

COMMONWEALTH OF KENTUCKY
ADAIR COUNTY FISCAL COURT
ADAIR COUNTY KENTUCKY
OCCUPATIONAL LICENSE TAX
ADAIR COUNTY
ORDINANCE NO. 08-23-22

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

An Ordinance relating to the imposition and administration of an occupational license requirement and payment of an occupational license tax by persons and business entities conducting business, occupations and professions within the County of Adair, Kentucky.

WHEREAS, the County of Adair, Kentucky desires to comply with the requirements of KRS 67.750 to 67.790 and KRS 67.083 pertaining to localities under 30,000 in population imposing occupational license taxes on persons and business entities conducting business, occupations and professions within the County of Adair so that the assessment and payment of Occupational License Taxes can be administered more efficiently.

NOW, therefore, be it ordained by the Adair County Fiscal Court of the County of Adair, Kentucky as follows: Ordinance No. 08-23-22 is hereby enacted and read in full as follows:

Sections:

1. *Definitions*
2. *License Application Required*
3. *Occupational License Tax Payment Required*
4. *Apportionment*
5. *Employers to Withhold*
6. *Returns Required*
7. *Refunds*
8. *Federal Audit Provisions*

9. *Administrative Provisions*

10. *Information to Remain Confidential*

11. *Penalties*

12. *Use of Occupational License Tax*

13. *Severability*

Definitions

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

- (1) "Business entity" means each separate corporation, limited liability company, business development corporation, partners, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted.
- (2) "Business" means any enterprise, activity, trade, occupation, profession, or undertaking of any nature conducted for gain or profit.
- (3) "County" means the County of Adair, Kentucky.
- (4) "Compensation" means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows: Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401 (a), 401 (k), 402 (e), 403 (a), 403 (b), 408, 414 (h), or 457 of the Internal Revenue Code; and Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code.
- (5) "Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December.
- (6) "Employee" means any person who renders services to another person or any business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency of instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee. A minister shall not be

presumed to be self-employed but shall be presumed to be an employee of the institution engaging his services, which institution shall be deemed the employer for the purposes of this ordinance.

- (7) "Employer" means employer as defined in Section 3401(d) of the Internal Revenue Code.
- (8) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, the year in which the tax is due, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31 of the year in which the tax is due, that would otherwise terminate.
- (9) "Person" shall mean every natural person, whether a resident or non-resident of the County. Whenever the word "person" is used in a clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to corporations, shall mean the officers and directors thereof.
- (10) "Return" or "Report" means any properly completed and, if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with the County; "Tax District" means any city, county or special district with the authority to levy an occupational license tax; "Taxable Year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which income is computed.

Occupational License Application Required

- (1) Every person and business entity engaged in any business in the County of Adair shall be required to apply for and obtain an occupational license from the County of Adair before the commencement of business or in the event of a change of business status. Licensees are required to notify the County of any changes in address, the cessation of a business, or any other changes which render the information supplied to the County in the license application inaccurate.

Occupational License Tax Payment Required

- (1) Except as provided in subsection (2) of this section, every person or business entity engaged in any business for profit and any person or business entity that is required to make a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to the County an occupational license tax for the privilege of engaging in such activities within the County. The occupational license tax shall be measured by 0.50% for the first year and .25% for the following year of all wages and compensation paid or payable in the County for work done or services performed or rendered in the County by every resident and nonresident who is an employee;
- (2) The occupational license tax shall be imposed for a period of two (2) years.
- (3) Effective date is January 1, 2024.
- (4) The occupational license tax imposed in this section shall not apply to the following persons or business entities:
 - (a) Any compensation received by the members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training.

- (b) Any compensation received by precinct workers for election training or work at election booths in state, county and local primary, regular or special elections.
- (c) Domestic workers employed in private homes.

Apportionment

- (1) When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without the County, the license tax shall be measured by that part of the compensation paid or payable as a result of work done or service performed or rendered within the County. The license tax shall be computed by obtaining the percentage which the compensation for work performed or services rendered within the County bears to the total wages and compensation paid or payable. In order for the County to verify the accuracy of a taxpayer's reported percentages under this subsection, the taxpayer shall maintain adequate records.
- (2) All partnerships, S-Corporations, and all other entities where income is "passed through" to the owners are subject to this ordinance. The occupational license tax imposed in this ordinance is assessed against income before it is "passed through" these entities to the owners.
- (3) If any business entity dissolves, ceases to operate or withdraws from the County during any taxable year, or if any business entity in any manner surrenders or loses its charter during any taxable year, the dissolution, cessation of business, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of any occupational license tax for the period of that taxable year during which the business entity had business activity in the County.

Employers to Withhold

- (1) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation an occupational license tax calculated under Section (3) of this ordinance. Amounts withheld shall be paid to the County in accordance with this section.
- (2) Every employer required to deduct and withhold tax under this section shall, for the quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter, make a return and report to the County, and pay to the County, the tax required to be withheld under this section, unless the employer is permitted or required to report within a reasonable time after some other period as determined by the County.
- (3) Every employer who fails to withhold or pay to the County any sums required by this ordinance to be withheld and paid shall be personally and individually liable to the County for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.
- (4) The County shall have a lien upon all the property of any employer who fails to withhold or pay over to the County sums required to be withheld under this section. If the employer withholds, but fails to pay the amounts withheld to the County, the lien shall commence as of the date the amounts withheld were required to be paid to the County. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the County.

- (5) Every employer required to deduct and withhold tax under this section shall annually on or before February 28 of each year complete and file on a form furnished or approved by the County a reconciliation of the occupational license tax withheld, copies of federal forms W-2 or W-3, transmittal of wage and tax information as determined by the County shall be submitted.
- (6) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and occupational license tax deducted by the employer during the preceding calendar year.
- (7) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.
- (8) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this section shall be personally and individually liable, both jointly and severally for any tax required to be withheld from compensation paid or payable to one or more employees of the business entity and neither the corporate dissolution or withdrawal of the business entity from the County, nor the cessation of holding any corporate office shall discharge that liability; provided that the personal and individual liability shall apply to each and every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally and individually liable under this subsection unless such person had authority to collect, truthfully account for or pay over the tax imposed by this ordinance at the time that the taxes imposed by this ordinance becomes or became due.
- (9) Notwithstanding subsections (7) and (8) of this section, every employee receiving compensation in the County subject to the tax imposed under Section (3) of this ordinance shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this ordinance for the employee, such employee or employees shall be responsible for filing with the County of Adair, Kentucky each quarter in the same manner as if they were the employer. If the employer fails to or is not required to withhold, report or pay the license fee it shall become the duty of the employee to file with the County of Adair, Kentucky. The only employer that is not required to withhold, report and pay the occupational license tax is the Federal Government including the United States Postal Service. The payment required to be made by an employee can be made quarterly for the periods ending March 31st, June 30th, September 30th, and December 31st each year. All license fees must be received by February 28th for the preceding calendar year, together with a copy of the employee's W2 form. Employers not required to withhold, report or pay the license fee must annually during the month of January of each year, make a return to the County in which 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, commissions or other compensation earned during each preceding year by each such employee. This list shall include current full time employees, part time employees, temporary employees, and terminated employees whether it be voluntary or involuntary.

Returns Required

- (1) Every business entity subject to an occupational license tax governed by the provisions of this ordinance shall keep records, render under oath statements, make

returns and comply with rules as the County from time to time may prescribe. Whenever the County deems it necessary the County may require a business entity, by notice served to the business entity, to make a return, render statements under oath or keep records, as the County deems sufficient to determine the tax liability of the business entity.

- (2) The County may require for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or of any other person having knowledge in the premises.
- (3) The full amount of the unpaid tax payable by any business entity as appears from the face of the return, shall be paid to the County at the time prescribed for filing the occupational license tax return, determined without regard to any extension of time for filing the return.

Refunds

- (1) Where there has been an overpayment of tax under Section (5) of this ordinance, a refund or credit shall be made to the employer to the extent of overpayment only if a written application for refund or credit is received by the County from the employer within two (2) years from the date the overpayment was made.
- (2) An employee who has compensation attributable to activities performed outside the County based on time spent outside the County, whose employer has withheld and remitted to this County, the occupational license tax on the compensation attributable to activities performed outside the County, may file for a refund within two (2) years of the date prescribed by law for filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the County may confirm with the employer the percentage of time spent outside the County and the amount of compensation attributable to activities performed outside the County prior to approval of the refund.

Federal Audit Provisions

- (1) As soon as is practical after each return is received, the County may examine and audit the return. If the amount of tax computed by the County is greater than the amount returned by the business entity, the additional tax shall be assessed and a notice of assessment mailed to the business entity by the County within (5) years from the date the return was filed except as otherwise provided in this subsection.
 - (a) In the case of a failure to file a return or of a fraudulent return the additional tax may be assessed at any time.
 - (b) In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this subsection or six (6) months from the date the County receives the final determination of the federal audit from the business entity, whichever is later. The times provided in this subsection may be extended by agreement between the business entity and the County. For the purposes of this subsection, a return filed on the last day prescribed by law for filing the return shall be considered as filed on the last day. Any extension

granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.

- (2) Every business entity shall submit a copy of the final determination of the federal audit within thirty (30) days of the conclusion of the federal audit.
- (3) The County may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (1) of this section

Administrative Provisions

- (1) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levies by this ordinance.
- (2) Any tax collected pursuant to the provisions of this ordinance may be refunded or credited within two (2) years of the date prescribed by law for the filing of a return or the date the money was paid to the County, whichever is later, except that:
 - (a) In any case where the assessment period contained in Section (9) of this ordinance has been extended by an agreement between the business entity and the County, the limitation contained in this subsection shall be extended accordingly.
 - (b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

For the purposes of this subsection and subsection (1) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

- (3) The authority to refund or credit overpayments of taxes collected pursuant to this ordinance is vested exclusively in the County.

Information to Remain Confidential

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

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

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

Penalties

- (1) Every employer who fails to return or pay the tax on or before the time prescribed under section (5) of this ordinance may be subject to a penalty in amount equal to twelve percent (12%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty five percent (25%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the County. A fraction of a month is counted as an entire month.
- (2) Every tax imposed by this ordinance and all increases, interest and penalties thereon shall become, from the time the tax is due and payable, and a personal debt of the taxpayer to the County.
- (3) The County may enforce the collection of the occupational tax due under section (3) of this ordinance and any fees, penalties and interest as provided in subsections (1), (2), (3), and (4) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the County shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this ordinance.
- (4) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return or willfully makes a false return or who willfully fails to pay taxes owing or collected, with intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.
- (5) Any person who willfully aids or assists in, or procures, counsels or advises the preparation or presentation under, or in connection with any matter arising under this ordinance of a return, affidavit, claim or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim or document shall be guilty of a Class A misdemeanor.
- (6) A return for the purpose of this section shall mean and include any return, declaration or form prescribed by the County and required to be filed with the County by the provisions of this ordinance or by the rules of the County or by written request for information to the business entity by the County.
- (7) Any person violating the provisions of section (11) of this ordinance by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not longer than six (6) months or both.

- (8) Any person violating the provisions of section (11) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand (\$1,000.00) dollars or imprisoned for not more than one (1) year or both.

Use of Occupational License Tax

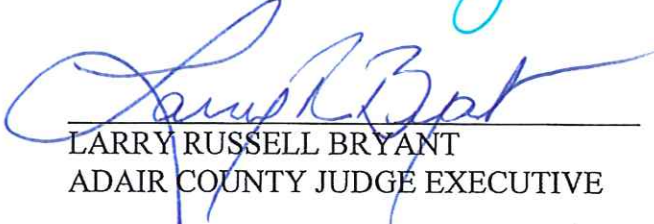
100% of all Occupational License Tax Revenue shall be appropriated to the County of Adair General Fund.

Severability

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

This Ordinance shall be effective: January 1, 2024.

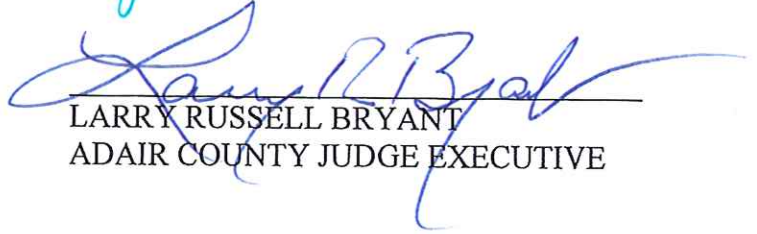
Introduced for the first reading on Motion made by Magistrate Flatt
and seconded by Magistrate Humphress and passed by majority of vote of
the Adair Fiscal Court in duly assembled session on the 25th day of July,
2023.


LARRY RUSSELL BRYANT
ADAIR COUNTY JUDGE EXECUTIVE

ATTEST:


BRIDGET S. COMPTON
ADAIR COUNTY FISCAL COURT CLERK

Introduced for the second reading on Motion made by Magistrate Platt and seconded by Magistrate Reeder and passed by majority of vote of Adair Fiscal Court in duly assembled session on the 22nd day of August, 2023.


LARRY RUSSELL BRYANT
ADAIR COUNTY JUDGE EXECUTIVE

ATTEST:


ADAIR COUNTY FISCAL COURT CLERK