

OCCUPATIONAL LICENSE FEE ORDINANCE
NO. 681596
FOR BREATHITT COUNTY, KENTUCKY

An ordinance levying and imposing license fees for the privilege of engaging in occupations, trades and professions in Breathitt County, Kentucky by all persons employed by others, measured by 1% percent gross receipts earned in Breathitt County, Kentucky, by such employed persons; and all self-employed persons, measured by 1% percent of the net profits earned in Breathitt County, Kentucky by said self-employed persons on and after June 1, 1997; defining words and terms; prescribing regulations and providing for the administration, enforcement, and collection of such license fee; requiring the filing of returns and the giving of information by employers and those subject to such license fee, imposing upon employers the duty of collecting license fees at the source; exempting certain occupations from the provisions hereof; providing the license fees collected shall be paid into the general fund of Breathitt County, Kentucky for the payment of general governmental expenses of said county; provided the penalty for violation thereof; repealing all ordinances in conflict therewith and providing a severability clause.

(3) "Business" means an enterprise, activity, profession or undertaking of any nature conducted for gain or profit, whether by a self-employed person, a corporation, an association, a co-partnership or any other entity; it shall include specifically but not exclusively the rental of any property, real or personal, having a situs in the county, but shall not include the usual activities of a board of trade, chamber of commerce, trade association, or unions; community chest funds or foundations; corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, educational, 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 other person.

(4) "Association" means a partnership or any other form of unincorporated enterprise owned by two or more persons;

(5) "Corporation" means a corporation or joint stock company organized under the laws of the United States, Kentucky, another state, territory or foreign country or dependency thereof;

(6) "Year" means the calendar year or the fiscal year "employed by a business subject to the license tax imposed by this chapter" if the taxpayer reports for state income tax purposes on the basis of a period other than the calendar year;

(12) "Non-Resident" means an individual, co-partnership, fiduciary, or association or other entity domiciled outside the county;

(13) "Person" shall mean any natural person, sole proprietorship, partnership, limited partnership, corporation or other legal entity. 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 a partnership or other form of unincorporated enterprise shall mean the partner or member thereof, and applied to corporations shall mean the officers and directors thereof;

(14) The words "trade, occupation and profession" shall mean and include the doing of any kind of work, the rendering of any kind of personal service or the holding of any kind of position or job within Breathitt County, by any clerk, laborer, tradesman, manager, official or other employee, including any non-resident of Breathitt County, who is employed by any employer as defined in this section, where the relationship between the individual performing the services and the person for whom such services are rendered is, as to those services, the legal relationship of the employer and employee, including also a partner of a firm or an officer of a firm or corporation of such partner or officer

administration, arm, authority, board, body, branch, bureau, department, division, section, or unit of the United States government, or of a corporation created and/or controlled by the United States government or any of its agencies or those of any foreign country of dependency.

(16) The word "employee" and the words "self-employed person" shall mean and include any person engaging in or following any trade, occupation, or profession, within the meaning of Section 14 of this ordinance.

(17) The words "gross receipts and compensation" shall have the same meaning and both shall mean and include the total gross amount of all salaries, wages, and commissions, considerations having monetary value, which a person receives from or is entitled to receive from or be charged for by his employer for any work done or personal services rendered in any trade, occupation, or profession including any kind of deductions before "take home pay" is received, but the words, "gross receipts" and "compensation" shall not mean or include amounts paid to traveling salesmen or other workers as allowance of reimbursement for traveling or other expenses incurred in the business of the employer, except to the extent of the excess of such amounts over such expenses actually

(d) Death benefits payable by the employer to the beneficiary of an employee or to his estate, whether payable in a single sum or otherwise;

(e) Amounts received by employees under the Workmen's Compensation Act as compensation for a disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of any such disability.

(f) Amounts received by farmers who derive income from the business of farming on their property within Breathitt County, Kentucky. Said exceptions include, but are not limited to, tobacco, produce, and other crops raised on real property within Breathitt County, Kentucky.

(19) The word "licensee" shall mean and include any person required to file a return or pay a license fee under this ordinance.

(20) The singular shall include the plural and vice-versa, and the masculine shall include the feminine and the neuter.

SECTION 3: DETERMINATION OF WORK PERFORMED WITHIN THE COUNTY

In cases where compensation is earned as a result of work done or services performed both within and without the county, the

tax collector is not filed by the employer and license fees are not paid the county by such employer, the employee for whom no return has been filed and no payment has been made shall file a return with the clerk-tax collector on or before April 15, showing in said return his gross receipts subject to license fees for the period from April 1 through December 31 of the previous year and shall file a return with the clerk-tax collector on or before April 1, and on said return his gross receipts subject to license fees during the pending calendar year. Such return may be made by completing the original copy of the statement furnished him by his employer in accordance with Section 4 hereof if such statement shows all the compensation earned by him, wherever employed, during the period for which such return is made. If for any reason all license fees of a person subject to the provisions of this ordinance were not withheld by his employer from his gross receipts, such persons shall file a return required by this section on a form obtainable at the clerk-tax collector's office. In addition to the gross receipts earned by him, such return shall show other pertinent information as may be required by the clerk-tax collector. Each person making a return required by this section shall at the time of the filing thereof, pay unto the

employed person making a return required by this section shall at the time of the filing thereof, pay to the clerk-tax collector the amount of the license fee due under this ordinance. The amount of any license fee in each year as provided herein shall bear interest from the date the same became due at the rate of 8% percent per annum until paid, and the self-employed person failing to pay the same when due shall also pay the penalty imposed under section 9 of this ordinance.

SECTION 6: DUTIES OF THE CLERK-TAX COLLECTOR

It shall be the duty of the clerk-tax collector to collect and receive all license fees imposed by this ordinance and to keep records showing the amounts received by her from each employer, employee, or self-employed person.

SECTION 7: INVESTIGATIVE POWERS OF CLERK-TAX COLLECTOR

The clerk-tax collector, or any agent or employee designated by her is hereby authorized to examine the books, papers, and records of any employer or supposed employer or any licensee in order to determine the accuracy of any return made, or if no return was made to ascertain the amount of license fee due under the terms

of this ordinance, including but not limited to the provisions for the reexamination and correction of returns as to which an overpayment or underpayment is claimed or found to have been made, and the regulations so promulgated shall be binding upon all licensees and employers.

SECTION 9. INFORMATION TO BE CONFIDENTIAL

Any information gained by the clerk-tax collector or any other official or agent or employee of the county as a result of any returns, investigations, hearings or verifications, required or authorized by this ordinance, shall be confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law, and any person or agent divulging such information shall, upon conviction, be subject to a fine of not less than \$50.00 nor more than \$500.00 or to imprisonment of not exceeding 30 days, or to both such fine and imprisonment at the discretion of the court or jury. Provided however, the clerk-tax collector may disclose to the Commissioner of Revenue of the State of Kentucky or his duly authorized agent all such information and right to inspect any of the books and records of the clerk-tax collector if said Commissioner of Revenue

(b) Any person or employee who shall fail, neglect or refuse to make any return required by this ordinance or any licensee who shall fail, neglect or refuse to pay a license fee, or any employee who shall fail to withhold said license fees or to pay over to Breathitt County, Kentucky such license fees, penalties or interest imposed by this ordinance, or fees, penalties or interest imposed by this ordinance, or any person or employer who shall fail to withhold said license fees or to pay over to Breathitt County, Kentucky such license fees penalties or interest imposed by this ordinance, or person or employer shall refuse to permit the clerk-tax collector or any agent or employee designed by the clerk-tax collector, in writing, to examine the clerk-tax collector's books, records, and papers, or who shall knowingly make any incomplete, false or fraudulent return, or who shall attempt to do anything whatever to avoid the full disclosure of the amount of gross receipts or compensation in order to avoid the payment of the whole or any part of a license fee shall, upon conviction be subject to a fine or penalty of not less than \$100 nor more than \$500 or imprisonment, for each offense. Such criminal penalties shall be in addition to the penalties imposed under sub-section (a) of this section.

advance and before that person is allowed to engage in such work, \$50 which shall be credited in the same manner as set out hereinabove.

Any solicitor, huckster, peddler or other person engaging in any type of activity which would generally be considered an itinerant activity shall pay to the clerk-tax collector in advance and before that person is allowed to engage in said activity, \$75 which shall be credited in the same manner as set out hereinabove.

There shall be no pro-rating of this license fee and it shall apply in full without exception whether the person engages in said business, trade, profession or occupation for a full year or any portion thereof.

SECTION 13: SEVERABILITY

The provisions of this ordinance are severable. If any provision section, paragraph, sentence or part thereof, or the application thereof to any employer or licensee or class of persons shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of this ordinance, it being the legislative intent to ordain and enact such provision, section, paragraph, sentence, and part thereof, separately and independently of each other.

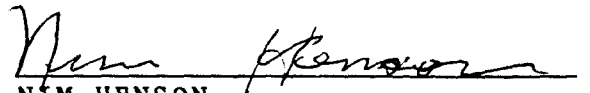
SECTION 17: PAYMENT OF MINIMUM FEES. YEAR OF ENACTMENT

Minimum fees for any year after the year of enactment hereof shall be paid on or before January 31, 1998, and on or before January 31, in each year thereafter.

SECTION 18: DURATION OF TAX

This ordinance is perpetual in nature and shall remain in full force and effect until repealed by a majority vote of the Breathitt Fiscal Court.

PASSED BY THE COUNTY JUDGE/EXECUTIVE AND BREATHITT COUNTY FISCAL COURT at its meeting of the 15th day of August, 1996.


NIM HENSON
BREATHITT CO. JUDGE/EXECUTIVE

Attest:


EUDELL OAKS
BREATHITT COUNTY CLERK