

FRANKLIN COUNTY FISCAL COURT

ORDINANCE NO. 01. 2004 SERIES

ORDINANCE NO. 11, 1986 SERIES
AS AMENDED BY

ORDINANCE NO. 21, 1988 SERIES
AS AMENDED BY

ORDINANCE NO. 7, 1996 SERIES
AS AMENDED BY

ORDINANCE NO. 3, 2001 SERIES
AS AMENDED BY

OCCUPATIONAL LICENSE FEE
AND
RULES AND REGULATIONS

ORDINANCE NO. 21, 1988 SERIES,

AN ORDINANCE AMENDING ORDINANCE NO. 11, 1986 SERIES, RELATING TO THE IMPOSITION AND PROFESSIONS WITHIN FRANKLIN COUNTY, KENTUCKY FOR THE HEALTH, EDUCATION, SAFETY, WELFARE AND CONVENIENCE OF THE INHABITANTS OF FRANKLIN COUNTY, KENTUCKY, PURSUANT TO KRS. 68.197.

WHEREAS, THE FRANKLIN COUNTY FISCAL COURT DESIRES CERTAIN CHANGES BE MADE TO THE ORDINANCE IMPOSING LICENSE FEES ON BUSINESS, OCCUPATIONS AND PROFESSIONS WITHIN FRANKLIN COUNTY, KENTUCKY, SO THAT SAID FEE AND PAYMENT CAN BE ADMINISTERED MORE EFFICIENTLY;

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF FRANKLIN COUNTY, KENTUCKY AS FOLLOWS:

THAT ORDINANCE NO. 11, 1986 SERIES IS HEREBY REPEALED, AMENDED AND RE-ADOPTED IN FULL TO READ AS FOLLOWS:

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1.01 Definitions. The following expressions when used in this chapter shall have the meaning ascribed to them in this sections, except where the context clearly indicates or requires a different construction:

1. “Occupational tax Collector” means the official collector of the occupational tax, to be appointed by the Franklin County Fiscal Court.
2. “County” means Franklin County, Kentucky, including the City of Frankfort and any other community whether incorporated or not.
3. Business” means an enterprise, activity, profession or under-taking of any nature conducted for gain or profit, whether conducted by a self-employed person, a corporation, an association, a co-partnership, or any other entity; it shall include specifically but not exclusively the rental of any property, real or personal, having a situs in the county, but shall not include the usual activities of a board or trade, chamber of commerce, trade association, or unions; community chest funds or foundations; corporations or associations organized and operated exclusively for religious, charitable, scientific, literacy, educational, or fraternal purposes, where no part of the earnings, income, or receipts of such units, groups, or associations inures to the benefit of my private shareholder or other person;
4. “Association” means a partnership or any other form of unincorporated enterprise owned by two or more persons.
5. “Corporation” means a corporation or joint stock company organized under the laws of the United States, Kentucky, another state, territory or foreign country or a dependency thereof.
6. “Year” means the calendar year of the fiscal year (employed by a business subject to the license fee imposed by this chapter) if the taxpayer reports for state income tax purposes on the basis of a period other than the calendar year.
7. “Compensation subject to the Occupational License Fee.”
 - A. The license fee on an employee’s “wages” includes a license fee on all payments paid of employees for employment, which would be includable as wages in accordance with the Internal Revenue Code including the following:

1. Salaries - Salaries, bonuses or incentive payments earned by an individual, whether directly or through an agent:
 - a) As an officer or employee, or both, of a corporation;
 - b) As an officer or employee (as distinguished from a partner or member) of a partnership or other association;
 - c) As an employee (as distinguished from the proprietor) of a business conducted by an individual owner;
 - d) As an officer or employee (whether elected or appointed, enlisted or commissioned) of a governmental agency; or
 - e) As an officer or employee of any business or other entity.
2. Wages - Wages, bonuses, or incentive payments received by an employee, whether directly or through an agent or services rendered:
 - a) Whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece-meal rates; and
 - b) Whether paid by an individual, non-profit association, corporation, partnership, fiduciary, governmental agency, or any business or other entity.
3. Commissions - Commissions received by an employee from his employer whether directly or through an agent, for services rendered regardless of how computed, including any amounts received as a drawing account exceeding the commissions earned.
4. Fees - Fees received by an employee, whether directly or through an agent, for services rendered regardless how computed.
5. 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.
6. 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 deduction election are both included as "wages".

7. 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 of said plan.
8. “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.
9. Contributions to Non-Qualified Plans – Employer contributions and/or assignments to any plan other than a plan described by Section 402(a), Section 401(k), Section 403(b), Section 414(h), or Section 457 of the Internal Revenue Code.
10. Non-Cash Fringe Benefits – Fringe Benefits received by an employee to the extent that such benefits are taxable for Federal income tax purposes.
11. 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 employee, other 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.
12. 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.
13. 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.
14. 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.

15. 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.
16. Other Income – All other income paid by an employer and received by an employee for the performance of any activity subject to the license fee, not expressly exempt (see below) unless such income is to be reported under the provisions of these Regulations.

(7) **B.** Compensation which is not subject to the license fee on wages includes the following:

1. Insurance Payments – Payments made to employees under a disability, sickness or accident insurance plan;
2. Unemployment Compensation – Unemployment compensation payments made by an governmental agency;
3. 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;
4. 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;
5. Allowances and Reimbursements 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;
6. 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;
7. 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);
8. Flexible Benefit Plan Payment – Payments by employers to Section 125 plans, sometimes referred to as cafeteria plans, flexible benefits 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 established a Section 125 plan which allows an employee 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 402(k) plan would be subject to the license fee.

9. 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) not 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.

10. Employer Contributions to Qualified Plans Not

Arising from Employee Election – Except as expressly provided in Subparagraph 8 of Subsection A of this Section (7), 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;

11. 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;

12. 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;

13. 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.

14. Exemptions Afforded by Treaty – Any wages, salaries, or other compensation paid to a foreign nation to the extent that such payments are exempt from state and local taxation by a treaty of the United States.

15. 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).

7.C. Compensation which is not “wages” for purposes of the imposition by ordinance or hereunder of a duty on the employer to withhold and remit a license fee thereon, but which nevertheless is subject to the license fee which must be paid by the employee if not withheld and remitted by the employer includes, but is not limited to, the following:

1. Tip Income.

2. Corporations are permitted but not required to withhold and remit fees paid to directors, provided that such corporations submit the 1099 information and indicate that such payments are director’s fees, and state the amount of the license fee withheld.

(8) “Taxpayer” means any person or business made liable for taxation or for the payment of amounts withheld from employees under the terms of this chapter.

(9) “Employer” means an individual, co-partnership, association, corporation, governmental body or units or administration or agency or any other entity who (or that) employs one or more persons on the basis of a salary wage, or other compensation, regardless of whether such employer is engaged in business;

(10) “Sales means net sales of merchandise or of services, or both computed by whatever method of accounting is authorized for state income tax purposes.

(11) “Sales within the County” means sales of merchandise within the county or of serviced performed within the county;

(12) “Net Profit” means the net income from the operation of a business after provision for all costs and expenses incurred (or disbursed) in the conduct thereof, and the term shall be defined as the same as reported for the state income tax purposes

pursuant to state laws in effect as of January 1, 1987, excluding items exempt hereunder but without the deduction of taxes based on income;

- (13) "Non-resident" means an individual, co-partnership, fiduciary, or association or other entity domiciled outside the county;
- (14) "Person" means every natural person, co-partnership, fiduciary, association, or corporation. Whenever the term "Person" is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to association, shall mean the partners or members thereof and as applied to corporations, the officers and directors;
- (15) "Resident" means an individual, co-partnership, association, corporation, or other entity domiciled or having a business situs in the county;
- (16) "Licensee" means any person required to file a separate return or to pay a license fee thereon under this chapter;
- (17) The singular includes the plural, and the masculine includes the feminine and the neuter.

1.02 Occupational License Fee Generally.

(a) Every person, association, firm, corporation or other entity in any occupation, business, trade, profession or other activity in the county shall pay to the County Treasurer for purposes of the general fund budget an annual occupational and business license fee for the privilege of engaging in said activities, which license fee shall be measured by one percent (1%) of the net annual salaries or wages earned by any licensee so compensated for work done or services performed or rendered within the county and the net profits, per annum, of all licensees who are engaged in business from that portion of such business conducted in the county.

(b) Where net salaries or wages of licensees so compensated are earned for work done or services performed or rendered in both within and without the county, said license fee shall be measured by such part of the salaries or wages as is earned as a result of work done or services performed or rendered in the county. Such license fee shall be computed by obtaining the percentage which the net salaries or wages for work performed or services rendered within the county bears to the total net salaries or wages earned.

1.03 Computation of Net Profits. In the case of licensees who are engaged in business and such business is conducted both in the county and outside, the net profit from activities conducted in the county shall be computed as follows:

- (1) Ascertain the percentage of total gross receipts for the year wherever derived from sales made or services rendered within the county.

(2) Ascertain the percentage of total gross receipts for the year within and without the county, which are paid for services within the county.

(3) Add the percentages determined as set out in clauses (1) and (2), immediately preceding and divide by two (2). Multiply the taxpayer's total net profits from activities conducted in the county.

1.04 Withholding and Payment of Tax by Employers—Returns. Each employer who employs one or more persons within the county shall deduct monthly, or more often than monthly, at a time of the payment thereof, the license tax due from each employee measured by the amount of salaries, wages, or other compensation due by the employer to the employee and shall pay to the occupational tax collector the amount of the license tax so deducted. The payment is required to be made on account of deductions by employers shall be made quarterly, for the quarterly periods ending March 31, June 30, September 30, and December 31 of each year, on or before the last day of the month next following the quarter of the deduction to the occupational tax collector. The employer shall annually during the month of January of each year, make a return to the occupational tax collector, in which it is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, or other compensation earned during such preceding year by each such employee together with such other pertinent information the occupational tax collector may require, or attach a copy of the W-2 form for each employee for said preceding year. Provided, however, that the failure or omission by any employer to deduct such license fee shall not relieve the employee from payment of such license fee and compliance with such regulations with respect to making returns and payments thereof, as may be fixed in this chapter or established by the occupational tax collector. No church, religious congregation or religious society of any creed is required under the terms of this chapter to withhold or deduct any sum from the wages, salaries or other compensation due by the church, religious congregation or religious society to its employees as salaries, wages, or other compensation, provided, however, that such organizations may voluntarily withhold from the salaries, wages, or other compensation of its employees and remit the withholding to the county treasurer as provided in this chapter, and in such event the sums so withheld shall be credited to the tax owed by the employees. Provided, further, however, that failure to withhold by said employers such license fees shall not relieve the employees of the church, religious congregations, or religious societies from the payment of the license fee required by this chapter.

1.05 Returns.

(a) Each person subject to the occupation license tax imposed by Section 1.02 and who is compensated by salaries or wages shall on or before the fifteenth day of the fourth month following the close of each year, make and file with the occupational tax collector a return, in duplicate, on a form furnished by or obtainable from the occupational tax collector, setting forth the aggregate amount of salaries, wages, and other compensation earned during the preceding year with such other pertinent information as the occupational tax collector may require. Provided, however, that where the entire license due under Section 1.02 has been withheld under the provisions of Section 1.04. The occupational tax collector may waive the filing of the return by such licensee. Provided further that if the fiscal year of the business, profession, or other activity differs from the calendar year, the return is made for a fiscal year or any other period different from a calendar year, the return shall be made on or before the fifteenth day of the fourth month following the end of the fiscal year or other period. Such return shall also show the amount of license tax imposed by Section 1.02.

(b) The person making the return shall, at the time of the filing thereof, pay to the occupational tax collector the amount of license tax shown as due thereon; provided, however, that where any portion of the license tax due shall have been deducted at the source credit for such amount shall be deducted from the amount shown to be due and only the balance, if any shall be due and payable at the time of the filing of the return, as hereinabove provided; and provided further it shall be the duty of each employer who has deducted the license tax from wages, salaries, or other compensation referred to in Section 1.04 to furnish the employee a statement showing the amount of salary earned and license fee deducted and paid by the employer during the preceding year, on or before February 15 of each year.

1.06 Declarations and Payment of Tax by Businesses. Every employer and every business liable for the license tax imposed in Section 1.02 shall, on or before the fifteenth day of the fourth month following the close of each tax year, file a return required in Section 1.05 and the declaration of the license tax imposed in Section 1.02.

1.07 License Required Before Commencing Business. Every person conducting a business as defined in Section 1.01 shall obtain a license from the occupational tax collector, before the commencement of such business, the fee for which shall be Ten Dollars (\$10). The fee shall be credited against the license tax as provided in Section 1.03. Provided, however, that where such person has heretofore obtained a license from the county for the conduct of such business the provisions of the section shall not apply.

- 1.08 Business License Required Before Building Permit is Issued. Every person listed as a contractor or subcontractor on an application for a building permit shall have a business license. No building permit shall be issued until all contractors or subcontractors have a business license.
- 1.09 Zoning Approval Required. No business license for businesses physically located in Franklin County shall be issued until the application is approved by the Department of Planning, Zoning & Building Codes Enforcement for compliance with the Franklin County Zoning Ordinance.
- 1.10 Extension of Date for Returns—Interest. An extension beyond the date for filing of any return shall be granted if either the Federal or State Government grants such an extension and said extension shall be attached to the extended tax return. Provided, however, that any balance unpaid when payment is due under the terms of this chapter shall bear interest at a rate of one percent (1%) per month until paid.
- 1.11 Collection of Tax—Records. It shall be the duty of the occupational tax collector to collect and account for the license taxes imposed by this chapter. He shall keep the records showing the amount received by him from each licensee and employee and the date of such receipt.
- 1.12 Rules and Regulations. The occupational tax collector is hereby charged with the enforcement of the provisions in this chapter, and is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations, relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter, including but not limited to provisions for the re-examination and correction of returns as to which an overpayment or underpayment is claimed or found to have been made, and the rules and regulations promulgated by him shall be binding upon the licensee and the employers.
- 1.13 Examination of Records. The occupational tax collector or any agent employee designated in writing by him is hereby authorized to examine the books, papers, and records of any employer or supposed employer or any licensee or supposed licensee in order to determine the accuracy of any return made, or, if no return was made, ascertain the amount of license fee imposed by the terms of this chapter. Each such employer or supposed employer is hereby directed and required to give the occupational tax collector or his duly authorized agent or employee the means, facilities and opportunity for such examination and investigation as are hereby authorized. The occupational tax collector is hereby authorized to examine any person under oath concerning any wages, salaries, commissions, or other compensation or net profits which were or should have been returned and to this end he may compel the production of books, paper, records and the attendance of all persons before him, whether as parties or witnesses, who believes to have knowledge of such wages, salaries, commissions,

or other compensation or net profits, to the extent that any officer empowered by administer oaths in this Commonwealth is permitted to so order.

- 1.14 Only Lawful Tax Imposed. It is not the intention of the county by this chapter to impose and require an occupational license fee prohibited by law.
- 1.15 Penalties—Interest. All license fees imposed by this chapter remaining unpaid after they become due shall be deemed delinquent and shall have added thereto a penalty of ten percent (10%), and shall thereafter bear interest at a rate of one percent (1%) for each month or fraction of a month until paid. Any employer who fails or refuses to withhold monthly the license fee measured by a percent of salaries, wages, etc., or who fails to pay said money, after withholding the same, to the occupational tax collector at the time it is due as provided under provisions of Section 1.04 shall become liable for the amount due and the same shall have added thereto a penalty of one percent (1%) for each month or fraction of a month until paid.
- 1.16 Information Confidential. Any information gained by any official or agent or employee of the county as a result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposed and except in accordance with proper judicial order, or as otherwise provided by law, and any person or agency divulging such information shall, upon conviction, be subject to a fine not exceeding one hundred dollars (\$100) or imprisonment not exceeding ten (10) days or both at the discretion of the court. Provided, however, the occupational tax collector may disclose to the Commissioner of Revenue of the state or his duly authorized agent all such information and right to inspect any o the books and records of the county if the Commissioner of Revenue of the state grants to the occupational tax collector the reciprocal right to obtain information from the files and records of the Department of Revenue of the state and maintains the privileged character of the information so furnished to him.
- 1.17 Criminal Penalties. Any person who shall fail, neglect, or refuse to make any return or to pay any fee or tax required by this chapter or any employer who shall fail to withhold said license fee or to pay over to the county the tax so withheld under the terms of this chapter or any person who shall refuse to permit the occupational tax collector or any agent or employee designated by him, in writing, to examine his books, records and paper, or who shall knowingly make any incomplete, false, or fraudulent return or who shall attempt to do anything whatsoever to avoid the full disclosure of the whole or any part of the license fee or tax shall, upon conviction, be subject to a fine or penalty of one hundred dollars (\$100) and costs for each offense.

1.18 Exemptions. Compensation for the following classes of persons shall be exempt to the extent herein set forth from the provisions of the Franklin County Fiscal Court occupational and business license tax:

(1) Compensation received by ministers taxable for federal income tax purposes pursuant to the Internal Revenue Code is exempt from the license fee on wages imposed by the County. Compensation received by ministers not taxable for federal income tax purposed pursuant to the Internal Revenue Code is not subject to any license fee imposed by the County. For purposed of this section, a minister is defined as a natural person who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or other religious organization, to teach and preach its doctrine or to administer rites in public worship, and who regularly performs one or more of these duties, provided, that no such person is exempt from the payment of an employee license on compensation earned in activities not connected with the regular functions of a religious organization. Thus, compensation earned by ordained persons employed as chaplains, teachers, administrators, musicians, or counselors whose employment is connected with the regular functions of a religious organization is exempt. Compensation earned by persons who are not ordained is not exempt regardless of the religious nature of such individual's work.

(2) Compensation received by domestic servants is exempt from the license fee on wages imposed by the County. For purposes of this section a domestic servant is defined as an individual employed to drive his employer as a chauffeur or employed on the grounds or in the home of his employer, to cook, clean, wash, garden, transport, or otherwise care for or wait upon the employer, the employer's family and guests or to care for the person, home grounds, and/or vehicles of the employer, the employer's family and guests, including but not limited to maids, butlers, nurses, nursemaids, gardeners, cooks, launderers, and chauffeurs engaged to service the employer, the employer's family, and guests, but not including such individuals who are employed by a cleaning service, personal nursing service, chauffeuring service, or other entity which offers the services of its employees to the public.

(3) All state, county, city, and district officers directly named and designated in the text of the constitution to the extend of their salaries, wages, or other compensation received for work or services rendered in the performance of the duties and obligations of their respective offices.

1.19 Legally Blind. The legally blind shall be exempt from the provisions of the Franklin County Fiscal Court occupational license tax, and no license fee shall be due from them to the extent of their net annual salaries, wages or other compensation. "Legally blind" as used herein, shall mean that the individual claiming exception has (a) central visual acuity of not better then 20/200 in the better eye with corrective lenses, or (b) such individual's visual acuity is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends to an angle no greater than twenty degrees.

- 1.20 Credit for License Paid to the City of Frankfort, Kentucky. All persons who pay a license fee to the City of Frankfort, Kentucky shall be allowed to credit their city license fee against their Franklin County license fee. Whenever the license fee imposed by the City of Frankfort equals or exceeds the license fee imposed by the Franklin County Fiscal Court the occupational tax collector shall waive the requirement of filing a return with the occupational tax collector. If the person works both within the city limits of Frankfort, Kentucky and in the unincorporated portions of Franklin County, in which case the license fee under this ordinance shall be applicable to work performed in the unincorporated area of Franklin County, Kentucky without any credit for the license fee paid to the City of Frankfort, Kentucky.
- 1.21 Severability. The provisions of this chapter are severable. If any work phrase, sentence or paragraph of this ordinance shall be held by any court of competent jurisdiction to be unconstitutional, illegal or otherwise unenforceable, such finding shall not affect the constitutionality, legality, or enforceability of the remaining portions hereof.
- 1.22 Effective Date. The provisions of this ordinance shall become effective January 1, 1987.

OC.REG. 5 ARRANGEMENT OF REGULATIONS

Occupation tax regulations have been prepared with regard to the sections of the License Fees and Occupational Tax Ordinance (Ordinance 11, 1986 Series and as amended Ordinance No. 21, 1988 Series, and as amended Ordinance No. 1, 1996 Series.)

OCCUPATION TAX REGULATIONS—NET PROFITS LICENSE

OC. REG. 10 BUSINESS REQUIRED TO MAKE A RETURN

Subject to the specific exemptions set forth below, every association, corporation, partnership, independent contractor, business, or any other entity (as defined in Ordinance 21, 1988 Series, Section 1.01) doing business in Franklin County is required to make a return of income, regardless of the amount of its net income. A business having an existence during any part of a taxable year is required to make a return. (See Independent Contractor, OC REG. 15, Section 2).

(1) RENTAL INCOME

Income received from renting real estate shall be considered non-business income and shall not be subject to the license fee. Rental or personal property and rents received by hotels, motels, and others engaged in the business of renting temporary lodging shall be subject to the license fee. Temporary lodging means rental for seven (7) days or less.

(2) INDEPENDENT CONTRACTORS

An independent contractor shall be deemed a person who, while performing services for another, is not under the direction or control of such other person as to the details and means of achieving the result to be accomplished. Examples are authors, professional men, seamstresses, laundresses, tailors, and registered nurses not a direct employee of a hospital or like corporation. Withholding does not apply to independent contractors. However, income received by such persons is subject to the business net profits license fee.

(3) FIDUCIARIES

A fiduciary is deemed a person who holds a trust, property, or money to which another person as a beneficial title or interest, or who received and controls income for another person or persons. The net income of a fiduciary shall be deemed subject to the business license fee whenever a fiduciary is regularly engaged in a business or profession commonly regarded as being incidental thereto (e.g., attorney at law, real estate agent).

(4) TRUSTS

Whenever a trust is engaged in an enterprise, activity or business, the income from the business shall be subject to the license fee.

OC. REG. 20 TIME AND PLACE FOR FILING RETURNS

For all years Net Profits License Fee Returns must be filed with the Franklin County Occupational Tax Collector, on or before the 15th day of the fourth month following the close of the taxable year, unless an extension of time for filing returns has been granted. When the due date falls on a Saturday, Sunday, or a legal holiday, the due date for filing returns will be the next business day following such Saturday, Sunday, or legal holiday. If a return is made and placed in the mail, properly addressed, in ample time to reach the Franklin County Occupational Tax Collector, on or before the due date, no penalty will be attached should the return not actually be received by the department until subsequent to that date.

OC. REG. 25 EXEMPT BUSINESS

Exempted from the Net Profits Tax are the activities of a board of trade, Chamber of Commerce, trade association and unions. Also exempt are religious, charitable and like corporations. If any part of the earnings of such business inures to the benefit of any person, it shall be sufficient to defeat the exemption.

OC. REG. 30 NET PROFITS RETURNS BY RECEIVERS

Receivers, trustees in dissolution, trustees in bankruptcy, and assignees, operating the property or business, much make returns of income for such business or property of a corporation, he shall be deemed to be operating such business or property whether he is engaged in carrying on the business or only marshalling, selling, and disposing of its assets for purposed of liquidations.

OC REG. 35 DEFINITIONS USED IN OC. REG. 40

(a.) NON-BUSINESS INCOME

Income received from ownership, holding, use or sale of property not held, owned, or used in the ordinary and regular course of business is non-business income. For merchandising firms, rents, interest, dividends, royalties, and gains from the sale or exchange property not held, owned, or used in the ordinary course of business are items of non-business income. Examples of expenses related to non-business income will include depreciation on repairs on rental property, depletion on royalties, interest paid on money invested in non business capital assets or property applicable taxes, and any other expenses directly or indirectly related to non-business receipts.

(b.) BUSINESS INCOME

Business income includes all income not properly classified as non-business income. Gain or loss from the sale or exchange of property held, owned or used in the ordinary and regular course of business but not for sale in the regular course of business in business income or loss.

OC.REG.40 BUSINESS NET INCOME

The net business income of business for Franklin County Occupation Tax purposes is Kentucky taxable income (e.g. taxable income defined in the Kentucky Statutes) with the following general adjustments:

- (1) Generally, businesses may deduct non-business income as defined in OC.REG.35(a). Examples for a merchandising firm are: (a) interest on corporation bonds, government securities and obligations of government instrumentalities; (b) royalties on patents and copyrights; (c) dividends from all sources.
- (2) Add all state and local taxes based on income and the license fee under this ordinance if taken as a deduction on State business return.
- (3) Add non-business expenses actually taken as deduction on the State business income tax return.
- (4) Add any net operating loss deduction taken on State return. The net operating loss deduction allowed by the State Code is not an allowable deduction under this ordinance.
- (5) When business income includes gains or losses from the disposition of capital assets, the amount of such gains or losses shall be the same as defined for State income tax purposes but without reference to the classification, limitation and percentage contained in the State Code governing "long and short term capital gains". Therefore, capital gains are fully subject and capital losses are completely deductible in the year sustained and net income per State return must be adjusted to reflect this rule. Since the capital gains and losses of a proprietorship or partnership are segregated from the business net profits on the State return any business capital gains or losses must be fully added or deducted.

OC.REG.45 ACCOUNTING FOR NET BUSINESS PROFITS IN GENERAL

The law and regulations of Kentucky pertaining to methods of accounting for the State income tax shall be applicable to the methods of accounting allowed by Franklin County. If the taxpayer files a State income tax return he shall use the same method of accounting for Franklin County (Adjustments are noted in OC.REG.40).

However, in amplification of the definition on Net Profits found in Ordinance 21, 1988 Series, Section 1.01(12), the following additional information and requirements are furnished:

1) ACCOUNTING PERIOD

The taxpayer's income shall be computed for Franklin County income tax purposes on the basis of the same calendar year or fiscal year required by Kentucky.

2) BASIS OF ACCOUNTING

Where a "cash basis", "accrual basis", "long term contract basis" or some hybrid method is used in filing State income tax returns, the same method must be used in reporting the income reportable under this ordinance.

3) INVENTORIES

The use of inventories at the beginning and end of each year is required in every case where the production, purchase or sale of merchandise is an income producing factor. The basis of pricing used for the purpose of the State income tax must be used under this ordinance.

4) GROSS PROFIT

Gross profit shall include (1) commission and fees, and interest where applicable (see OC.REG.45) plus the gross profit or loss from sales of merchandise, chattels, goods, securities, notes, choses in action, and service computed as follows:

Gross Sales or Billings	_____
Less: Returns and Allowances (A)	_____
Net Sales or Billings	
Opening Inventory	
Purchases	
Manufacturing Cost (where applicable)	
Total	
Less: Closing Inventory	
Cost of Goods Sold (B)	_____
Gross Profit (or Loss) (A)-(B)	_____

From Gross profits there shall be subtracted all ordinary and necessary business expenses including reasonable compensation paid employees, but no deduction may be claimed for "salary" or withdrawals of a sole proprietor or of the partner or member of an unincorporated business.

5) DEPRECIATION

A reasonable deduction for depreciation of property used in the trade or business and depletion may be claimed and allowed but the amount may not exceed that recognized for the purposes of the State Income Tax.

6) BAD DEBTS

Bad Debts, in a reasonable amount, may be allowed in the year ascertained worthless, and charged off, or a reasonable addition to the reserve may be claimed, but in no event shall the amount allowed exceed the amount recognized as a deduction for the purpose of the State Income Tax.

7) TAXES

Only taxes directly connected with the profits subject to the license fee may be claimed as a deduction. If for any reason the income from property is not taxable, then the tax on said property is not deductible. In any event the ordinance prohibits the deduction of the following taxes based on income:

1. The license fee under this ordinance.
2. Any Federal, State, or local taxes based on income;
3. Gift, estate, or inheritance taxes;
4. Taxes for local benefits or improvements which tend to appreciate the value thereof.

8) OTHER MAJOR ADJUSTMENTS

The tax applies to the business net income received in the ordinary trade or business. All non-business income as defined in OC.REG.35 is fully deductible. Non-business expenses are not deductible. (See outlined adjustments in OC.REG.40)

OC.REG.50 SALES AS A FACTOR IN APPORTIONMENT

Gross receipts from sales of tangible personal property are deemed to be assignable to Franklin County if the exchange of goods takes place in Franklin County or the goods are delivered to the buyer in Franklin County. Gross receipts from sales of services are deemed assignable to Franklin County if the service is performed in this county.

Gross receipts from the sale of intangible property included in business capital held for sale in the ordinary and regular course of business are deemed assignable to Franklin County if the sales are made in Franklin County or through a regular place of business in Franklin County.

Gross receipts from the sale of real estate held by a dealer for sale in the ordinary and regular course of business shall be deemed assignable to Franklin County if the realty is located in Franklin County. Gross receipts from the sale of insurance-by-insurance independent contractors shall be deemed assignable to Franklin County if the residence of the insured at the time of issuance of the policy is located in Franklin County.

Gross receipts from holding an intangible property (interest, etc.) where such property is held in the ordinary and regular course of business is deemed assignable to Franklin County if the situs of the business holding such property is located in Franklin County.

OC.REG.55 PAYROLLS AS A FACTOR IN APPORTIONMENT

The total payrolls shall include all expenditures of the business for personal services rendered, except compensation paid to officers of a corporation, fees paid for services performed by contractual obligation other than employer-employee relationship, and compensation paid to employees engaged in producing non-business income. The above three classes of compensation shall not be considered as payrolls within the meaning of this section and shall be excluded from both total and Franklin County payrolls.

In determining the payrolls assigned to Franklin County it is immaterial as to the location of the payroll office or the residence of the employee. The payrolls assigned to Franklin County shall include the amount paid to employees chiefly situated at, connected with, or sent out from premises in Franklin County. The governing factor as to the assignment of payrolls should depend upon which of the above phrases most aptly applies to the type of employment in which the employee is engaged. Thus, salary or commission paid to a salesman sent out from premises of the business in Franklin County to sell products out of the county, compensation paid to employees chiefly situated at or working on premises of the corporation within Franklin County and the compensation paid too an accountant connected with a Franklin County office but spending a portion of his time without Franklin County should be assigned wholly to Franklin County payrolls.

However, if the licensee established to the satisfaction of this department that, because a very great amount of its payroll was paid to employees attached to a Franklin County place of business who performed a very great part of their services outside of Franklin County, the computation of the payroll factor in accordance with the general rules of apportionment would create an inequitable result, this department may permit the payroll factor to be computed on the basis of the amount of compensation paid for services rendered within and without Franklin County. The converse of the above is also true.

OC.REG.60 SEPARATE ACCOUNTING

Any business deriving income from business operations partly within and partly without Franklin County must determine the net business income attributable to Franklin County by the prescribed formula for allocating net income, unless the department notifies the business that the actual amount of net income, received from business in Franklin County is determinable by separate accounting.

Any business deriving business income from activities or other sources partly within and partly without Franklin County may apply for permission to determine the net income within Franklin County by separate accounting.

Generally, taxpayers should show why the prescribed formula results in an arbitrary allocation wholly out of accord with actual income earned within Franklin County and that his operations are especially adapted to separate accounting. After reviewing the facts the department will render a decision to the taxpayer as to the method of reporting to be used in determining the net income within Franklin County. However, it is generally recognized that business operation in the following categories will not be adapted to separate accounting: (1) a company whose assets are distributed in several cities or states but are united in a single function; (2) a taxpayer engaged in the activities of both manufacturing and selling products within and without Franklin County.

It is also generally recognized that certain types of business are better adapted to separate accounting. Thus, a dance band, with no tangible real property contracting for work both within and without Franklin County would be better adapted for separate accounting.

OC.REG.65 CONSOLIDATED RETURNS

Corporations that are owned or controlled by another or others doing business, within Franklin County, shall be permitted or required to file a consolidated return covering the entire operations of the parent corporation and its subsidiaries whenever the intercorporate transactions of the related group tends to reduce the net income of the corporation, or corporations, doing business within Franklin County below the amount that would probably result if such corporation, or corporations, was not a member of the related group. Generally, whenever the Kentucky Department of Revenue requires or permits a corporation to file a consolidated return, the Franklin County Occupational Tax Collector shall also require that the corporation file a consolidated return for Franklin County business. If for any reason this basis results in an inequitable allocation of income, the corporation may request to use an alternative basis.

OC.REG.70 NEW BUSINESS

Each new business must obtain a \$10.00 initial license before the commencement of such business. This fee shall be credited in full to the license payer's account. Thus, for the first year's operation a business taxpayer earns a net income of \$4,000. The tax for both years shall be computed as follows:

FIRST YEAR

Net Income after all Adjustments	\$4000.00
Tax @ 1% of Net Profits	40.00
Less: credit for initial fee	10.00
Tax Due	30.00

SECOND YEAR

Net Income after all Adjustments	\$4000.00
Tax @ 1% of Net Profits	40.00

The liability shall be finally determined (and the initial payment corrected) at the time the payments for the second year becomes due. Liability for both years shall be measured by the results of the first year's operation.

OC.REG.75 RECORDS OF TAXPAYER

Taxpayers subject to the license fee are required to keep such records as will enable the filing of true and accurate returns and such records must be preserved to enable the filing of true and accurate returns and such records must be preserved to enable the Franklin County Occupational Tax Collector to verify the correctness of returns filed.

OC. REG. 80 REFUNDS FOR BUSINESS LICENSE TAX

Compensation will be deemed to have been derived from activity within the county during periods of paid sick leave, vacation time or compensation time, as well as for training sessions, or work-related conferences, seminars or meetings, including necessary travel time, outside Franklin County. Additionally, compensation will be deemed to have been derived from activity within the County, even though their employment entails and requires majority travel outside of the County. No refunds will be issued for time away Franklin County.

If an employee's work place or station is changed to a place outside the Franklin County for an extended period of time that would subject that individual to a license fee for that taxing district, then, upon verified proof of same, that employee shall receive a proportioned reduction of his County license fee.

OC. REG. 85 AUDIT AND ADDITIONAL ASSESSMENT

The Franklin County Occupational Tax Collector or its representative may audit any return and examine any return and examine any records bearing upon matter required to be included in the return. Proof may be required in support of any item.

If as a result of audit a return is found to be incorrect, this department must assess and collect any underpayment for the entire period that erroneous returns were filed, subject to the limitation of KRS 134.470. (STATUTE OF LIMITATIONS)

OC. REG. 90 INTEREST AND PENALTIES

All license fees unpaid after they become due shall bear interest at the rate of one percent (1%) per month and penalty of ten percent (10%). The fact that a taxpayer failed to receive or procure returns shall not relieve the penalty and interest due.

OC. REG. 95 PENALTY FOR DIVULGING INFORMATION SHOWN ON TAX RETURNS

All license fee returns and all audits connected therewith are confidential. Any information gained by any employee, agent, or official of Franklin County from any license tax return or audit and divulged by the employee, except for official purposes, and except in accordance with proper judicial order, shall constitute a misdemeanor, punishable by fine not exceeding One Hundred Dollars (\$100.00) or not exceeding ten (10) days or both at the discretion of the court. Every such breach of confidence constitutes a separate offense.

All other provisions of Ordinance No. 1, 2004, as amended remain unchanged.

INTRODUCED AND GIVEN FIRST READING IN SUMMARY at a duly convened meeting of the Fiscal Court of Franklin County, Kentucky, held on the 15th Day of January 2004

GIVEN SECOND READING AND ADOPTED at a duly convened meeting of the Fiscal Court of Franklin County, Kentucky, held on the 6th Day of February 2004, and of record in Fiscal Court Order Book 19 Page 280.

Introduced and given first reading at a regular meeting of the Franklin County Fiscal Court on January 15, 2004 and fully adopted after the second reading at the regular meeting of Franklin County Fiscal Court on February 6, 2004. This Ordinance shall take effect and be in full force when passed, published, and recorded according to law.

Teresa A. Barton
County Judge/Executive

ATTESTED TO:

Berry Hammermeister
Fiscal Court Clerk