

MARSHALL COUNTY FISCAL COURT
MARSHALL COUNTY, KENTUCKY
ORDINANCE OCCUPATIONAL LICENSE TAX
OCTOBER 6, 1981

WHEREAS, The following Ordinance was introduced on motion of Magistrate Lovett, seconded by Magistrate Devine, and all voting "Aye", and read in full to the Court:

AN ORDINANCE OF THE FISCAL COURT OF MARSHALL COUNTY, RELATING TO THE IMPOSITION AND PAYMENT INTO THE TREASURY OF MARSHALL COUNTY, KENTUCKY, OF LICENSE FEES BASED ON THE EXERCISE OF ACTIVITIES NECESSARY TO CARRY ON BUSINESSES, TRADES, PROFESSIONS AND OCCUPATIONS IN MARSHALL COUNTY, KENTUCKY. THIS LICENSE FEE IS FOR GENERAL CAPITAL OUTLAY PURPOSES, INCLUDING BUT NOT LIMITED TO ROADS, BRIDGES, AND EQUIPMENT PURCHASES.

THIS LICENSE FEE FOR GENERAL PURPOSES IS IN ADDITION TO AND SEPARATE FROM THE MARSHALL COUNTY OCCUPATIONAL LICENSE TAX FOR SCHOOLS WHICH WAS IMPOSED BY THE FISCAL COURT OF MARSHALL COUNTY EFFECTIVE SEPTEMBER 1, 1968.

SECTION ONE. This Ordinance is to take effect immediately upon passage by the Marshall County Fiscal Court upon second reading and publication in the Tribune-Courier newspaper.

SECTION TWO. That on and after January 1, 1982, every person, association, corporation or other entity engaged in any business, trade, occupation or profession in Marshall County shall pay to the administrator, as collecting officer for Marshall County, an annual license fee which shall be based on the said activities performed and shall be measured by one-half of one percent (1/2%) of (a) all salaries, wages, commissions and other compensations earned by every person, resident and non-resident alike, for work done or services

performed or rendered in the County; and (b) the net profits of all businesses, trades, professions, or occupations from activities conducted in the County.

Where salaries, wages, commissions and other compensations under (a) above are earned for work done or services performed or rendered both within and without the County, said license fee shall be measured by such part of the salaries, wages, commissions and other compensations as is earned as a result of work done or service performed or rendered in the County. Such license fee shall be computed by obtaining the percentage which the compensation for work performed or services rendered within the County bears to the total compensation earned.

The net profits of business and professions from activities conducted in the County under (b) above shall be computed as follows:

- (a) Multiply the entire net profit from all sources by a business allocation percentage to be determined by
 - 1. Ascertaining the percentage which the gross receipts of the licensee from sales or services rendered within the County bears to the total gross receipts from sales or services rendered wherever made.
 - 2. Ascertaining the percentage which the wages, salaries, and other personal service compensations for the period covered by the report for services performed or rendered within the County bears to the total wages, salaries and personal service compensation for such period of all the licensee's employees within and without the County.
 - 3. Adding together the percentages determined in accordance with subparagraphs one (1) and two (2) above, and dividing the total so obtained by two (2), or by the number of factors actually used.

SECTION THREE. The following words, when used in this Ordinance shall have the meaning ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

"COUNTY" Marshall County, Kentucky (including the cities of Hardin, Benton and Calvert City)

"ADMINISTRATOR" The person or persons designated by the Marshall County Fiscal Court as being responsible for the collection of the Occupational License Fee, and the accounting thereof to the Fiscal Court.

"BUSINESS" An enterprise, activity, profession or undertaking of any nature conducted for gain or profit, whether conducted by an individual, co-partnership association, or any other entity, but shall not include the usual activities of board of trade, chamber of commerce, trade associations or unions (or the association performing the services usually performed by trade associations or unions); Community Chest funds or foundations; corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes, or for the prevention of cruelty to children or animals; or clubs or fraternal organizations operated exclusively for social, literary, educational or fraternal purposes, where no part of the earnings or income or receipts of such units, groups, or associations inures to the benefit of any private shareholder or individual.

"ASSOCIATION" A partnership, limited partnership, or any other form of unincorporated enterprise, owned by two or more persons.

"CORPORATION" A corporation or joint stock association organized under the laws of the United States, the State of Kentucky or any other state, territory or foreign country or dependency.

"EMPLOYER" An individual, co-partnership, association, corporation, governmental body or unit or administration or agency, or any other entity, who or

that employs one or more persons on a salary, wage commission or other compensa-
tion basis, regardless of whether such employer is engaged in business as above
defined, or is excluded by the terms of said definition.

"INDIVIDUAL" A natural person.

"PERSON" Every natural person, co-partnership, fiduciary, association or
corporation.

"SALES" Net sales of merchandise or of services, or of both, computed by what-
ever method of accounting is authorized for federal income tax purposes.

"SALES WITHIN THE COUNTY" Shall be deemed to include sales of merchandise
delivered to a customer within the County or service performed within the County
for a customer. (As to sales within the County, the place of delivery controls,
not the ultimate resting place of the commodity. If title passes to the customer
in Marshall County, i.e., if delivery is f.o.b. rail truck, etc. within Marshall
County, it is considered as a sale within the County.)

"NET PROFIT" The net income from the operation of a business, or enterprise,
after provision for all costs and expenses incurred in the conduct thereof, shall
be the same as reported for federal income tax purposes excluding items exempted
under this Ordinance but without deduction of taxes based on income.

"LICENSEE" Any person required hereunder to file a return or to pay a license
fee thereon under this Ordinance. The singular shall include the plural, and
the masculine shall include the feminine and neuter.

SECTION FOUR. Each employer who employs one or more persons within the County
shall deduct monthly or more than monthly, at the time of the payment thereof,
the license fee due from each employee measured by the amount of salaries, wages,
commissicns, or other compensation due by said employer to said employee and
shall pay to the Administrator the amount of the license fee so deducted. The
payment required to be made on account of deductions by employers shall be made
quarterly, for the quarterly periods ending March 31st, June 30th, September 30th,

and December 31st of each year, on or before the last day of the month next following the quarter of said deduction to the Administrator, in which is set forth the name and residence of each employee of said employer during the preceding calendar year, giving the amount of salaries, wages, commissions, or other compensations earned during such preceding year by each such employee, together with such other pertinent information as the Administrator may require. Provided, however, that the failure or omission by any employer to deduct such license fee shall not relieve the employee from the payment of such license fee.

SECTION FIVE. Each person subject to a license fee imposed by this Ordinance shall, on or before the 15th day of the fourth month following the close of each year, make and file with the Administrator, setting forth the aggregate amount of salaries, wages, commissions and other compensations or net profits during the preceding year with such other pertinent information as the Administrator may require. Provided, however, that where all license fees due under this Ordinance have been properly withheld, the Administrator may waive the filing of said return by such licensees. Provided further that where the fiscal year of the business, profession, or other activity differs from the calendar year and licensee files federal income tax returns for such other fiscal period, the license fee 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 the calendar year, the said return shall be made on or before the 15th day of the fourth month following the end of the said fiscal year or other period. Such return shall also show the amount of the license fee imposed by this Ordinance. Provided further that the first return under this Ordinance shall be required to show only compensation and net profits earned from the effective date of this Ordinance to the close of the calendar or fiscal periods.

The person making the said return shall, at the time for filing thereof pay to the Administrator the amount of license fee shown as due thereon; provided, however that where any portion of the license fee so due shall have been deducted at the source, credit for such amount shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of the filing of said return, as herein above provided; and provided further it shall be the duty of each employer who has deducted the license fee from the wages, salaries, commissions, or other compensations referred to in Section four (4) above, to furnish said employee a statement showing the amount of salary earned and license fee deducted and paid by said employer during the preceding calendar year, or before February 15th of each year.

The administrator shall have the authority to extend the filing of said return in his discretion. Such extension shall be upon the written request due under the terms of this Ordinance; provided, however, that any balance unpaid when payment is due shall bear interest at the legal rate until paid.

SECTION SIX. It shall be the duty of the Administrator to collect and receive the license fees imposed by this resolution and order; to keep records of the amount received by him from each licensee and employer and the date of such receipts; and to pay all money so received into the county treasury each month for taxes collected the previous month, or more often if he desires.

SECTION SEVEN. The administrator is hereby charged with the enforcement of the provisions of this Ordinance and is hereby empowered to take all action which he may deem necessary relating to any matter or thing pertaining to the administration and enforcement of the provisions of this Ordinance, including but not limited to the re-examination and correction of returns as to which an over-payment or underpayment is claimed or found to have been made and the rulings made by him shall be binding upon the licensee and the employers. The costs of administering this Ordinance including salaries for the Administrator and other staff may be paid out of the funds collected.

SECTION EIGHT. The Administrator or any agent or employee designated in writing by him are hereby authorized to examine the books, papers, and records of any employer or supposed employer or of any licensee or supposed licensee in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of license fee imposed by the terms of this Ordinance. Each such employer or supposed employer or licensee or supposed licensee is hereby directed and required to give the Administrator, his duly authorized agent or employee the means, facilities and opportunity for such examination and investigation as are hereby authorized. The Administrator is hereby authorized to examine any person under oath concerning any wages, salaries, commissions or other compensation or net profits which were or should have been returned and to this end they may compel the production of books, papers, records, and the attendance of all persons before them, whether as parties or witnesses, whom they believe to have knowledge of such wages, salaries, commissions or other compensation or net profits, to the extent that any officers empowered to administer oaths in this Commonwealth is permitted to so order.

SECTION NINE. Only those persons upon whom the imposition of this tax is prohibited by statute are exempted from this tax.

SECTION TEN. Any information gained by the Administrator 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 resolution and order shall be confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law. Provided, however, the Administrator may disclose to the Commissioner of Revenue of the State of Kentucky or his duly authorized agent all such information and may permit him or his agent to inspect any of the books and records of the Administrator if said

Commissioner of Revenue of the State of Kentucky grants the Administrator the reciprocal right to obtain information from the files and records of the Department of Revenue of the State of Kentucky and maintains the privileged character of the information so furnished him. And likewise may also share all such information with any other local taxing entity and permit inspection upon a reciprocal agreement with such local taxing entity.

SECTION ELEVEN. All license fees imposed by this resolution and order remain unpaid after they become due shall bear interest at the legal rate and the person from whom said license fees are due shall further be charged a penalty of one percent of the amount of the unpaid licensee fee for each month or fraction of a month said license fees remain unpaid, not exceeding a penalty of twelve percent in the aggregate. Any person or employer who fails or refuses to withhold monthly the license fee measured by a percent of salaries, wages or other compensation, or who fails to apply said money, after withholding the same, to the Administrator at the time it is due as provided under the terms of Section four (4) of the Ordinance shall become liable for the amount due to the Administrator and the same shall bear interest at the legal rate in addition to which a penalty of one percent of the amount of the unpaid license fees for each month or fraction of a month said license fees remain unpaid, not exceeding a penalty of twelve percent in the aggregate.

SECTION TWELVE. The provisions of this Ordinance are severable. If any sentence, clause or section or part of this Ordinance or the application thereof to any particular state or case is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or repeal any of the remaining provisions, sentences, clauses or sections or parts of this Ordinance, it being the intent of this Court to adopt such

provision, section, paragraph, sentence and part thereof separately and independently of each other.

SECTION THIRTEEN. Persons for whom withholding need not be made by the employer are domestic servants, household employees and ordained ministers.

SECTION FOURTEEN. This act shall not apply to any tax sheltered annuity contributions or the like approved by the Internal Revenue Service.

SECTION FIFTEEN. No person shall be required to pay more than fifteen thousand dollars (\$15,000) in any one year under the terms of this ordinance.

Upon second reading, final approval was on Motion by Magistrate LOVETT, seconded by Magistrate HARGROVE, and passed by vote of 3 Aye and 0 Nay.

Adopted this 20th day of OCTOBER, 1981.

Mike Miller
Mike Miller
County Judge/Executive

Attest:

James English
Clerk