ORDINANCE NO. 110, SERIES 2008

AN ORDINANCE AMENDING SECTION 110 OF THE LOUISVILLE/JEFFERSON COUNTY METRO CODE OF ORDINANCES (LMCO) RELATING TO OCCUPATIONAL LICENSE TAX (AS AMENDED).

SPONSORED BY: Council Members Kelly Downard and Cheri Hamilton

NOW, THEREFORE BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (COUNCIL) AS FOLLOWS:

SECTION I. LMCO Section110 is hereby amended to read as follows:

110.01: DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS. Any enterprise, activity, trade, profession, occupation or undertaking of any nature conducted for gain or profit. However, this term shall not include the usual activities of boards of trade; chambers of commerce; trade associations or unions, or other association performing the services usually performed by trade associations or unions. Business shall not include funds or foundations, corporations or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic or fraternal purposes, where no part of the earnings, income or receipts of such units, groups, or associations inures to the benefit of any private shareholder or individual except to the extent that there is unrelated business income.

BUSINESS ENTITY. 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.

COMMISSION. The Louisville/Jefferson County Metro Revenue Commission.

COMMISSIONERS. The Commissioners of the Louisville/Jefferson County Metro Revenue Commission.

COMPENSATION. Wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee as defined in KRS 67.750(2). Compensation shall also include any amount designated by a unit of government of any state or political subdivision thereof or by any agency or instrumentality of any of the foregoing as an employee contribution to an employees' trust described in Section 401(a) of the Internal Revenue Code or to a plan described in Section 403(a) of the Internal Revenue Code, where the employing unit has picked up the employees' contribution pursuant to the provisions of Section 414(h) of the Internal Revenue Code. Compensation shall also include non-cash fringe benefits taxable for federal income tax purposes as provided in this section.

CONCLUSION OF THE FEDERAL AUDIT. 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.

COUNTY. Jefferson County, Kentucky.

DOMICILE. That place where a person has his fixed, permanent home, and to which he has, whenever absent, the intention of returning and from which he has no present intention of moving.

DULY ORDAINED MINISTER OF RELIGION. A natural person who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization to teach and preach its doctrines or to administer its rites in public worship and who regularly performs one or more of those duties.

EMPLOYEE. Any person who renders services to another person or any business entity for compensation, except for independent contractors, including an officer, employee, or elected official of the United States, a state, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one (1) or more of the foregoing. The term "employee" also includes an officer or corporation. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee. If there is a dispute as to the status of a worker, the Commission will require a copy of the federal SS-8 determination and follow the federal determination.

EMPLOYER. The person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:

(1) If the person for whom the individual performs or performed the services does not have control of the payment of the compensation for such services, the term

employer for withholding tax purposes means the person having control of the payment of such compensation; and

(2) In the case of a person paying compensation 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.

FINAL DETERMINATION OF THE FEDERAL AUDIT. The revenue agents report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

FISCAL YEAR. An accounting period of twelve (12) months ending on the last day of any month other than December.

INDIVIDUAL. A natural person.

INTERNAL REVENUE CODE. With respect to occupational license taxes for taxable years ending on or after December 31, 2006 shall mean the Internal Revenue Code in effect on December 31, 2006 exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2006 that would otherwise terminate; and with respect to occupational license taxes for taxable years ending prior to December 31, 2006 shall mean the Internal Revenue Code as amended and in effect on December 31 of the business entity's taxable year.

LICENSE TAX. An occupational license fee or tax for revenue purposes.

LOUISVILLE METRO. Jefferson County, Kentucky.

METRO GOVERNMENT. Louisville/Jefferson County Metro Government.

NET PROFIT. For a business entity 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, and adjusted as follows:

(1) 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;

(2) 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;

(3) Include any amount claimed as a net operating loss carry back or carry forward allowed under section 172 of the Internal Revenue Code;

(4) Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes;

(5) Include contributions to Keogh (HR-10) Retirement Plans and contributions to a Simplified Employee Pension Plan as defined in Section 408(k) of the Internal Revenue Code and contributions to any other self-employment retirement plan and other deductions that benefit non-employee individuals.

(6) Exclude any sum elected by the business entity as a credit against its federal income tax liability in lieu of a deduction for business expenses otherwise available to the business entity.

(7) Exclude the amount of foreign dividend gross-up under Section 78 of the Internal Revenue Code;

(8) Exclude the amount of Subpart F income included under Section 951 of the Internal Revenue Code but not actually received;

(9) Exclude for taxable years beginning on or after July 1, 1986, the amount of dividends described in Section 862(a)(2) of the Internal Revenue Code after deducting from such dividends the expenses and other deductions properly apportioned or allocated thereto as provided under Section 862(b);

(10) Exclude for taxable years beginning on or after July 1, 1987 interest income described in Section 862(a)(1) of the Internal Revenue Code, rental or royalty income described in Section 862(a)(4) of the Internal Revenue Code and other gains and profits described in Sections 862(a)(5) and 862(a)(6) of the Internal Revenue Code, after deducting from such interest, rental, royalty, gain or profit the expenses, losses and other deductions properly apportioned or allocated thereto as provided in Section 862(b) of the Internal Revenue Code;

(11) Include for taxable years beginning on or after July 1, 1987 any deduction claimed by the licensee on its federal income tax return for any loss arising from the sale of its interest in any corporation other than a corporation described in Section 861(a)(2) of the Internal Revenue Code;

(12) Include for taxable years beginning on or after July 1, 1987 any deduction claimed by the licensee on its federal income tax return for any loss arising from default under any bond, note or other obligation bearing interest of a type described in Section 862(a)(1) of the Internal Revenue Code, and for any loss arising from any property described in Section 862(a)(4), Section 862(a)(5) and Section 862(a)(6) of the Internal Revenue Code;

(13) 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.

PERSON. Every individual, partnership, fiduciary, association, or corporation. Whenever the word "person" is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to partnerships 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.

PROPERTY. For purposes of the sales factor shall include tangible personal property and real property. This definition does not apply to taxpayers whose principal business activity is trading in securities.

RESIDENT. An individual domiciled in Louisville Metro.

RETURN OR REPORT. 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 Commission.

SALES REVENUE. Receipts from the sale, lease, or rental of goods, services, or property. See definition of "property" above.

SECRETARY-TREASURER. The Secretary-Treasurer of the Louisville/Jefferson County Metro Revenue Commission.

SOLE PROPRIETOR. An individual engaged in any business, profession, or occupation, but not as an employee.

TAX DISTRICT. A city of the first to fifth class, county, urban-county, charter county, consolidated local government, school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license taxes.

TAXABLE NET PROFIT.

(1) In case of a business entity having payroll or sales revenue only within Louisville Metro, the term means "net profit" as defined above in this section.

(2) In case of a business entity having payroll or sales revenue both within and without Louisville Metro, the term means "net profit" as defined above in this section, and as apportioned under section 110.06 of this article.

TAXABLE YEAR. The calendar year or fiscal year ending during the calendar year, upon the basis of which net profit is computed.

UNRELATED BUSINESS INCOME. Unrelated business income is income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the organization's exemption

110.02: LEVY OF OCCUPATIONAL LICENSE TAX – GENERAL.

(A) Every natural person and business entity engaged in any business, trade, occupation, profession, or other activity for profit in Louisville Metro, shall pay to the Commission, as collecting agent for Metro Government, an annual occupational license tax for the privilege of engaging in these activities. The occupational license tax shall be measured by:

(1) One and one-fourth percent (1.25%) of all wages and compensation paid or payable to every resident or non-resident employee for work done or services performed or rendered in Louisville Metro; and

(2) One and one-fourth percent (1.25%) of the net profit from business activities conducted in Louisville Metro by a business entity.

(B) *Transit tax*. In addition to the occupational license taxes required in subsection (A), every person and business entity engaged in any business, trade, occupation, profession, or other activity for profit in Louisville Metro shall pay to the Commission an occupational license tax for the privilege of engaging in these activities. This additional occupational license tax shall be measured by:

(1) One fifth of one percent (.20%) of all wages and compensation paid or payable to every resident or non-resident employee for work done or services performed or rendered in Louisville Metro; and

(2) One fifth of one percent (.20%) of the net profit from business activities conducted in Louisville Metro by a business entity.

(C) All occupational license taxes, plus any applicable interest and penalties, received by the Commission pursuant to subsection (B) above, less a fixed charge for services rendered in the amount of 1.35% of the net receipts thereof, shall be paid over monthly into, and pending disbursement be held in, a separate and special trust fund identified as the Mass Transit Trust Fund to be used solely for purposes of the Mass Transportation Program approved by the electorate of Jefferson County, November 5, 1974, and as provided in KRS Chapter 96A.

(D) All partnerships, S-Corporations, limited liability companies, limited liability partnerships, limited partnerships, or similar entities where income, deductions, gains, losses, credits or any other similar attributes are passed through to the partners, members, shareholders, or owners are subject to this article. The occupational license taxes imposed in this article are assessed against business income at the entity level and before it is passed through to the partners, members, shareholders, or owners. Also see definition section for provision 5 of the net profit.

(E) If any business entity dissolves, ceases to operate, or withdraws from the Louisville Metro area 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 Louisville Metro area.

(F) If a business entity makes, or is required to make, a federal income tax return, the net profit shall be computed for the purposes of this article 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.

110.03: EXEMPTED ACTIVITIES.

(A) The occupational license taxes imposed in this section shall not apply to the following persons or business entities:

(1) 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. Business entities whose business is predominantly non-public service and the public service business is merely incidental to the principal business, are required to pay a license tax on their net profit derived from the non-public service activities apportioned to the Louisville Metro.

(2) Any bank, trust company, combined bank and trust company or combined trust, banking and title business in this state, and any savings and loan association whether state or federally chartered.

(3) Any company providing multichannel video programming services or communications services as defined in KRS 136.602. If only a portion of an entity's business is providing multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services including products or services that are related to and provided in support of the multichannel video programming services or communications services.

(4) Any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor.

(5) Any income or compensation received by precinct workers for election training or work at election booths in state, county and local primary, regular or special elections.

(6) Any income or compensation received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training.

(7) Insurance companies who pay a license tax based on premiums under Ordinance §122 or §38.64 or domestic life insurance companies that pay a tax based on taxable capital under Ordinance §38.36 are not required to pay a license tax measured by net profits under the terms of this article.

(8) Persons or business entities that have been issued a license under KRS Chapter 243 to engage in the manufacturing or trafficking in alcoholic beverages may exclude the portion of their net profits derived from the manufacturing or trafficking in alcoholic beverages.

(9) A sale of used goods conducted or participated in by the resident of the residential property on which the sale takes place shall not be considered a business for purposes of this ordinance unless such sales are conducted for more than three consecutive days or for more than four times a year.

(10) During "Derby Festival Week," that is the week preceding and including the first Saturday in May, residents who provide parking spaces for a fee in the area encompassed by Colorado Avenue on the north, Interstate 264 (Watterson Expressway) on the south, Louisville Avenue (railroad tracks) on the east and Seventh Street Road on the west, shall not be considered to be engaged in an occupation for purposes of this ordinance and no license is required.

(11) The occupation of serving as a duly ordained minister of religion is exempted from the terms of this ordinance and no occupational license tax is required. It is not the intention of this ordinance to exempt a duly ordained minister of religion from the

necessity of paying the license tax measured by compensation and net profits earned for activities not connected with his or her regular duties as a minister of religion.

(12) Venture capital funds are exempt from the terms of this section provided, that for purposes of this exemption, a venture capital fund is a limited liability company, limited liability partnership, or limited partnership, formed and operated for the exclusive purpose of buying, holding and/or selling securities (including debt securities), on its own behalf and not as a broker, primarily in non-publicly traded companies, and the capital of the fund is primarily derived from investments by entities and/or individuals which are neither, directly or indirectly, related to nor affiliated with the fund. An annual informational return is required to be filed in order to qualify for this exemption. For purposes of this section, the following provisions shall apply:

(a) ***AFFILIATED.*** Entities that are part of an affiliated group as defined in 26 U.S.C. § 1504(a) and any applicable federal regulations thereto, as they may be amended from time to time;

(b) ***NON-PUBLICLY TRADED COMPANIES.*** Any business entity that is not a ***PUBLICLY TRADED COMPANY***, as defined by subsection (d)(4);

(c) ***PRIMARILY***, as used in this section, means over 80%.

(d) ***PUBLICLY TRADED COMPANY.*** Any entity that is traded on:

(1) A national securities exchange registered under § 6 of the Securities Exchange Act of 1934, or exempted from registration under such act by 15 U.S.C. § 78f, because of the limited volume of transactions;

(2) A foreign securities exchange operating under principles analogous to a national securities exchange;

(3) A regional or local exchange;

(4) An interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise; or

(5) On a secondary market or the substantial equivalent thereof, if taking into account all of the facts and circumstances, the owners are readily able to buy, sell or exchange their ownership interest in a manner that is comparable, economically, to trading on an exchange.

(e) ***RELATED.*** Entities and/or individuals that are related as determined by 26 U.S.C. § 267(b) and (f) and any federal regulations applicable thereto as they may be amended from time to time.

(13) Any family-owned non-corporate entity where the sole activity of such entity is the production of investment income is exempted from the terms of this section. An annual informational return must be filed in order to qualify for this exemption. For purpose of this section, the following provisions shall apply:

(a) ***FAMILY-OWNED.*** At least 95% of the equity of such entity is owned by members of the family, which means, with respect to an individual, only:

(1) An ancestor of such individual;

(2) The spouse or former spouse of such individual;

(3) A lineal descendent of such individual, of such individual's spouse or former spouse, or of a parent of such individual;

(4) The spouse or former spouse of any lineal descendent described in subsection (3); or

(5) The estate or trust of a deceased individual who, while living, was as described in any of the above subsections.

(6) For purposes of this section, a legally adopted child of an individual shall be treated as the child of such individual by blood.

(b) ***INVESTMENT INCOME.*** Means and includes gross receipts derived from dividends, interest, annuities, and sales or exchanges of stock or securities to the extent of any gains therefrom.

(14) No license tax under this article is required where expressly exempted elsewhere in this ordinance or prohibited by federal or state law

(B) The provisions and limitations of this subsection shall not apply to license fees imposed for regulatory purposes as to form and amount.

110.04: OCCUPATIONAL LICENSE APPLICATION REQUIRED.

(A) Business entities required to file a return under § 110.07 and all employers must apply before commencing business for an occupational license tax reporting number (account number) and in such process shall complete and execute the questionnaire prescribed by the Commission. Business entities and employers are required to notify the Commission of changes of address, of the cessation of business activity, and of other changes which render inaccurate the information supplied in the completed questionnaire.

(B) All employers located within a Development Area created pursuant to KRS 65.490 through 65.499 and 2007 House Bill 549 will be subject to additional informational reporting requirements as prescribed by the Commission.

110.05: DEDUCTION TO BE MADE BY EMPLOYERS.

(A) Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation the license tax imposed under Section 110.02 of this ordinance.

(B) Every employer required to deduct and withhold occupational license taxes under this section shall report for the quarterly periods ending March 31st, June 30th,

September 30th, and December 31st of each year the wages or compensation from which occupational license taxes have been so withheld on or before the last day of the month following the end of each such quarter, and shall make the payment required to be made on account of such employee withholding of occupational license taxes on or before the time required for the filing of the quarterly returns.

(C) Notwithstanding the provisions of subsection (B) of this section, each employer, for which the aggregate Metro Government, Mass Transit Trust Fund, and school boards occupational license taxes required to be withheld from all employee wages and compensation for any one of the preceding four quarters shall have exceeded the sum of $3,000, shall remit the occupational license taxes required to be withheld from employees monthly on or before the fifteenth day of the month following the month in which the wages or compensation shall have been paid by the employer; or (in the case of deferred compensation subject to the occupational license taxes imposed hereunder) on the fifteenth day of the month following the month in which such deferred compensation is deemed to have been earned by the employee.

(D) Every employer shall also deduct from each employee who receives non-cash fringe benefits taxable for federal income tax purposes, at the time at which the receipt of such non-cash benefits by the employee is required to be reported by the employer for federal income tax purposes, the occupational license tax arising from the employee's receipt of such compensation; and the employer shall remit to the Commission with the deposit made for the period in which such non-cash benefits are so reported the occupational license tax due on such non-cash fringe benefits. The

employer may report the value of fringe benefits provided during any period commencing no earlier than November 1st of any year as having been paid by the employer and received by the employee during the following year provided that the reporting for occupational license tax purposes is consistent with the reporting for federal income tax purposes. Occupational license taxes shall be paid on the non-cash fringe benefits subject to federal income tax as provided by the Internal Revenue Code and as provided by the Code of Federal Regulations in effect for the licensee's taxable year; and such non-cash fringe benefits shall be valued for purposes of the imposition of the occupational license tax as provided by the Internal Revenue Code and as provided by the Code of Federal Regulations in effect for the licensee's taxable year.

(E) Every employer shall, annually on or before February 28th of each year, make a return to the Commission in which is set forth the name, residence, and social security number of each employee of said employer employed during the preceding calendar year, giving the amount of wages or compensation earned during such preceding year by each such employee, and the amount of occupational license taxes withheld pursuant to this ordinance, together with a form prescribed by the Commission, reconciling the sum total of compensation paid and taxes withheld as disclosed by the information return with the aggregate amount previously reported on the quarterly returns and with aggregate remittances paid for the calendar year, and such other pertinent information as the Commission may require.

(F) Every employer shall furnish each employee a statement, on or before January 31st of each year, showing the amount of compensation earned and the occupational license tax deducted and paid by said employer during the preceding calendar year.

(G) Each employer, in the event of overpayment by the employer of the employee occupational license tax, shall upon request by the employee and may on its own initiative apply to the Commission for a refund on behalf of the employee. Provided, however, that no employer shall be required to make an application hereunder on behalf of an employee if the employer remits the overpayment directly to the employee and unless a refund of $1 or more is due that employee.

(H) Unless written application for refund or credit is received by the Commission from the employer or employee within two (2) years from the date the overpayment was made, no refund or credit shall be allowed. Where there has been an overpayment of license tax under this article, 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 by the employer under this section.

(I) An employee who has compensation attributable to activities performed outside the Louisville Metro area, based on time spent outside the Louisville Metro area, whose employer has withheld and remitted to the Commission the occupational license tax on the compensation attributable to activities performed outside the Louisville Metro area, 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 Commission shall confirm with the employer the percentage of

time spent outside the Louisville Metro area and the amount of compensation attributable to activities performed outside the Louisville Metro prior to approval of the refund.

(J) Every employer who is notified of or discovers an underpayment by the employer of the employee occupational license tax shall correct the previously submitted returns which had shown the under-withholding and shall remit payment of the employee occupational license tax not previously paid, together with any applicable penalty and interest.

(K) Every employer who fails to withhold or pay to the Commission any sums required by this article to be withheld and paid shall be personally and individually liable to the Commission for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.

(L) 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 occupational license tax required to be withheld from compensation paid or payable to one (1) or more employees of the business entity, and neither the corporate dissolution or withdrawal of the business entity from Louisville Metro area, 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 occupational license 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 occupational license tax imposed by this article at the time that the taxes imposed by this article become or became due.

(M) Notwithstanding subsections (K) and (L) of this section, every employee receiving compensation subject to the occupational license tax shall be personally liable for any amount due.

(N) The Commission shall have a lien upon all the property of any employer who fails to withhold or pay over to the Commission sums required to be withheld under this section. If the employer withholds, but fails to pay the amounts withheld to the Commission, the lien shall commence as of the date the amounts withheld were required to be paid to the Commission. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the Commission.

(O) If for any reason the occupational license taxes due hereunder have not been withheld by the employer in whole or in part, the employee is required to file an annual return on or before April 15th with the Commission and to pay the occupational license tax due on all compensation earned which has not been subject to withholding, together with any applicable interest and penalty. The employee shall provide the original copy of the statement furnished to him or her by his or her employer showing all of the compensation earned by him or her, wherever employed, during the period for which such return is made. In addition to the compensation earned by him or her, such return shall show such other pertinent information as may be required by the Commission. Each person making a return required by this section shall at the time of filing the appropriate return pay to the Commission the amount of license tax due under this

subsection; provided, that any portion of the license tax deducted by the employer shall be credited on the return and only the balance, if any, shall be due and payable at the time of filing said return.

110.06: APPORTIONMENT OF NET PROFIT.

(1) Except as provided in subsection (6) 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 two (2); and

(b) For business entities with sales revenue in more than one (1) tax district, by multiplying the net profits by the sales factor as set forth in subsection (3) of this section.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the tax district 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 tax district based on the time the individual's service is performed within the tax district. Wages made by third party payors and/or for leased employees must be included in the wage apportionment of the person who has control of the actions and the work product of the employees.

(3) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in the tax district 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 sale, lease, or rental of tangible personal property is in the tax district 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 tax district 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 tax district 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 tax district based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the tax district and the denominator of which is the total time spent performing that income producing activity.

(c) Sales revenue from the lease or rental of real property is allocated to the tax district where the property is located.

(4) If either the payroll factor or sales factor under this subsection is absent, then the apportionment percentage shall be equal to the remaining percentage determined under subsections (2) or (3) of this section. A factor is not deemed to be absent merely because none of the business entity's sales revenue arose inside the Louisville Metro

area or because none of the wages or compensation paid by the business entity were for services performed or rendered inside the Louisville Metro area.

(5) The apportionment provisions provided above shall be presumed to determine fairly and correctly the business entity's net profits from activities conducted in Louisville Metro.

(6) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in Louisville Metro, the business entity may petition for, or the Commission may require, in respect to all or any part of the business entity's business activity, if reasonable:

(a) The exclusion of any one (1) or more of the factors;

(b) The inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in the tax district; or

(c) The employment of any other method to effectuate an equitable allocation and apportionment of net profits.

(d) Separate accounting.

(7) If an alternate method of apportionment is approved by the Commission, the business entity must continue to file under the alternate method until given permission to change by the Commission.

110.07: FILING OF ANNUAL NET PROFIT RETURN.

(A) Every business entity subject to the occupational license tax imposed by this ordinance shall, on or before the fifteenth day of the fourth month following the close of each year, make and file with the Commission a return, on a form furnished by or

obtainable from the Commission, setting forth the aggregate amount of net profits during the preceding year with such other pertinent information as the Commission may require, including, but not limited to, federal income tax returns and schedules. The return shall also show the amount of the occupational license tax imposed by this ordinance, and the business entity shall pay to the Commission by the due date of the return the full occupational license tax due as shown thereon after credit is given for any prior estimated payments or credits. Provided, however, that where the fiscal year of the business entity differs from the calendar year and the business entity files a federal income tax return for such other fiscal period, the occupational license tax shall be measured by the net profits of the fiscal year, and where the return is made for a fiscal year or any other period different from a calendar year, the said return shall be made on or before the fifteenth day of the fourth month following the end of the fiscal year or other period.

(B) Any return required to be filed hereunder shall be considered to have been timely filed if it is postmarked or hand-delivered to the offices of the Commission on or before the due date or, in the event the due date is a Saturday, Sunday, or Metro Government legal holiday, if it is postmarked or hand- delivered to the offices of the Commission on the next day which is not a Saturday, Sunday, or a Metro Government legal holiday.

(C) Notwithstanding the provisions of subsection (A) hereof, every business entity, other than a sole proprietorship, shall make quarterly estimated payments on or before the fifteenth day of the fourth, sixth, ninth, and twelfth month of each fiscal year if the business entity's aggregate liability for occupational license taxes, measured by net

profits, due to the Metro Government, the Mass Transit Trust Fund, and the school boards, for the taxable year exceeds five thousand dollars ($5,000).

(D) The quarterly estimated tax payment required under subsection (C) shall be based on the lesser of:

(a) Twenty-two and one-half percent (22.5%) of the current taxable year tax liability;

(b) Twenty-five percent (25%) of the preceding full year taxable year tax liability; or

(c) Twenty-five percent (25%) of the average tax liability for the three (3) preceding full year taxable years' tax liabilities if the tax liability for any of the three (3) preceding full taxable years exceeded twenty thousand dollars ($20,000).

(E) Any business entity that fails to submit the minimum quarterly payment required under subsection (D) of this section by the due date for the quarterly payment shall pay an amount equal to twelve percent (12%) per annum simple interest on the amount of the quarterly payment required under subsection (D) of this section from the earlier of:

(a) The due date for the quarterly payment until the time when the aggregate quarterly payments submitted for the taxable year equal the minimum aggregate payments due under subsection (D) of this section; or

(b) The due date of the annual return.

(F) The provisions of this section shall not apply to any business entity's first full or partial taxable year of doing business in Louisville Metro, or any first taxable year in which a business entity's tax liability exceeds five thousand dollars ($5,000).

(G) At the election of the business entity, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(H) In the case where the tax computed under the provisions of this article is less than the amount which has been declared and paid as estimated tax for the same taxable year, a refund or credit, if a credit is requested, shall be made upon the filing of a return.

(I) Overpayment, resulting from the payment of estimated tax in excess of the amount determined to be due upon the filing of a return for the same taxable year, may be credited against the amount of estimated tax determined to be due on any declaration filed for the next succeeding taxable year, or for any deficiency or nonpayment of tax for any previous taxable year.

(J) No refund shall be made of any estimated tax paid unless a complete return is filed as required by this article.

(K) Every business entity making payments of six hundred dollars ($600.00) or more to natural persons other than employees (non-employee compensation payments) for services performed within Louisville Metro is hereby required to maintain records of such payments and to report such payments to the Commission by February 28th of the

year following the close of the calendar year in which the non-employee compensation was paid.

(L) However, any business entity that makes non-employee compensation payments in excess of six hundred dollars ($600.00) to more than one hundred (100) natural persons may comply with the requirements of this section by submitting copies of federal Form 1099 reporting non-employee compensation paid to natural persons at an address in Louisville Metro. Such business entity is not required to identify services performed within Louisville Metro.

110.08: EXTENSION FOR FILING NET PROFIT RETURN.

(A) The Commission may grant any business entity an extension of time for the filing of its return, of not more than six (6) months (unless a longer extension has been granted by the Internal Revenue Service and agreed to by the Commission).

(B) Such extension shall be by written request, filed with the Commission by the business entity or his designated representative, made on or before the date upon which the return is due, and must be accompanied by an occupational license tax payment in an amount not less than 90% of the total occupational license tax as finally determined, or estimated payments of 90% of the license tax obligation must be on file at the time the extension is requested. A copy of the federal extension can be filed with the Commission. However, a filing of a request with the federal or state government does not satisfy the requirement of written request to the Commission.

(C) If the time for filing a return is extended, the business entity shall pay, as part of the tax, an amount equal to twelve (12%) percent interest on the tax shown due on the return, but not previously paid, from the time the tax was due until the return is actually filed and the tax paid to the Commission.

110.09: COLLECTION OF TAXES; RECORDS.

It shall be the duty of the Commission to collect and receive the occupational license taxes imposed by this ordinance and to keep records showing the amounts received from each business entity and each employer and the date of such receipt.

110.10: PAYMENT OF TAX NOT DELAYED - CLAIMS FOR REFUND OR CREDIT.

(A) No suit shall be maintained in any court to restrain or delay the collection or payment of any license tax under the provisions of this ordinance.

(B) Any license 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 Commission, whichever is the later, except that:

(1) In any case where the assessment period under this section has been extended by an agreement between the business entity and the Commission, the limitation contained in this section shall be extended accordingly.

(2) Credits related to adjustments resulting from a federal audit shall be limited to years covered by the audit or to related audit issues covered by the audit. Refunds will only be paid for credits timely requested within the two year limitation contained in this section, and only if additional obligations for other

years in the audit period have been satisfied; otherwise, the taxpayer will receive a credit to be first applied to all other obligations in the audit period and second to future obligations.

(3) For the 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.

(C) Exclusive authority to refund or credit overpayments of license taxes collected is vested with the Commission.

110.11: RULES AND REGULATIONS.

(A) The Commission is hereby charged with the enforcement of the provisions of this ordinance and are hereby empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to all matters pertaining to the administration and enforcement of the provisions of this ordinance, including without limitation, rules and regulations clarifying, construing, and supplementing the provisions of this chapter in a manner not inconsistent with any of the provisions of this ordinance. The Commission shall give written notice of its intention to adopt or amend any regulations to the Mayor, the Council Clerk, the Chairman of the Board of the Transit Authority of River City, the Superintendent of the Jefferson County School System, the Superintendent of the Anchorage School System, the Executive Director of the Kentucky Society of Certified Public Accountants, and the President of Greater Louisville, Inc. at least thirty (30) days prior to the final adoption of any proposed regulations or amendments and shall allow

an opportunity for comment on each proposed regulation or proposed amendment prior to adoption. The rules and regulations promulgated by the Commission and the rulings made by the Commission shall be binding on all business entities, employers, and employees affected.

(B) Notwithstanding any other provision of this ordinance, the Commission shall have the authority to resolve occupational license tax controversies, taking into consideration the facts and circumstances of each particular matter, but only to the extent of waiving penalties or interest, in whole or in part, and only where the business entity, employer, or employee demonstrates to the satisfaction of the Commission reasonable cause for the failure of the business entity, employer, or employee to file or pay timely. The Commission shall also have the authority to resolve occupational license tax controversies based on the hazards and cost of litigation and/or doubt as to collectability.

110.12: EXAMINATION AND INVESTIGATION OF BOOKS AND RECORDS.

(A) The Secretary-Treasurer of the Commission and any employees or agents of the Commission designated in writing by the Secretary-Treasurer are authorized to examine the relevant books and records of any business entity, employer, or other person who may have liability under this ordinance, and to conduct such audits and investigations as may be necessary to determine the accuracy of any return made or, if no return was made, to ascertain the amount of occupational license tax and other amounts owed under the terms of this ordinance for the years under review.

(B) Every business entity, employer, or other person who may have liability under the provisions of this ordinance is directed and required after notice of not less than ten days to provide the Secretary-Treasurer and employees or agents of the Commission designated by the Secretary-Treasurer the means, facilities, and opportunity, including the reasonable cooperation, to conduct such examinations and investigations as shall be lawful and necessary to determine the liability, if any, of any such business entity, employer, or other person for occupational license taxes and other amounts due under the provisions of this ordinance.

(C) The Secretary-Treasurer and employees or agents of the Commission designated by the Secretary-Treasurer are authorized to examine under oath any person concerning any return filed with the Commission and any wages or net profits which were or should have been reported to the Commission, and otherwise with regard to the liability of any business entity, employer, or person for occupational license taxes or other amounts due under the terms of this ordinance.

(D) The Secretary-Treasurer and employees or agents of the Commission designated by the Secretary-Treasurer shall have the authority to compel the production of books and records and the attendance of all persons, whether as parties or witnesses, whom they reasonably believe to have knowledge relevant to any examination or investigation, through any and all appropriate judicial proceedings.

110.13: ASSESSMENT OF ADDITIONAL TAX – FEDERAL AUDIT ADJUSTMENTS.

(A) As soon as practicable, after each return is received, the Commission may examine and audit the return. If the amount of license tax computed by the Commission is greater than the amount shown on the return filed by the business entity or employer, the additional license tax shall be assessed and a notice of assessment mailed to the business entity or employer by the Commission within five (5) years from the date the return was filed, except as otherwise provided in this subsection.

(1) In the case of a failure to file a return or of a fraudulent return, the additional license tax may be assessed at any time.

(2) In the case of a return where a business entity understates net profit, or omits an amount that could properly be included in 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 license tax may be assessed at any time within six (6) years after the return was filed.

(3) In the case of an assessment of additional license 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 Commission receives the final determination of the federal audit from the business entity, whichever is later.

(B) The times provided in this subsection may be extended by agreement between the business entity and the Commission. For the 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.

(C) 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.

(D) The Commission may initiate a civil action for the collection of any additional license tax within the times prescribed in this subsection.

110.14: CONFIDENTIALITY OF INFORMATION.

(A) Any information gained by the Commissioners, Commission, or any other official or agent or employee of the Metro Government as a result of any returns, investigations, hearings, or verifications required or authorized by this ordinance shall be confidential, except in accordance with proper judicial order or as otherwise provided by law.

(B) No present or former employee of the Commission 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 Commission 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 Commission from testifying in any court, or from introducing as evidence returns or reports filed with the Commission, in an action for violation of the occupational license tax ordinances or in any action challenging the occupational license tax laws.

(C) The Commission reserves the right to disclose to the State Commissioner of Revenue, or his or her duly authorized agent, all such information and rights to inspect any of the books and records of the Commission, if the Commissioner of Revenue grants to the Commission 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 Commission may publish statistics based on such information in such a manner as not to reveal data respecting net profits or compensation of any person or business entity.

(D) In addition, the Commission is empowered to execute similar reciprocity agreements, as described in subsection (C) of this section, with any other taxing entity, (including but not limited to the Internal Revenue Service) should there be a need for exchange of information in order to effect diligent enforcement of this ordinance. All such agreements shall require the parties to keep the exchanged information confidential.

(E) Any person who violates the provisions of paragraph (B) of this subsection by intentionally inspecting confidential taxpayer information without authorization shall be fined not more than five hundred dollars ($500) or imprisoned for not longer than six (6) months, or both.

(F) Any person who violates the provisions of paragraph (B) of this subsection by divulging confidential taxpayer information shall be fined not more than one thousand dollars ($1,000) or imprisoned for not more than one (1) year, or both.

110.15: NO EFFECT ON PRIOR TAX YEARS.

The enactment of this ordinance is not intended to affect the position of either the Commission or any business entity, employer, or other person with respect to any administrative or judicial dispute concerning an interpretation of this ordinance as heretofore enacted and amended pertaining to any tax year prior to the effective date of this ordinance.

110.16: RENTAL ACTIVITIES.

(A) Corporations, partnerships, and other associations receiving income from the rental of real property shall be deemed to be in the business of renting said property, and income derived therefrom is subject to the occupational license tax measured by net profits.

(B) Every business entity, including individuals or fiduciaries acting on behalf of individuals or deceased individuals, engaged in the rental of real property, including but not limited to, improvements such as warehouses, apartment buildings containing four

or more units, hotel buildings, office buildings, restaurants, and other commercial structures shall be deemed with respect to such rentals to be engaged in an "activity" which requires a license tax to be paid and a return filed regardless of the amount of gross receipts received therefrom.

(C) Individuals and fiduciaries acting on behalf of individuals or deceased individuals who receive income from the rental of real property [other than rent from commercial structures under subsection (B)] located in Louisville Metro shall be deemed to be engaged in an "activity" which requires a license tax to be paid and a return to be filed, unless the annual gross receipts received from the rental of such real property in Louisville Metro is less than fifty thousand dollars ($50,000).

110.17: CERTAIN PERSONS SUBJECT TO THE OCCUPATIONAL LICENSE TAX.

(A) An individual who is an INDEPENDENT CONTRACTOR, as defined in Section 110.01, shall pay an occupational license tax measured by NET PROFITS and an individual who is an EMPLOYEE, as defined in Section 110.01, shall pay an occupational license tax measured by COMPENSATION.

(B) Waiters, waitresses, bellhops, and others receiving tip income shall be deemed to be employees with respect to any base wage and any tip income on which the employer withholds and remits an occupational license tax, and, in addition, shall be deemed independent contractors for purposes of any tip income or other compensation received for which the employer has not withheld and remitted an occupational license

tax. An individual who receives tip income not reported by his employer is deemed to be engaged in an activity which requires him or her to register with the Commission and obtain his own reporting identification number, to file an annual return as required by Section 110.07, and to remit the license tax due as shown on said return.

(C) For the purpose of this ordinance, a salesperson is a natural person engaged in selling any tangible or intangible property, other than real property, or any unit of services rendered on behalf of another whether for remuneration as wages or commissions. Notwithstanding any other provision herein to the contrary, where salaries, wages, commissions, and other compensation are earned both inside and outside Louisville Metro by an individual engaged in the occupation of a salesperson, the license tax shall be measured by multiplying the total of such income earned by the individual for federal income tax purposes after deduction for employee business expenses while engaged as a salesperson; times the time spent by the salesperson so engaged while located in Louisville Metro; divided by the total time spent by the salesperson so engaged.

110.98: SEVERABILITY.

Each section and each provision of each section of this article are severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any business entity, employer, employee, taxpayer, 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 article, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of the rest.

110.99: PENALTIES.

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

(1) Fails to file any return or report on or before the due date prescribed for filing or as extended by the tax district; or

(2) 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 license tax due.

(B) Any person who pays the full amount shown on the return, but who fails to pay the amount of any additional occupational license fee due as finally assessed by the Commission within 15 days after the assessment becomes final, shall be assessed a penalty of 5% of the unpaid amount of the license fee. However, the aforesaid 5% penalty on the amount due may be assessed without notice of final assessment of additional license fee due if the amount shown on the return is based on fraud or gross negligence. In all events the unpaid amount of any license fee shall bear interest at the rate of 12% per annum from the date originally due until paid in full. Penalty shall apply on the expiration of the fifteen (15) day period.

(C) Every employer who fails to file a return or pay the license tax [including monthly deposits under Section 110.05(C)] on or before the date prescribed under this section may be subject to a penalty in an amount equal to five percent (5%) of the license 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 license tax due.

(D) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the license tax, an amount equal to twelve percent (12%) per annum simple interest on the license tax shown due, but not previously paid, from the time the license tax was due until the tax is paid to the Commission.

(E) All license taxes, interest, and penalties thereon, shall become, from the time the license tax is due and payable, a personal debt of the taxpayer to the Commission.

(F) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return, willfully makes a false return, or willfully fails to pay the license taxes owing or collected, with the intent to evade payment of the license tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.

(G) 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 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.

(H) The Commission is authorized to initiate criminal charges, when appropriate under KRS 514.070 (Theft by failure to make required disposition of property) or any other applicable criminal statutes as may be deemed advisable against any employer who withholds occupational license taxes from one or more employees employed within the Metro Government and intentionally fails to remit such occupational license taxes withheld to the Commission.

(I) The failure of any employer or licensee to receive or procure forms or documents is not an excuse for failure to make any return or to pay the occupational license tax.

(J) Any corporate officer or other individual required to withhold, truthfully account for, and remit to the Commission any license tax imposed by this chapter who willfully fails to withhold the license tax, or truthfully account for and remit the license tax, or willfully attempts in any manner to evade or defeat the payment of the license tax, shall, in addition to the sanctions provided by this section and any other penalties provided by law, be civilly liable for the total amount of the license tax evaded, or not collected, or not accounted for and remitted, plus applicable penalties and interest. Neither the corporate dissolution, withdrawal of the

corporation from the state, nor the cessation of holding any corporate office shall discharge the foregoing liability of any person.

SECTION II. This Ordinance shall become effective for tax periods beginning on or after July 1, 2008.

Kathleen J. Herron
Metro Council Clerk

Jim King
President of the Council

Jerry E. Abramson
Mayor

6-30-08
Approval Date

APPROVED AS TO FORM AND LEGALITY:
Irv Maze
Jefferson County Attorney

LOUISVILLE METRO COUNCIL
READ AND PASSED
June 26, 2008

BY:

LMCO 110 - IJF Amnd Downard Sponsor K_Johnson Proposed Amend ROC bkn Draft 4.doc 6-16-08