

**CITY OF RUSSELLVILLE, KENTUCKY
ORDINANCE 2007-18**

AN ORDINANCE LEVYING, IMPOSING AND ADMINISTERING OCCUPATIONAL LICENSE REQUIREMENTS AND PAYMENT OF OCCUPATIONAL TAXES BY PERSONS OR BUSINESS ENTITIES CONDUCTING BUSINESS, OCCUPATIONS AND PROFESSIONS WITHIN THE CITY OF RUSSELLVILLE, KENTUCKY, CONTAINING A SEVERABILITY CLAUSE, REPEALER CLAUSE, PENALTY CLAUSE AND AN EFFECTIVE DATE.

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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL IN AND FOR THE CITY OF RUSSELLVILLE, KENTUCKY AS FOLLOWS:

Sections:

- 1 Definitions
- 2 Occupational License Application Required
- 3 Occupational Tax Payment Required
- 4 Apportionment
- 5 Employers to Withhold Payroll Taxes
- 6 Returns Required
- 7 Net Profit Return Extensions
- 8 Refunds
- 9 Federal Audit Provisions
- 10 Administrative Provisions
- 11 Information to Remain Confidential
- 12 Penalties
- 13 Use of Occupational License Tax
- 14 Severability
- 15 Repealer Clause
- 16 Effective Date

1 - Definitions

As used in this ordinance, the following terms and their derivatives shall have the following meanings unless the context clearly indicates that a different meaning is intended; the singular shall include the plural and vice versa, and the masculine shall include the feminine and the neuter:

KRS 67.750

- (1) **"Business entity"** means each separate corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (2) **"Business"** means any enterprise, activity, trade occupation, profession or undertaking of any nature conducted for gain or profit. "Business" shall not include a board of trade, chambers of commerce, trade associations, or unions, or other associations performing services usually performed by trade associations or unions as recognized by the Internal Revenue Service. "Business" shall not include funds, foundations, corporations, or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic or fraternal purposes, or for the prevention of cruelty to children or animals, where no part of the earnings, incomes or receipts of such unit, group or association, inures to benefit of any private shareholder or other person.
- (3) **"Russellville" or "city"** means the City of Russellville, 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:
 - (a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and
 - (b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code;

KRS 67.775

- (5) **"Conclusion of the federal audit"** means the date that the adjustments made by the Internal Revenue Service to net income as reported on the business entity's federal income tax return become final and unappealable;

- (6) **"Final determination of the federal audit"** means the revenue agents' report of other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

KRS 67.750

- (7) **"Fiscal year"** means fiscal year as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (8) **"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.
- (9) **"Employer"** shall mean and include any individual, person, partnership, association, corporation, governmental body or unit or administrative agency, or any other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis. Also defined as the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person except that:
- (a) If the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" means the person having control of the payment of such wages, and
- (b) In the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" means such person;
- (10) **"Internal Revenue Code"** means the Internal Revenue Code in effect on December 31, 2004, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2004 that would otherwise terminate.
- (11) **"Net Profit"** "Net Profits" means the net income from the operation of a business or enterprise after the provision for all costs and expenses incurred in the conduct thereof, shall be the same as reported for federal income tax purposes excluding items exempted under this ordinance, but without deduction of taxes based on income.
- "Net profits" also means gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by Chapter 1 of the Internal Revenue Code.
- Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;
 - Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;
 - Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;
 - Include any amount of income and expenses passed through separately as pass-through entity for federal tax purposes; and

- e. Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution, or the constitution and Statutory laws of the United States;
- (11) **"Person"** shall mean every natural person, whether a resident or non-resident of the City of Russellville. 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.
- (12) **"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 City of Russellville;
- (13) **"Sales Revenue"** means receipts from the sale, lease, or rental of goods, services or property; *(For Further Clarification: Sales within the city shall be sales of merchandise delivered to a customer within the City of Russellville)*
- (14) **"Tax District"** means any county or city with the authority to levy net profits or payroll taxes;
- (15) **"Taxable net profit"** in case of a business entity having payroll or sales revenue only within the City of Russellville means net profit as defined in subsection (11) of this section;
- (16) **"Taxable net profit"** in case of a business entity having payroll or sales revenue both inside and outside the City of Russellville means net profit as defined in subsection (11) of this section, and as apportioned under Section (4) of this ordinance; and
- (17) **"Taxable year"** means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed.
- (18) **"Craft Vendor"** means persons operating a booth, stand, table or tent during the annual Tobacco Festival Crafts Show, Flying Fish Festival and similar one-day community events for the purpose of showing and selling homemade or natural crafts or locally grown agricultural products or other craft items of a similar nature.
- (19) **"Street Vendor"** means food vendors or persons selling items purchased or obtained from sources other than themselves, and amusement, arcade and carnival owners/operators operating a booth, stand, table, tent, ride or amusement during the annual Tobacco Festival Crafts Show, Flying Fish Festival and similar one-day community events.
- (20) **"Peddler"** shall mean persons who sell manufactured items door-to- door or from a truck or automobile.
- (21) **"Association"** means a partnership, limited partnership, joint venture or any other form of unincorporated enterprise, owned or engaged in by two or more persons.
- (22) **"Corporation"** means a corporation or joint stock association organized under the laws of the United States, the State of Kentucky, or any other state, territory or foreign country or dependency.
- (23) **"Occupation, Trade, Professions or other activity"** means and includes the doing of any kind of work, the rendering of any kind of personal service or the holding of any kind of position or job within the City of Russellville, Kentucky.
- (24) **"Transient Contractor"** means any individual, partnership, or corporation that does not have a permanent location in the City of Russellville and that does not do business on a repetitive basis within the city limits.

- (25) **"Independent Contractor"** means a person who has no payroll taxes withheld and who receives a Federal Form 1099 in lieu of a Federal Form W-2. Compensation may be non-monetary, such as rent-free housing in exchange for services at an apartment building/complex or free food for restaurant workers. Also defined as the individual who is not subject to the direct control of another and may conduct the sale or service as he sees fit and may receive compensation from multiple sources. These individuals are considered self-employed. *(Note: Consequences of treating an employee as an independent contractor: If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you may be held liable for employment taxes for that worker. See Internal Revenue Code section 3509 for more information)*
- (26) **"Transient Independent Contractor"** means any independent contractor who does not have a permanent business location in the City of Russellville, and who does not do business on a repetitive basis within the city limits. This person has no payroll taxes withheld and who receives a Federal form 1099 in lieu of a Federal form W-2. Compensation may be non-monetary.
- (27) **"Fiduciary"** A fiduciary is a person who holds in trust property, moneys or properties, to which another has beneficial title or interest, or who receives and controls sales revenue for another person or persons.

2 – Occupational License Application Required

Every person or business entity engaged in any trade, occupation, or profession, or other activity for profit, wholly or partially within the city limits or anyone required to file a return under this ordinance in the City of Russellville shall be required to complete and execute the registration questionnaire prescribed by the Occupational Tax Office and pay the \$25.00 registration fee. Each person shall be required to complete and submit a separate registration questionnaire and registration fee payment for each separate business before the commencement of business or in the event of a status change, other than change of address, telephone number, or e-mail address. Licensees are required to notify the Occupational Tax Office of changes of address, telephone numbers, or e-mail addresses or the cessation of business activity, and of other changes which render inaccurate the information supplied in the completed registration questionnaire. The following groups are exempted from the registration fee: ministers, federal employees and individuals over 65 years of age who are exempt from filing federal taxes. These persons must complete the registration questionnaire and are exempt only from the registration fee.

(1) The following money receipts are not deemed to be "salaries, wages, commissions, and other compensations and net profits" within the meaning of this ordinance, to wit:

- (a) Old age or Retirement payments
- (b) Periodic payments made to persons retired from services after reaching a specified age or after a stated period of employment are not subject to the payroll tax.
- (c) Disability, sickness and accident plans are not subject to the payroll tax. Unemployment compensation payments by the Commonwealth of Kentucky or any agent are not subject to the payroll tax.
- (d) 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, are not subject to the payroll tax.

- (e) Benefits arising under Workmen's Compensation Act as compensation for disabilities sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability are not subject to the payroll tax.
- (2) Insurance: General Individuals engaged in the sale of insurance may be either employees or independent contractors, a determination which shall be governed by generally accepted principles of the accounting profession and the rules and regulations of the Internal Revenue Service.
 - (a) Agencies: if an insurance office is located inside the City of Russellville, all net profits are subject to the Russellville Net Profit Tax and all payroll is subject to City of Russellville payroll tax. EXCEPTION: Brokers may exclude from the Russellville Net Profit Tax only the actual time they are conducting business outside the City of Russellville. A detailed record must be kept and submitted to the city for work time physically spent outside the city. This record must accompany the Net Profit Return filed by April 15 of each year or 105 days after the end of the fiscal year.
 - (b) Self-employed Insurance Agents based in a Russellville office: All commissions, bonuses, etc earned within the city of Russellville are subject to the Russellville Net Profit Tax and payroll tax.
 - (c) Group Insurance Commissions: Commissions paid on the sale of contracts of group insurance are subject if the group is located within the City of Russellville as a unit without regard to the residence of the writing agent.
 - (d) Bonuses and Insurance Payments Subject to Net Profit Tax: That proportionate part of all bonuses and incentive payments received by an agent or employee, which bears the same ratio to the total amount of commissions received by him on policies sold to residents, bears to the total amount of commissions received by him on all policies sold to both residents and non-residents is subject to the Net Profit Tax.
- (3) Income received from Real Estate:
 - (a) All individuals who derive income from real estate must pay a registration fee to do business in the City of Russellville, and are required to pay net profit taxes, and if applicable, payroll taxes to the City of Russellville.
 - (b) The rent received from warehouses, apartments, hotels, motels, office buildings, storages facilities and structures rented for any commercial or business operation shall constitute a subject activity, and the net income there from is subject to the tax imposed by this ordinance.
 - (c) Rents from single dwellings or single apartments or other rental property not specifically set out above shall constitute a subject activity and the net income there from is subject to the fee imposed by this ordinance.
 - (d) All corporations engaged in the rental of real estate or partnerships organized for that purpose shall be considered to be engaged in a subject activity.
 - (e) When any property falls within the classifications above given, the manner of its acquisition, i.e., purchase, gift, inheritance, fiduciary or as fiduciary montage in position, etc., does not affect the subject of the income derived there from.
 - (f) Where the property is located within the city limits, the silence of the beneficiary is immaterial.
 - (g) Brokers or Agencies: If a real estate office is located inside the City of Russellville, all net profits from that location are subject to the Russellville Net Profit Tax. EXCEPTION: Brokers may exclude from the Russellville Net Profit Tax only the actual time they are conducting business outside the City of Russellville. A detailed record must be kept and submitted to the city for work

time physically spent outside the city. This record must accompany the Net Profit Return filed by April 15 of each year or 105 days after the end of the fiscal year.

- (h) Real Estate Agents: Real estate agents are Independent Contractors and must have a license in order to conduct business within the City of Russellville, regardless of business office location. All property sold within the city is subject to the Net Profit Tax. For the sale of property outside the city, the determining factors shall be the amount of time spent in an office, at a place of public records, and at the place of closing the sale if any or all of these are within the City of Russellville. Only time spent outside the city is not subject to the Net Profit Tax.
- (4) Peddlers: Persons who sell manufactured items door-to-door or from a truck or automobile will each be required to pay a registration fee. The charge for the fee will be \$100.00 per person for three (3) consecutive days in which they solicit sales in the city of Russellville. Notwithstanding any other penalty to the contrary provided elsewhere in this Ordinance, one who fails to obtain a Peddler's License, shall be subject to a fine of \$100. 00 per person.
- (5) Persons who conduct yard/tag sales more than twice per calendar year are required to register as a business and are required to remit annual net profit tax to the City of Russellville.
- (6) Attorneys-At-Law:
 - (a) Partnerships and corporations: if the partnership or corporate office is located inside the City of Russellville, all net profits and payroll taxes from that location are subject to the Russellville Occupational Ordinance.
 - (b) Attorneys based in a Russellville office or elsewhere: All commissions, bonuses, or fees earned within the City of Russellville are subject to the Russellville Net Profit Tax. A detailed record may be required for work time physically spent outside the city.
 - (c) Sole Proprietors: Any individuals who work both inside Russellville and outside Russellville must submit at the time of filing a Net Profit Return a detailed record of work time spent outside the City of Russellville.
- (7) Trading Securities: When a person engages in buying and selling of stocks, bonds and other types of securities and such transactions are not isolated and few but are extended so as to constitute an activity, the net profits there from including dividends and interest are subject to the Net Profit Tax.
- (8) Fiduciaries: Money received by a fiduciary is sales revenue, where a fiduciary is regularly engaged in a business or profession as a fiduciary, or is engaged in a business or profession commonly regarded as being incidental or collateral thereto, for example, an attorney-at-law, real estate agent, etc.
- (9) Independent Contractor: An independent contractor is a person who, while performing services for another, is not under the direction and control of such other person as to the result to be accomplished by the work, and as to the details and means by which the result is accomplished, such as authors, professional persons, plumbers, electricians, seamstresses, laundresses, tailors, registered nurses. The income received by such person is subject to the Net Profit Tax. This person has no payroll taxes withheld and will receive a Federal form 1099 in lieu of Federal form W-2. *(Note: Consequences of treating an employee as an independent contractor: If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you may be held liable for employment taxes for that worker. See Internal Revenue Code section 3509 for more information.)*
- (10) Trusts: Whenever a trust estate is engaged in enterprise, activity or business, which is productive of income, said activity or business shall be considered subject to the Net Profit Tax.

- (11) Musicians and Entertainers:
- (a) Contractor: The term "contractor" means that individual musician through whom the purchaser and the musician negotiate the contract of services and the performance thereof. The contractor may or may not perform actual musical service under a contract which he has negotiated.
 - (b) Purchaser of Music: The person, partnership, organization or association for whom or for which the musical services are to be performed or furnished and who exercises an employer's control over the conduct of the musicians; for example, hotels, cafes, taprooms, restaurants, theaters, clubs, radio stations and radio sponsors.
 - (c) Responsibility for Withholding Fee: When a contract or agreement for the purchase of music has been executed between a purchaser and a contractor, the musician shall be deemed to be the employee of the purchaser. The purchaser shall be the person responsible for withholding the license fee from the wages paid to musicians, and the remittal thereof to the occupational tax department.
 - (d) Entertainers Other Than Musicians: An entertainer other than a musician is usually engaged by a purchaser through a booking agent. The booking agent, once the contract or agreement of employment has been executed, does not exercise an employer's control over the entertainer. The owner of a hotel, café, taproom, restaurant, theater or club or any place which furnishes entertainment to the public or to its patrons, shall be deemed the person liable as an employer of entertainers. Such employer must deduct the license fee from the compensation paid to the entertainer and remit the same to the occupational tax department.
- (12) Other Compensation:
- (a) Tips received are subject to the Net Profit Tax and will be reported in the same manner as an independent contractor.
 - (b) Vacation and holiday benefits are subject to the payroll tax and the tax shall be withheld and paid by the employer.
 - (c) Payments made to employees by an employer at the time of the voluntary or involuntary separation of the employee from the service of the employer are subject to the payroll tax and the tax shall be withheld and paid by the employer.
 - (d) Other individuals: Any individual who works both inside Russellville and outside Russellville must submit at the time of filing a Net Profit Tax Return, a detailed record of work time spent outside the City of Russellville.
- (13) Other Professionals:
- (a) Partnerships and corporations: if the partnership or corporate office is located inside the City of Russellville, all net profits from that location are subject to the Russellville Net Profit Tax.
 - (b) Other Professionals based in a Russellville office or elsewhere: All commissions, bonuses, or fees earned within the City of Russellville are subject to the Russellville Net Profit Tax and payroll tax. A detailed record may be required for work time physically spent outside the city.
 - (c) Sole Proprietors: Any individuals who work both inside Russellville and outside Russellville must submit at the time of filing a Net Profit Return a detailed record of work time spent outside the City of Russellville.

3 – Occupational Tax Payment Required

There is hereby levied and imposed an annual registration fee of twenty-five dollars (\$25) upon all persons, associations, corporations or other entities in any business, occupation, trade

profession or other activity in the City of Russellville, Kentucky, for the privilege of engaging in such business, occupation, trade, profession or other activity. Tax shall be measured by and be equal to two percent (2%) of the gross salaries, wages, commissions and other compensations earned in the city and the net profits of all business, professions or occupations from activities conducted in the city on and after the sixth day of January, 1972. Where such salaries, wages, commissions and other compensations or net profits are earned for work done or services performed or rendered both within and without the city, said tax shall be measured by such part of the salaries, wages and commissions and other services performed or rendered in the city. Such tax shall be computed by obtaining the percentage that the compensation or net profits for work performed or services rendered within the city bears to total compensation earned.

KRS 68.197

- (1) Except as provided in subsection (5) of this section, every person or business entity engaged in any business for profit, wholly or partially within the City of Russellville, 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 City of Russellville an occupational tax for the privilege of engaging in such activities within the City of Russellville. The occupational taxes shall be measured by 2% of:
 - (d) all wages and compensation paid or payable for work done or services performed or rendered in the City of Russellville by every resident and nonresident who is an employee, whether temporary, transient or permanent without regard to home office location or address of payroll issuer;
 - (e) The net profit from business conducted in the city by a resident or nonresident business entity.

Computation of percentages of the net profits for work performed or services rendered within the city relates to the total compensation earned. The net profits of businesses and professions from activities conducted in the city shall be computed as follows: Multiply the entire net profit from all sources by a business allocation percentage to be determined by:

1. Determine the percent of sales and services by dividing the receipts of sales and services rendered within the city by total sales and services rendered.
2. Determine the percent of wages, salaries and other personal service compensation by dividing wages, salaries and other personal service compensation earned within the city by total wages, salaries and other personal services compensation.
3. Add together the percentage determined in accordance with subparagraphs (1) and (2) above and divide the total by two.

- (2) All partnerships, S corporations, and all other entities where income is "passed through" to the owners are subject to this ordinance. The Net Profit Tax imposed in this ordinance is assessed against income before it is "passed through" these entities to the owners.

KRS 67.763

- (3) If any business entity dissolves, ceases to operate, or withdraws from the City of Russellville 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 Net Profit Tax or payroll taxes for the period of that taxable year during which the business entity had business activity in the City of Russellville;

KRS 67.765

- (4) If a business entity makes, or is required to make, a federal income tax return, the Net Profit Tax shall be computed for the purposes of this ordinance on the basis of the same

calendar or fiscal year required by the federal government, and shall employ the same methods of accounting required for federal income tax purposes.

- (5) In addition to the Registration Fee, Transient Contractors shall be required to post a cash payroll tax deposit in the amount equal to two percent (2%) of the estimated labor cost of the contract. This deposit will be held until all Net Profit Returns and Employee Withholding requirements have been deemed met by the City. If the licensee fails to make any tax payment the bond will be forfeitable in its entirety. All Transient Contractors must supply the city with a written list of all project subcontractors and suppliers before a project's building permit will be issued. Transient Contractors and Transient Independent Contractors will be subject to one or both of the following: 1) to post a cash payroll tax deposit equal to two percent (2%) of the estimated total labor cost; 2) to post a cash net profit deposit equal to two percent (2%) of the estimated net profit of the project. The net profit cash deposit shall be a minimum of \$25.00. Contractor deposits will be held until the Contractor furnishes the City with a list (consisting of names, addresses, and phone numbers) of all subcontractors. The Contractor will keep the list current by furnishing the City with an amended list within 10 days of the date of any hiring or substitution of subcontractors. A copy of each contract may be required by the City. Subcontractors shall furnish the City of Russellville with a list (consisting of names, addresses and phone numbers) of all independent contractors. The subcontractor will keep the list current by furnishing the City with an amended list within 10 days of the date of any hiring or substitution of independent contractors. A copy of each contract may be required by the City.
- (6) The occupational taxes imposed in this section shall not apply to the following persons or business entities:
 - (a) any bank trust company, combined bank and trust company, combined trust banking and title business organized and doing business in this state; any savings and loan association whether state or federally chartered; *(For further clarification: State or national banks, trust companies or combined banks and trust companies and title insurance companies organized and doing business in this state in accordance with KRS 92.300 if they pay both an ad valorem tax and a tax to the city on the fair cash value of the shares of stock as provided in KRS 136.270)*
 - (b) any compensation received by members of the Kentucky national guard for active duty training, unit training assemblies and annual field training;
 - (c) any compensation received by precinct workers for election training or work at elections booths in state, city, and local primary, regular, or special elections;
 - (d) Public Service Corporations that pay an ad valorem tax on property valued and assessed by the Kentucky Department of Revenue pursuant to the provisions of KRS 136.120. Licensees whose businesses are predominately non-public service who are also engaged in public service activity are required to pay a net profit tax on their net profit derived from the non-public service activities apportioned to the City of Russellville; *(For further clarification: Public utility companies that pay both an ad valorem tax and franchise tax as provided in KRS 92.281 (3) and the state tax provided in KRS 278-130 (2).)*
 - (e) Persons or business entities that have been issued a license under KRS Chapter 243 to engage in manufacturing or trafficking in alcoholic beverages are required to file a return, but may exclude the portion of their net profits derived from the manufacturing or trafficking in alcoholic beverages;
 - (f) Insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky except as provided in KRS 91A.080;

- (g) any profits, earnings, distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent of any profits, earnings or distributions would not be taxable to an individual investor;
- (h) manufacturing establishments, which have heretofore or are hereafter by ordinance exempt from city taxation for a period not exceeding five years immediately following their establishment as an inducement to their locating within the City of Russellville as provided in KRS 92.300;
- (i) Craft vendors participating in the annual Tobacco Festival Crafts Show, Flying Fish Festival and other similar one-day community events shall not be subject to the occupational license fee reporting requirements or for payment of the minimum or any occupational license fee.

4 – Apportionment

KRS 67.753

- (1) Except as provided in subsection (4) of this section, net profit shall be apportioned as follows:
 - (a) for business entities with both payroll and sales revenue in more than one (1) tax district, by multiplying the net profit by a fraction, the numerator of which is the payroll factor, described in subsection (2) of this section, plus the sales factor, described in subsection (3) of this section, and the denominator of which is (2); and
 - (b) for business entities with sales revenue in more than one (1) tax district, by multiplying the net profit by the sales factor as set forth in subsection (3) of this section;
 - (c) for the purposes of subsections (1) thru (4) of this section, the business entity shall file an apportionment for provided by the occupational tax office
- (2) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the City of Russellville during the tax period by the business entity for compensation, and the denominator of which is the total compensation paid or payable by the business entity everywhere during the tax period. Compensation is paid or payable in the City of Russellville based on the time the individual's service is performed within the City of Russellville;
- (3) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in the City of Russellville during the tax period, and the denominator of which is the total sales revenue of the business entity everywhere during the tax period.
 - (a) the sales, lease, or rental of tangible personal property is in the City of Russellville if:
 - 1. the property is delivered or shipped to a purchaser, other than the United States Government, or to the designee of the purchaser within the City of Russellville regardless of the f.o.b. point or other conditions of the sale; or
 - 2. the property is shipped from an office, store, warehouse, factory, or other place of storage in the City of Russellville and the purchaser is the United States Government
 - (b) sales revenues, other than revenue from the sale, lease or rental of tangible personal property or the lease or rental of real property, are apportioned to the City of Russellville based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the City of Russellville and the denominator of which is the total time spent performing that income-producing activity.
 - (c) Sales revenue from the sale, lease, or rental of real property is allocated to the tax district where the property is located.

- (4) if the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the City of Russellville, the business entity may petition the City of Russellville or the City of Russellville may require in respect to all or any part of the business entity's business activity, if reasonable:
 - (a) separate accounting;
 - (b) the exclusion of any one (1) or more of the factors;
 - (c) the inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in the City of Russellville; or
 - (d) The employment of any other method to effectuate an equitable allocation and apportionment of net profit.
- (5) when compensation is paid or payable for work done or services performed or rendered by an employee, both inside and outside the City of Russellville, the payroll 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 City of Russellville. The payroll tax shall be computed by obtaining the percentage which the compensation for work performed or services rendered within the City of Russellville relates to the total wages and compensation paid or payable. In order for the City of Russellville to verify the accuracy of a taxpayer's reported percentages under this subsection, the tax payer shall maintain adequate records.

5 – Employers to Withhold Payroll Taxes

KRS 67.780

- (1) Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation any tax imposed against the compensation by the City of Russellville. Amounts withheld shall be paid to the City of Russellville in accordance with the section (3) of this ordinance. Tax shall be measured by and be equal to two percent (2%) of the gross salaries, wages, commissions and other compensations earned in the city.

KRS 67.783

- (2) Every employer required to deduct and withhold tax under this section shall, for the month or quarter ending after January 1 and for each month or quarter ending thereafter, on or before the end of the month following the close of each month or quarter, make a return and report to the City of Russellville, and pay to the City of Russellville, 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 City of Russellville.
- (3) Every employer who fails to withhold or pay to the City of Russellville any sums required by this ordinance to be withheld and paid shall be personally and individually liable to the City of Russellville for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.
- (4) The City of Russellville shall have a lien upon all the property of any employer who fails to withhold or pay over to the City of Russellville sums required to be withheld under this section. If the employer withholds, but fails to pay the amounts withheld to the City of Russellville, the lien shall commence as of the date the amounts withheld were required to be paid to the City of Russellville. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the City of Russellville.
- (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 City of Russellville a reconciliation of the occupational license tax withheld where compensation is paid or payable to employees. Either copies of federal forms W-2 and W-3, transmittal of wage and tax statements, or a detailed employee listing with the

required equivalent information, as determined by the City of Russellville, 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 payroll tax deducted by the employer from the compensation paid to the employee for payment to the City of Russellville during the preceding calendar year.

KRS 67.785

- (7) An employer shall be liable for the payment of the payroll tax required to be deducted and withheld under this section.
- (8) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this ordinance shall be personally and individually liable, both jointly and severally, for any payroll tax required to be withheld from compensation paid to one or more employees of any business entity, and neither the corporate dissolution or withdrawal of the business entity from the City of Russellville, nor the cessation of holding any corporate office, shall discharge that liability of any person; provided that the personal and individual liability shall apply to each or every person holding the corporate office at the time the payroll tax becomes or became obligated. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any payroll tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due.
- (9) Every employee receiving compensation in the City of Russellville subject to the payroll tax imposed under Section (3) of this ordinance shall be personally liable for the payroll tax notwithstanding the provisions of subsections (7) and (8) of this section. In all cases where the employer does not withhold the payroll tax levied under this ordinance from the employee, such employee or employees shall be responsible for filing with the City of Russellville each quarter in the same manner as if they were the employer. If an employer fails to or is not required to withhold, report, or pay the payroll tax, it shall become the duty of the employee to file with the City of Russellville. The only employer that is not required to withhold, report, and pay the payroll license tax is the Federal government including the United States Postal Service. The payment required to be made by an employee, can be made quarterly for the periods ending March 31st, June 30th, September 30th, and December 31st of each year. A copy of the employee's W-2 form must be received by February 28th for the preceding calendar year. Employers not required to withhold, report, or pay the payroll tax must annually during the month of January of each year, make a return to the occupational tax administrator, in which is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation earned during such preceding year by each such employee. This list shall include all current full time employees, part time employees, temporary employees, and terminated employees whether it be voluntary or involuntary.

6 – Returns Required

KRS 67.768

- (1) All business entity net profit returns for the preceding taxable year shall be made by April 15 of each year, except net profit returns made on the basis of a fiscal year, which shall be made by the fifteenth day of the fourth month following the close of the fiscal year. Blank forms for returns shall be supplied by the City of Russellville.

- (2) Every business entity shall submit a copy of its federal income tax return (form 1040) and all supporting statements and schedules at the time of filing its net profit return with the City of Russellville. Whenever in the opinion of the City of Russellville, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the City of Russellville may compel the business entity to produce for inspection the return, the City of Russellville may compel the business entity to produce for inspection a copy of any statements and schedules in support thereof that have not been previously filed. The City of Russellville may also require copies of reports of adjustments made by the federal government

KRS 67.760

- (3) Every business entity subject to an occupational taxes governed by the provisions of this ordinance shall keep records, render under oath statements, file returns and comply with rules as the City of Russellville from time to time may prescribe. Whenever the City of Russellville deems it necessary, the City of Russellville may require a business entity, by notice served to the business entity, to file a return, render statements under oath, or keep records, as the City of Russellville deems sufficient to determine the tax liability the business entity.
- (4) The City of Russellville 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.

KRS 67.773

- (5) It shall be the responsibility of persons who make Federal Form 1099 "non-employee compensation" payments to natural persons other than employees for services performed within the City of Russellville, to maintain records of such payments and to report such payments to the City of Russellville. Said payments must be reported on by remitting Federal Form 1099 by February 28 of the year following the close of the calendar year in which the non-employee compensation was paid. If a business entity or person is not required to remit Federal Form 1099 to the IRS, including but not limited to payments less than \$600, they are still liable to remit the equivalent information to the City of Russellville. The information required to be reported by said licensee shall include:
- (a) payer's name, address, social security and/or Federal identification number
 - (b) recipient's name and address
 - (c) recipients' social security and/or Federal identification number
 - (d) amount of non-employee compensation paid in the calendar year
 - (e) amount of non-employee compensation earned in the City of Russellville for the calendar year

7 – Net Profit Return Extensions

KRS 67.770

- (1) The City of Russellville may grant any business entity an extension of not more than six (6) months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the City of Russellville and the business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the net profit license tax, requests the extension by providing a copy of the federal extension request and pays the amount properly estimated as its tax, or the minimum amount due of twenty-five dollars (\$25), whichever is greater.
- (2) If the time for filing a return is extended, the business entity shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the

balance shown due on the return, from the original return date the tax was due until the return is actually filed and the tax paid to the City of Russellville. A fraction of a month is counted as an entire month.

8 – Refunds

KRS 67.788

- (1) Where there has been an overpayment of payroll tax under Section (5) of this ordinance, a refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under section (5) by the employer;
- (2) Unless written application for refund or credit is received by the City of Russellville from the employer or business entity within two (2) years from the date the overpayment was made, no refund or credit shall be allowed;
- (3) An employee who has compensation attributable to activities performed outside the City of Russellville, based on time spent outside the City of Russellville, whose employer has withheld and remitted to this city the occupational payroll tax on the compensation attributable to activities performed outside the City of Russellville, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the city may confirm with the employer the percentage of time spent outside the City of Russellville and the amount of compensation attributable to activities performed outside the City of Russellville prior to approval of the refund.

9 – Federal Audit Provisions

KRS 67.775

- (1) As soon as practicable after each return is received, the City of Russellville may examine and audit the return. If the amount of tax computed by the City of Russellville 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 City of Russellville within five (5) years from the date the return was filed, except as otherwise provided in this subsection.
 - (a) In the case of a failure to file a return or of a fraudulent return the additional tax may be assessed at any time.
 - (b) In the case of a return where a business entity understates net profit, or omits an amount properly includable in the net profits, or both, which understatement or omission, or both, is in excess of twenty-five percent (25%) of the amount of net profit stated in the return, the additional tax may be assessed at any time within six (6) years after the return was filed.
 - (c) In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional 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 City of Russellville receives the final determination of the federal audit from the business entity, whichever is later.
 - (d) The times provided in this subsection may be extended by agreement between the business entity and the City of Russellville. For purposes of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day. Any extension granted for filing the return

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

- (2) 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 City of Russellville may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (1) of this section.

10 – Administrative Provisions

KRS 67.778

- (1) No suit shall be maintained in any court to restrain or delay the collection or payment of the taxes levied 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 City of Russellville, whichever is later, except that:
 - (a) In any case where assessment period contained in Section (9) of this ordinance has been extended by an agreement between the business entity and the City of Russellville, 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.
 - (c) For the purposes of this subsection and subsection (3) 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.

The authority to refund or credit overpayments of taxes collected pursuant to this ordinance is vested exclusively in the City of Russellville.

11 – Information to Remain Confidential

KRS 67.790

- (1) No present or former employee of the City of Russellville 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 City of Russellville 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 tax payer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the City of Russellville from testifying in any court, or from introducing as evidence returns or reports filed with the City of Russellville in an action for violation of the City of Russellville tax laws or in any action challenging the City of Russellville laws.
- (2) The City of Russellville 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 city if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the City of Russellville 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 City of Russellville may publish statistics based on such information in a manner as not to reveal data respecting net profits or compensation of any person or business entity.

- (3) In addition, the City of Russellville 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.

12 - Penalties

KRS 67.790

- (1) A business entity subject to tax on net profits may be subject to a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof that payment is late if the business entity:

- (a) fails to file any return or report on or before the due date prescribed for filing or as extended by the City of Russellville; or
- (b) Fails to pay the tax computed on the return or report on or before the due date prescribed for payment.

The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

- (2) Every employer who fails to file a return or pay the tax on or before the date prescribed under Section (5) of this ordinance may be subject to a penalty in an amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however the penalty shall not be less than twenty-five dollars (\$25).
- (3) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time tax was due until the tax is paid to the City of Russellville. A fraction of a month is counted as an entire month.
- (4) Every tax imposed by this ordinance, and all increases, interest, and penalties thereon, shall become from the time the tax is due and payable, a personal debt of the taxpayer to the City of Russellville.
- (5) The City of Russellville may enforce the collection of the occupational taxes 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 City of Russellville shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provisions of this ordinance.
- (6) In addition to the penalties prescribed in this section, any person, business entity or employer who willfully fails to make a payroll return, willfully makes a false payroll return, or who willfully fails to pay payroll taxes owing or withheld, with the intent to evade payment of the payroll tax or amount withheld or any part thereof, shall be guilty of a Class A misdemeanor.
- (7) 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, 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.

- (8) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the City of Russellville and required to be filed with the City of Russellville by the provisions of this ordinance, or by the rules of the City of Russellville or by written request for information to business entity by the City of Russellville.
- (9) Any person violating the provisions of section (11) of this ordinance by intentionally inspecting confidential tax payer information without authorization, shall be fined not more than five hundred dollars (\$500) or imprisoned for not longer than six (6) months or both.
- (10) Any person violating the provisions of section (11) of the ordinance by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1000) or imprisoned for not more than one (1) year, or both.

13 – Use of Occupational License Tax

All funds collected through the occupational license taxes shall be deposited to the City of Russellville general fund. The City provides police protection, fire protection, street services, cemetery, parks and recreation services.

14 - Severability

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

15 – Repealer Clause

All ordinances or parts of ordinances in conflict herewith and now in effect are hereby repealed to the extent of that conflict only.

16 – Effective Date

This ordinance shall become effective upon passage and publication as required by law.

FIRST READING conducted the 4th day of December, 2007.

SECOND READING and passage by roll call this 18th day of December, 2007.

Ayes: Chuck Phillips, Russell Jones, Jack Whipple, Mark Stratton, Lanny McPherson, Jimmy Davenport

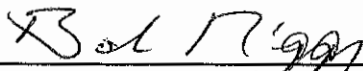
Nays: NONE

Absent: NONE

Abstaining: NONE


 EUGENE ZICK, MAYOR

ATTEST:


 Bob Riggs, City Clerk