Occupational License Tax (Net Profits)

SCHOOL DISTRICT OF WARREN COUNTY

ORDINANCE NO. 46

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

WHEREAS, the Board of Education of Warren County School District desire(s) to comply with the requirements of KRS 160.601 et. seq. and KRS 67.750 to 67.790 and deems it necessary and desirable that certain changes be made to existing ordinances imposing occupational license taxes on persons and businesses entities, so that the assessment and payment of Occupational License Taxes can be administered more efficiently.

Now, therefore, be it ordained by the Warren County Board of Education of the School district of Warren County, Kentucky as follows:

Ordinance No. 46 is hereby enacted and shall read in full as follows:

Sections:

1	Definitions
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§ 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:

(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) "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;

(3) "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;

(4) "Final determination of the federal audit" means the revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

(5) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

(6) "Employee" means any person who renders services to another person or any business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency of instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.

(7) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code.

(8) "Gross receipts" means all revenues or proceeds derived from the sale, lease, or rental of goods, services, or property by a business entity reduced by the following:

(a) sales and excise taxes paid; and

(b) returns and allowances;

(9) "Internal Revenue Code" means the Internal Revenue Code as defined in current KRS 67.750.

(10) "Net profit" 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:

(a) 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;

(b) 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;

(c) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;

(d) 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; 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) "Rental or Leasing Unit" shall mean any room or rooms connected together or other structures or portions thereof constituting a separate, independent establishment or premises for rent, lease or sublease to the occupant thereof.

12) "Resident" means an individual, partnership, association, corporation, limited liability company, sole proprietorship or other entity domiciled for having a business situs in the school district of Warren County, Kentucky

(13) "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 school district;

(14) "Sales Revenue" means receipts from the sale, lease, or rental of goods, services, or property;

(15) "School district" means the school district of Warren County, Kentucky.

(16) "Tax district" means the Warren County School District;

(17) "Taxable net profit" in case of a business entity having payroll or sales revenue only within the school district means net profit as defined herein;

(18) "Taxable net profit" in case of a business entity having payroll or sales revenue both within and without the school district means net profit as defined herein, and as apportioned under Section (4) of this Ordinance; and

(19) "Taxable year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which net profit is computed.

§ 2 - Occupational License Application Required

(1) Every individual who resides in the school district of Warren County, Kentucky who earns salaries, wages, commissions and compensation for work done and services

performed or rendered in Warren County, Kentucky and all business entities residing in the school district of Warren County, Kentucky engaged in any business in Warren County, Kentucky shall be required to apply for and obtain an occupational license from the school district of Warren County, Kentucky before the commencement of business or in the event of a change of business status. Licensees are required to notify the school district of any changes in address, the cessation of business, or any other changes which render the information supplied to the school district in the license application inaccurate.

3 - Occupational License Tax Payment Required

(1) Except as provided in subsection (2) of this section, every individual or business entity residing in the school district shall be required to file and pay to the school district an occupational license tax for the privilege of engaging in such activities within Warren County, Kentucky pursuant to KRS 160.605. The occupational license tax shall be measured by **one-half (1/2) of one percent (1%) of:**

(a) all salaries, commissions, wages and compensation paid or payable for work done or services performed or rendered in Warren County by every school district resident;

(b) the net profit from business conducted in the school district by a resident business entity.

(c) Net profits generated by rental units where the taxpayer owns two or more rental units.

(2) Exceptions:

(a) All partnerships, S corporations, and all other entities where income is "passed through" to the owners are subject to this ordinance. **The occupational license tax imposed in this ordinance is assessed against income before it is "passed through" these entities to the owners.**

(b) No occupational license tax shall be imposed upon or collected from any insurance company, bank, trust company, combined bank and trust company, combined trust,

banking and title business in this state, any savings and loan association whether state or federally chartered, or upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, or upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special election.

(c) No occupational license tax shall be collected from any individual who is not a resident of the school district imposing the school tax.

(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 predominantly non-public service who are also engaged in public service activity are required to pay a license fee on their net profit derived from the non-public service activities apportioned to the school district;

(e) Persons or business entities that have been issued a license under KRS Chapter 243 to engage in manufacturing or trafficking in alcoholic beverages. Persons engaged in the business of 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;

(3) If any business entity dissolves, ceases to operate, or withdraws from the school district 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 school district.

(4) If a business entity makes, or is required to make, a federal income tax return, the occupational license 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.

§ 4 - Apportionment

(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 two (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 form 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 school district during the tax period by the business entity for compensation, and the denominator of which is the total compensation paid by the business entity everywhere during the tax period. Compensation is paid in school district based on the time the individual's service is performed within the school district.

(3) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in the school 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 school 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 school 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 school district and the purchaser is the United States government.

(b) Sales revenues, other than revenues from the sale, lease or rental of tangible personal property or the lease or rental of real property, are apportioned to the school district based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the school district 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 school district, the business entity may petition the school district or the school district 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 school district; 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 within and without the school district, the license tax shall be measured by that part of the compensation paid or payable as a result of work done or service performed or rendered within Warren County. The license tax shall be computed by obtaining the percentage which the compensation for work performed or services rendered within Warren County bears to the total wages and compensation paid or payable. In order for the school district to verify the accuracy of a taxpayer's reported percentages under this subsection, the taxpayer shall maintain adequate records.

§ 5 - Employers to Withhold

(1) Every employer making payment of compensation to an employee that resides in the school district of Warren County, Kentucky, shall deduct and withhold from the compensation an occupational license tax calculated under Section (3) of this ordinance.

(2) Every employer required to deduct and withhold tax under this section shall, for the

quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter, make a return and report to the school district, and pay to the school district, 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 school district.**

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

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

(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 school district 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 school district, shall be submitted.

(6) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and occupational license tax deducted by the employer from the compensation paid to the employee for payment to the school district during the preceding calendar year.

(7) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.

(8) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this section shall be

personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid or payable to one or more employees of the business entity, and neither the corporate dissolution or withdrawal of the business entity from Warren County, nor the cessation of holding any corporate office, shall discharge that liability; provided that the personal and individual liability shall apply to each and every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally and individually liable under this subsection unless such person had authority to collect, truthfully account for, or pay over the tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due.

(9) Not withstanding subsections (7) and (8) of this section, every employee residing in the school district of Warren County, Kentucky receiving compensation in Warren County that is subject to the occupational license tax imposed under Section (3) of this ordinance shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this ordinance from the employee, such employee or employees shall be responsible for filing with the school district each quarter in the same manner as if they were the employer.

§ 6 - Returns Required

(1) All business entity returns for the preceding taxable year shall be made by April 15 of each year, except 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 school district.

(2) Every business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its occupational license tax return with the school district. Whenever, in the opinion of the school district, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the school district 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 school district may also require copies of reports of adjustments made by the federal government.

(3) Every business entity subject to an occupational license tax governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply with rules as the school district from time to time may prescribe. Whenever the school district deems it necessary, the school district may require a business entity, by notice

served to the business entity, to make a return, render statements under oath, or keep records, as the school district deems sufficient to determine the tax liability the business entity.

(4) The school district 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.

(5) The full amount of the unpaid tax payable by any business entity, as appears from the face of the return, shall be paid to the school district at the time prescribed for filing the occupational license tax return, determined without regard to any extension of time for filing the return.

1099 Filing Requirement

Every business entity making payments of $600 or more to district residents, other than employees, for services performed within Warren County are responsible for maintaining the records of those payments and for completing IRS Form 1099 on or before February 28 of the year following the close of the calendar year in which such compensation was paid.

Persons or business entities not required to remit a Form 1099 remain liable to the school district to remit equivalent information for any compensation made to persons or business entities that are not employees.

§ 7 – Extensions

(1) The school district 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 school district and the business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the occupational license tax, requests the extension and pays the amount properly estimated as its tax.

(2) If the time for filing a return is extended, the business shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due on the return, but not been previously paid, from the time the tax was due until the return is actually filed and the tax paid to the school district. A fraction of a month is counted as an entire month.

§ 8 - Refunds

(1) Where there has been an overpayment of occupational license tax of this ordinance, a refund or credit shall be made to the employer to the extent of overpayment that the amount of the overpayment was not deducted and withheld by the employer. No refund shall be allowed unless written application for refund or credit is received by the school district from the employer within two (2) years from the date the overpayment was made.

(2) Appropriate refund claim forms or amended returns must be completed.

(3) A resident employee who has compensation attributable to activities performed outside Warren County, based on time spent outside Warren County, whose employer has withheld and remitted to this school district, the occupational license tax on the compensation attributable to activities performed Warren County, 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 school district may confirm with the employer the percentage of time spent outside Warren County and the amount of compensation attributable to activities performed outside Warren County prior to approval of the refund.

§ 9 - Federal Audit Provisions

(1) As soon as practicable after each return is received, the school district may examine and audit the return. If the amount of tax computed by the school district 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 school district 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 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 tax may be assessed before the expiration of the times provided in this subsection, or six (6) months from the date the school district receives the final determination of the federal audit from the business entity, whichever is later.

The times provided in this subsection may be extended by agreement between the business entity and the school district. 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.

(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 school district 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

(1) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax 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 school district, whichever is the later, except that:

(a) In any case where the assessment period contained in Section (9) of this ordinance has been extended by an agreement between the business entity and the school district, the limitation contained in this subsection shall be extended accordingly.

(b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

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

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

§ 11 - Information to Remain Confidential

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

(2) The school district 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 school district if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the school district 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 school district 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.

(3) In addition, the school district is empowered to execute similar reciprocal 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

(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 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 school district; 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 time prescribed under Section (5) of this ordinance may be subject to a penalty in 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 the tax was due

until the tax is paid to the school district. 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 school district.

(5) The school district may enforce the collection of the occupational tax due under section (3) of this ordinance and any fees, penalties, and interest as provided in subsections (1), (2), (3), and (4) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the school district shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this ordinance.

(6) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return or willfully makes a false return, or who willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected, 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 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.

(8) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the school district and required to be filed with the school district by the provisions of this ordinance, or by the rules of the school district or by written request for information to the business entity by the school district.

(9) Any person violating the provisions of section (11) of this ordinance by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred dollars ($500) or imprisoned for not longer than six (6) months, or both.

(10) Any person violating the provisions of section (11) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand ($1000) or imprisoned for not more than one (1) year, or both.

§ 13- Use of Occupational License Tax

All money derived from the license taxes under the provisions of this ordinance shall be paid to the school district and placed to the credit of the school district's general revenue fund.

§ 14 - Severability

Each section and each provision of each section of this ordinance are severable, and if any provision, 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 the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of the rest.