962\); Martin v. City of Greenville, 312 Ky. 292, 227 S.W.2d 435 \(1950\); Daily v. City of Owensboro, 257 Ky. 281, 77 S.W.2d 939 \(1934\)](#)
  
  - The fee may not exceed the sum which will compensate the licensing authority for such services as issuing, recording, and inspecting related to the regulations to be enforced.  
[City of Erlanger v. KSL Realty Corp., Ky., 704 S.W.2d 649, 650-651 \(1986\);](#)

# Occupational taxes are for revenue.

- An “occupational tax” is founded solely on the production of revenue.

[Comm of Sinking Fund of City of Louisville vs Hopson, 613 S.W.2d 621](#)

- The bottom line is that they are no more and no less than taxes levied on the “privilege” of engaging in any occupation, business, trade or profession within the geographical boundary of the unit of government imposing the tax.

[Patrick v. City of Frankfort, Ky., 539 S.W.2d 275 \(1976\);](#)

The right to impose a license fee or occupational tax embraces all 'trades, occupations and professions.'

- 'The authority to tax under this section is as far reaching and as sweeping as language could make it.....It would be difficult to find three words that cover wider fields of employment'

Hager v. Walker, 107 S.W. 254

Weyman v. City of Newport, 156 S.W. 109;

R.J. Reynolds Tobacco Co. v City of Lexington, 205 S.W.592;

Karnes v City of Benton, 80 S.W.2d 558;

Mills v City of Barboursville, 117 S.W.2d 187

# "Engaging in business"

- A single isolated transaction under specific employment is not "carrying on," "conducting," or "managing" business, calling, etc. within city license tax ordinance.

[City of Mayfield v Reed, 127 S.W. 2d 847](#)

[Karnes v City of Benton, 80 S.W. 2d 558](#)

- Work or service performed in the city that is a single act, a number of isolated acts, or special employment on a temporary basis are not considered engaging in or carrying on a business within the meaning of a law imposing a license tax.
- Nevertheless, it should be understood that where the abovementioned activities are continuous or systematic, such acts may be considered as engaging in or carrying on a regular business or occupation

[Evers v. City of Mayfield, Ky., 85 S.W. 697 \(1905\).](#)

# Federal employees

- The immunity of the federal government from taxation does not extend to government's officers or employees
- Employees of United States brought action challenging validity of city occupational tax ordinance  
[Patrick v City of Frankfort, 539 S.W.2d 275 \(1976\)](#)
- Two issues presented by appellants, which were (1) did the ordinance levy an income tax in contravention of [Section 181 of the Kentucky Constitution](#), and (2) did the ordinance impose a fee on the privilege of being employed by the United States of America?
- The court held that the challenged Frankfort, Kentucky, ordinance is a levy of such a license fee that is not prohibited by the Kentucky Constitution and the tax is not a prerequisite to the right of the taxpayer to perform his duties. The court stated that the appellants were subject to the tax the same as if they were not federal employees.

# Attorneys

- [Newlin v Stuart, 117 S.W.2d 608 \(Ky. App. 1938\)](#)
  - Attorney sought annulment of Danville license tax
  - Alleged he was officer of the court and paid statutory fee for license to practice law
- Court stated that to sustain plaintiff's grounds of attack would be require a departure from logic, reason, common sense, and justice. That every person engaged in any profession governed by a regulatory statute would escape payment of the occupational tax, which would have the effect to exempt physicians, dentists, pharmacists, plumbers, barbers, and many other professions and callings that the Legislature under its police power have seen proper to license and regulate. That such an exemption, has never been upheld.
- See also:
  - [Woodruff v. City of Louisville, 6 Ky. Opin. 230 \(1872\)](#)
  - [Bullitt v City of Paducah, 3 S.W. 802;](#)
  - [Baker v. City of Lexington, 53 S.W.16;](#)
  - [Evers v. City of Mayfield, 85 S.W. 697;](#)
  - [Yantis v City of Lexington, 94 S.W. 653;](#)
  - [Elliott v City of Louisville, 40 S.W. 690;](#)
  - [Dreidel v City of Louisville, 105 S.W.2d 807.](#)

# Circuit Court Judges

- Comm. Sinking fund City of Louisville v Hopson, 613 S.W.2d 621
  - Five judges in Louisville challenged occupational tax
  - Alleged interference with the independence of the judicial system.
  - The court discussed the difference between regulation and supervision under police power and occupational tax solely for revenue purposes.
- Stated there is no license issued, no certificate to be displayed, no regulations imposed, no provisions for revocation of privilege, and the sole penalty provided is a fine for failure to properly file returns.
- Held that circuit court judges are no different than federal employee, state employees or general citizenry

## Income earned from renting real property and income from the sale of rental property

- Comm of Sinking Fund v Doyle's Estate, 573 S.W.2d 932 (Ky App 1978)
  - Individuals, partnerships and corporations brought suit challenging the authority of City of Louisville to collect occupational taxes on income from rental property
  - Louisville had 30% Rule – If 30% of individuals time was devoted to rental activity than presumption individual is engaging in business activity rather than simply investing money for production of income.
- The Court of Appeals, held that:
  - The regulation exempting individuals devoting less than 30% Of their time to renting real property was valid and did not unlawfully discriminate against corporations and partnerships;
  - Excluded those individuals who are truly are not in “business,” but who have merely invested some savings in rental property and who devote little or no time or effort to “managing” the property
  - Partnerships and corporations are uniquely “business” organizations and they may be presumed to be in some business.
  - The occupational tax was applicable to individuals as well as corporations and partnerships and could be based on both rental income and income from the sale of rental property;

# Limitations on the authority to tax

- Statutory Restrictions and Exemptions
  - General Assemblies restrictions
- Limitations imposed by the courts
  - Kentucky Constitution

# General Assembly – Restrictions on Cities Power to Tax

- **Sixth class cities can not impose license fees on employee compensation or net profits**
  - **KRS 92.281(5)** License fees on businesses, trades, occupations, or professions may not be imposed by a city of the sixth class at a percentage rate on salaries, wages, commissions, or other compensation earned by persons for work done or services performed within said city of the sixth class nor the net profits of businesses, professions, or occupations from activities conducted in said city of the sixth class.
  
- **Cities can not impose license tax on companies that pay both an ad valorem and franchise tax**
  - **KRS 92.281(3)**.... nor shall it be construed to authorize a city to require any company that pays both an ad valorem tax and a franchise tax to pay a license tax.
  - Section 181 Subsection (3) states that a city cannot authorize any company paying an ad valorem and a franchise tax to pay a license tax.
  - A city cannot levy license fees against companies which are paying an ad valorem and franchise taxes assessed pursuant to Chapter 136  
[City of Pikeville v UPS 417 S.W.2d 140 \(1967\) and City of Covington v Cincinnati, Newport & Covington Transportation Company, 515 S.W.2d 617 \(1974\)](#)
  - KRS 92.281(3) prohibiting the imposition of a local license tax does not depend upon whether the public service corporation has a franchise from the community in which it is operating but whether or not it pays both a franchise tax and an ad valorem property tax.

# General Assembly – Restrictions on Cities Power to Tax (cont.)

- **Cities can not impose license tax on precinct workers**
  - **KRS 92.281(6)** License fees or occupational taxes may not be imposed against or collected on income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.
  
- **Can not impose license tax on qualified investment fund**
  - **KRS 92.281(7)** License fees or occupational taxes may not be imposed against or collected on any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor.
  
- **Exemption of providers of multichannel video programming services or communications services**
  - **KRS 92.281(8) (a)** It is the intent of the General Assembly to continue the exemption from local license fees and occupational taxes that existed on January 1, 2006, for providers of multichannel video programming services or communications services as defined in KRS 136.602 that were taxed under KRS 136.120 prior to January 1, 2006.
  
  - **KRS 92.281(8) (b)** To further this intent, license fees or occupational taxes may not be imposed against any company providing multichannel video programming services or communications services as defined in KRS 136.602. If only a portion of an entity's business is providing multichannel video programming services or communications services including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services including products or services that are related to and provided in support of the multichannel video programming services or communications services.

# General Assembly – Restrictions on Cities Power to Tax (cont.)

## ■ **Cities may exempt manufacturing establishments**

- **KRS 92.300(1)** The legislative body of any city of the second to sixth class may by ordinance exempt manufacturing establishments from city taxation for a period not exceeding five (5) years as an inducement to their location in the city. In cities of the third class, two-thirds (2/3) of the members of the city legislative body must concur for this purpose.

## ■ **Exemptions of banks, trust companies, combined bank and trust companies, savings and loan association**

- **KRS 92.300(2) (a)** No city of the second to sixth class or urban-county government may impose or collect any license tax upon:
  - (1.) Any bank, trust company, combined bank and trust company, or trust, banking and title insurance company organized and doing business in this state;
  - (2.) Any savings and loan association whether state or federally chartered;

## ■ **Exemptions of members of Kentucky National Guard and precinct workers**

- **KRS 92.300(2) (b)** No city of the second to sixth class or urban-county government may impose or collect any license tax upon income received:
  - (1.) By members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training; or
  - (2.) By precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.

## General Assembly – Restrictions on Cities Power to Tax (cont.)

- **Exemption of volunteer member fire companies of cities of fourth class**
  - **KRS 92.300(2)(b)(3)** Unpaid volunteer members of fire companies in cities of the fourth class shall be exempt from city poll taxes so long as they remain active members.
- **Cities can not regulate the performance of duties and activities of ministers**
  - **KRS 92.300(2)(b)(4)** Pursuant to KRS 92.281, no city shall regulate any aspect of the manner in which any duly ordained, commissioned, or denominationally licensed minister of religion may perform his or her duties and activities as a minister of religion. Duly ordained, commissioned, or denominationally licensed ministers of religion shall be subject to the same license fees imposed on others in the city enacted pursuant to KRS 92.281.

# General Assembly – Restrictions on Counties (containing 300,000 population) Power to Tax

- **Counties can not impose license tax on companies that pay both an ad valorem and franchise tax**
  - **KRS 68.180(3) (a)** No public service company that pays an ad valorem tax shall be required to pay a license tax.
  
- **Counties can not impose license tax on precinct workers**
  - **KRS 68.180(3)(e)** No license tax shall be imposed upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.
  
- **Counties can not impose license tax on qualified investment fund**
  - **KRS 68.180(3)(f)** No license tax shall be imposed upon any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor, or in other cases where the county is prohibited by law from imposing a license tax.

# General Assembly – Restrictions on Counties (containing 300,000 population) Power to Tax (cont.)

- **Exemption of providers of multichannel video programming services or communications services**

- **KRS 68.180(3)(b)(1)** It is the intent of the General Assembly to continue the exemption from local license fees and occupational taxes that existed on January 1, 2006, for providers of multichannel video programming services or communications services as defined in KRS 136.602 that were taxed under KRS 136.120 prior to January 1, 2006.
- **KRS 68.180(3)(b)(2)**. To further this intent, no company providing multichannel video programming services or communications services as defined in KRS 136.602 shall be required to pay a license tax. If only a portion of an entity's business is providing multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services.

# General Assembly – Restrictions on Counties (containing 300,000 population) Power to Tax (cont.)

- **Exemptions of banks, trust companies, combined bank and trust companies, savings and loan association**
  - **KRS 68.180(3)(c)** No license tax shall be imposed upon or collected from any bank, trust company, combined bank and trust company, combined trust, banking and title business in this state, any savings and loan association, whether state or federally chartered.
  
- **Exemption for members of Kentucky National Guard**
  - **KRS 68.180(3)(d)** No license tax shall be imposed upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training.
  
- **County population over 300,000 can not regulate the performance of duties and activities of ministers**
  - **KRS 68.180(5)** Pursuant to this section, no fiscal court shall regulate any aspect of the manner in which any duly ordained, commissioned, or denominationally licensed minister of religion may perform his or her duties and activities as a minister of religion. Duly ordained, commissioned, or denominationally licensed ministers of religion shall be subject to the same license fees imposed on others in the county on salaries, wages, commissions, and other compensation earned for work done and services performed or rendered.

# General Assembly – Restrictions on Counties (containing 30,000 population) Power to Tax

- **Counties can not impose license tax on companies that pay both an ad valorem and franchise tax**
  - **KRS 68.197(4)(b)** No public service company that pays an ad valorem tax is required to pay a license tax
  
- **Exemption of providers of multichannel video programming services or communications services**
  - **KRS 68.197(4)(c)(1)**. It is the intent of the General Assembly to continue the exemption from local license fees and occupational taxes that existed on January 1, 2006, for providers of multichannel video programming services or communications services as defined in KRS 136.602 that were taxed under KRS 136.120 prior to the effective date of this section.
  
  - **KRS 68.197(4)(2)**. To further this intent, no company providing multichannel video programming services or communications services as defined in KRS 136.602 shall be required to pay a license tax. If only a portion of an entity's business is providing multichannel video programming services including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services.

# General Assembly – Restrictions on Counties (containing 30,000 population) Power to Tax (cont.)

- **Exemptions of banks, trust companies, combined bank and trust companies, savings and loan association**
  - **KRS 68.197(4)(d)** No license tax shall be imposed upon or collected from any insurance company except as provided in KRS 91A.080, bank, trust company, combined bank and trust company, combined trust, banking, and title business in this state, or any savings and loan association whether state or federally chartered, or in other cases where the county is prohibited by law from imposing a license fee.
- **Exemption for members of Kentucky National Guard, precinct workers and qualified investment fund**
  - **KRS 68.197(5)** No license fee shall be imposed or collected on income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, or on income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections, or upon any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor.
- **County population over 30,000 can not regulate the performance of duties and activities of ministers**
  - **KRS 68.197(11)** Pursuant to this section, no fiscal court shall regulate any aspect of the manner in which any duly ordained, commissioned, or denominationally licensed minister of religion may perform his or her duties and activities as a minister of religion. Duly ordained, commissioned, or denominationally licensed ministers of religion shall be subject to the same license fees imposed on others in the county on salaries, wages, commissions, and other compensation earned for work done and services performed or rendered.

# General Assembly – Restrictions on Boards of Education Power to Tax

- **Boards of Education can not impose license tax on companies that pay both an ad valorem and franchise tax**
  - **KRS 160.483(3)** No public service company which pays an ad valorem tax is required to pay a license fee.
  
- **Exemption of providers of multichannel video programming services or communications services**
  - **KRS 160.483(4) (a)** It is the intent of the General Assembly to continue the exemption from local license fees and occupational taxes that existed on January 1, 2006, for providers of multichannel video programming services or communications services as defined in KRS 136.602 that were taxed under KRS 136.120 prior to January 1, 2006.
  
  - **KRS 160.483(4)(b)** To further this intent, no company providing multichannel video programming services or communications services as defined in KRS 136.602 shall be required to pay a license fee. If only a portion of an entity's business is providing multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services.

# General Assembly – Restrictions on Boards of Education Power to Tax (cont.)

- **Exemptions of banks, trust companies, combined bank and trust companies, savings and loan association, members Kentucky National Guard, and precinct workers**
  - **KRS 160.483(5)** No license fee shall be imposed upon or collected from:
    - (a) Any bank, trust company, combined bank and trust company, combined trust, banking and title business in this state;
    - (b) Any savings and loan association whether state or federally chartered;
    - (c) Any income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training; or
    - (d) Any income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.
- **Exemption of non-residents**
  - **KRS 160.483(6)** No license tax shall be collected from any individual who is not a resident of the county of the tax-levying authority imposing the tax.
- **Boards of Education can not regulate the performance of duties and activities of ministers**
  - **KRS 160.483(7)** Pursuant to this section, no tax-levying authority shall regulate any aspect of the manner in which any duly ordained, commissioned, or denominationally licensed minister of religion may perform his or her duties and activities as a minister of religion. Duly ordained, commissioned, or denominationally licensed ministers of religion shall be subject to the same license fees imposed on others by the tax levying authority on salaries, wages, commissions, and other compensation earned for work done and services performed or rendered.

# Summary

	Cities (2-5 class)	Counties 300,000	Counties 30,000	Bd. Education
Ad Valorem and Franchise Tax	KRS 92.281(3)	KRS 68.180(3)(a)	KRS 68.197(4)(b)	KRS 160.483(3)
Precinct Workers	KRS 92.281(6) KRS 92.300(2)(b)(2)	KRS 68.180(3)(e)	KRS 68.197(5)	KRS 160.483(5)
Qualified Investment Funds	KRS 92.281(7)	KRS 68.180(3)(f)	KRS 68.197(5)	KRS 160.483(4)(a) & (b)
Multichannel video programming or comm.	KRS 92.281(8)(a) & (b)	KRS 68.180(3)(b)(1) & (2)	KRS 68.197(4)©(1) & (2)	KRS 160.483(4)(a) & (b)
Banks, trust co., savings and loan associations	KRS 92.300(2)(a)	KRS 68.180(3)(d)	KRS 68.197(4)(d)	KRS 160.483(5)
Kentucky National Guard	KRS 92.300(2)(b)(1)	KRS 68.180(3)(d)	KRS 68.197(5)	KRS 160.483(5)
Regulating Ministers	KRS 92.300(2)(b)(4)	KRS 68.180(5)	KRS 68.197(11)	KRS 160.483(7)
Non-residents				KRS 160.483(6)
Volunteer Firemen	KRS 92.300(2)(b)(3) (cities of 4 <sup>th</sup> class)			

# Limitations imposed by the courts

- Kentucky Constitution

- Section 2

- Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority

- Section 171

- ....Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws.

# Limitations imposed by the courts

- Tax must be based on reasonable classifications
- Tax must not be discriminatory
- Tax must not be excessive, arbitrary, or prohibitive (non-confiscatory)

# Reasonable Classification

- Uniform as to class and applied equally within the class.
  - A taxing authority cannot single out a particular entity for special licensing and/or require that entity to bear a heavier burden than other entities are required to bear.

[City of Erlanger v KSL Realty Corp., Inc., 819 S.W.2d 707](#)

- "It is familiar law that the selection of subjects of classification for taxation founded upon a natural and reasonable basis, with a logical relation to the purposes and objectives of a statute or ordinance, does not offend the principle of equality or uniformity in the imposition of a tax of this character so long as it operates equally upon all of those within the class."

[City of Louisville v. Sebree, 308 Ky. 420, 214 S.W.2d 248, 256 \(1948\)](#)

- The classification must be based on reasonable distinction, uniform as to the class, and not excessive, arbitrary or prohibitive. The ordinance cannot create a special class for the purpose of imposing an additional tax burden

[Baker v. City of Corbin, Ky. App., 556 S.W.2d 449 \(1977\),](#)

# Non-Discriminatory

## ■ Resident and non-resident

- It is well settled that there must be some reasonable basis for the classification, and classification based on mere difference in citizenship cannot be sustained.
- Hence a statute or ordinance which, in imposing license taxes, discriminates in favor of residents of the city or state, as against nonresidents of the same class, is unconstitutional.

[Long v. City of Benton](#), 148 S.W.2d 702 (1941)

- May impose nondiscriminatory license tax on nonresidents who constantly use city's streets to deliver goods to their customers

[H H Leet Furniture Co v City of Richmond](#), 357 S.W.2d 329

- But can't apply license fee or tax on non-residents who merely pass through the city

[Vertner Smith Co. v Town of Elsmere](#), 214 S.W. 2d 765

# Non-Confiscatory

- The word, "confiscatory," means that the proportionate tax cannot be unreasonable or arbitrary as to amount to a confiscation of property or a denial of the right to engage in a particular trade, occupation, or profession.
- Thus, the proportionate tax cannot place an oppressive burden on the taxpayer.

[Hager v. Walker, Ky., 107 S.W. 254, 256](#)

- A license tax for revenue purposes can not prohibit or substantially prohibit by taxation a legitimate business.

[Stewart Dry Goods V Lewis, 7 F. Supp 438](#)

- Validity of a revenue law is to be measured not by the consequence it may have on any one or a few individuals but by result it produces on those of a class engaged in the occupation or business sought to be subjected to the tax.

[Foster Trading Co. vs Lockett, 303 S.W.2d 315](#)

# Presumption of Constitutionality

- State legislatures possess the greatest freedom in classification in the field of taxation. Since members of a legislature necessarily enjoy a familiarity with local conditions which the Supreme Court could not have, "the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it."

[Madden vs Kentucky, 309 US 83, \(1939\)](#)

# Statutory Construction

## ■ Legal Interpretation

- Statutes imposing license or privilege taxes are strictly construed against state or taxing power, and all doubts as to construction must be resolved in favor of taxpayers.

[Esbeco Distilling Co. V Shannon, 129 S.W.2d 172](#)

## ■ Exemptions

- The general rule is that exempting statutes are to be strictly construed as against the one claiming the exemption. Exemptions will never be implied except by the most satisfactory and imperative language.
- See [Sutherland, Statutory Construction, Vol. 3, Section 66.09.](#) There it was stated that taxation is the rule, and exemption therefore the exception.

# “Double taxation”

- ‘In the present Constitution there is a declaration that taxation must be uniform, but no direct prohibition against double taxation. But a prohibition against double taxation was hardly necessary, because there cannot be such a thing as double taxation where the taxation is uniform.
- “Double taxation’ means taxing twice, for the same purpose, in the same year, some of the property in the territory in which the tax is laid without taxing all of it. If all the property in the territory upon which the tax is imposed is taxed twice and for the same purpose and in the same year without discrimination or exemption, this is not double taxation in the sense that such taxation is prohibited, because, within constitutional limits, if the tax is uniform, the amount of it is in the discretion of the taxing authorities, and it may all be levied at one time, or it may be the subject of several levies. Uniformity in taxation and double taxation are wholly inconsistent. One cannot exist where the other is in force. And so if our constitutional scheme of uniform taxation is observed, there can be no double taxation.’  
[Cumberland Telephone & Telegraph Co. v. Hopkins, 90 S.W. 594](#)  
[Hager v. Walker, 107 S.W.2d 254](#)  
[Commonwealth v. Walsh's Trustee, 117 S.W. 398](#)
- Transient room tax and city occupational tax did not constitute double taxation, as the two taxes were not imposed on same property by same governing body during same taxing period for same taxing purpose 83.340-83.350  
[Second St. Properties v Fiscal Court of Jeff Co., 445 S.W.2d 709](#)
- Property tax and license or occupational tax is not within the prohibition against “double taxation” nor is ordinarily, the imposition of two or more licenses or occupation taxes.  
[Harco Corp V Martin, 112 S.W.2d 693](#)

# Regulations

## ■ Filing of Returns

- License shall be issued and enforced on terms and conditions as prescribed by ordinance authorize by implication the power of city to require filing of an occupational license tax return and the enforcement of that requirement by means of a penalty as necessary incident to exercise of expressed grant. 181, 91.200, 91.200(3), 91.260, 92.281
- [City of Louisville v Fisher Packing Co., 520 S.W. 3d 744.](#)

## ■ Requirement of Registration

- Regulation imposing on business entities the duty to register and give information as to items subject to federal income tax but exempt from occupational tax did not represent an unconstitutional exercise of absolute and arbitrary power.  
[Comm vs Doyle's estate, 573 S.W.2d 932](#)

## ■ Requirement to file Federal Schedules

- Federal tax return schedules are an integral part of a taxpayer's books and records which are subject to verification and examination by the taxing authorities. In order to require taxpayers to attach federal income tax schedules or their federal income tax return to the net profit tax return, an ordinance must be passed specifically setting this requirement forth in detail.
- A city of the fourth class has authority to enact an ordinance requiring its taxpayers to file federal income tax return schedules as a part of the city's net profits tax returns as a verification of such returns. [\(OAG 82-555\)](#)

## ■ Authority to audit

- Reasonable enactments granting local governments inquisitorial powers to determine the accuracy of tax returns have been held valid as not being in conflict with the due process, search and seizure, and other clauses of the federal and state constitutions.  
[Kirkwood Drug Company, Inc. vs. City of Kirkwood, 387 S.W.2d 550\(1965\)](#) (Missouri Supreme Court case)
- Ordinances authorizing cities to examine books and records are not unconstitutional as being an unreasonable search and seizure  
[Kohler vs. Benckart, Ky., 252 S.W.2d 854.](#)  
[Paducah Automotive Trades Association vs. City of Paducah, 211 S.W.2d 660](#)

# Penalties

- Penalty for failure to file in amount of 5% of unpaid license fee for each month or fraction of month such return remained unfilled, not exceeding penalty of 25% in the aggregate, was not void for excessiveness.  
[City of Louisville v Fischer Packing Co, 520 S.W. 2d 744](#)
- Penalty not unreasonable, confiscatory, or arbitrary  
[City of Harrodsburg v Devine, 418 S.W.2d 426](#)
- County government was entitled to recover penalties and interest on adjudged delinquent occupational license fees as authorized by city ordinance; penalties and interest were valid method of enforcing tax provisions.  
[Lexington-Fayette Urban County Government v Abney, 748 S.W. 2d 376](#)
- Penalties may be imposed for failure to pay the tax, but such penalties must be codified by ordinance.  
[OAG 78-383](#)