

GALLATIN FISCAL COURT
WARSAW, KENTUCKY
ORDINANCE NO. 070804-3

Amended 10/13/2011

Amended 12/18/2005

AN ORDINANCE OF THE FISCAL COURT OF GALLATIN COUNTY, KENTUCKY, RELATING TO LICENSE FEE UPON ALL PERSONS ENGAGED OR EMPLOYED IN ANY TRADE, OCCUPATION OR PROFESSION WITHIN THE COUNTY OF GALLATIN, COMMONWEALTH OF KENTUCKY FOR THE HEALTH EDUCATION, SAFETY, WELFARE AND CONVENIENCE OF THE INHABITANTS OF GALLATIN COUNTY, COMMONWEALTH OF KENTUCKY, INCLUDING BUT NOT LIMITED TO ALS AMBULANCE, FIRE, POLICE, JAIL, AND PARKS, OF ONE (1%) PER CENT

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

Now, therefore, be it ordained by the Gallatin County Fiscal Court of Gallatin County, Kentucky that Ordinance No. 070804-01 is hereby amended and re-adopted in full to read as follows:

Ordinance No. 070804-01 is hereby enacted and shall read as follows:

WHEREAS, Gallatin County Fiscal Court, like many local governments, is experiencing reduction in state and federal monies and as a result is experiencing a growing budgetary shortfall;

WHEREAS, Gallatin County Fiscal Court is experiencing growing financial difficulties in maintaining the basic services it has undertaken for the Gallatin County community including but not limited to ALS ambulance service, quality fire protection, improved police protection, animal control, senior services, mandatory jail, capital improvements, improved parks and related recreational services; **earmarking \$50,000.00 toward Senior Center building and or maintenance construction and community assistant services annually.**

WHEREAS, the Gallatin County Fiscal Court having determined that the most feasible method for obtaining the desired revenue for the county is by imposition of a tax;

WHEREAS, the Gallatin County Fiscal Court having determined that an annual occupational license fee tax shall be imposed on any wage, salary, business, trade, occupation or profession in Gallatin County, Kentucky;

WHEREAS, an Ordinance should be enacted to implement the

above referenced annual occupational license fee tax;

NOW, THEREFORE, BE IT HEREBY ORDAINED by the Gallatin County Fiscal Court as follows:

SECTION 1: DEFINITIONS

The following words, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the content clearly indicated or requires a different meaning;

Association: A partnership, limited partnership, joint venture or any other form of unincorporated enterprise, owned or engaged in by two (2) or more persons.

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.

Corporation: A corporation or joint stock association organized under the laws of the United States, this state, or any other state, territory or foreign country or dependency.

Collection Officer: The collection officer of the county or any other person designated to perform the functions set forth within this ordinance.

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 IRC; 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 IRC, including but not limited to Sections 125 and 132 of the IRC.

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

Employer: Any individual, person, 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 compensation basis. As defined in Section 3401(d) of the Internal Revenue Code.

Internal Revenue Code: means the IRC in effect on December 31, of the year in which the tax is due, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, of the year in which the tax is due, that would otherwise terminate.

Licensee: Any person required to file a return or to pay an occupational tax under this chapter.

Occupational Tax: A tax imposed for the privilege of exercising the right to engage in trade, occupation or profession for compensation paid by others within Gallatin County, Kentucky. This is analogous with a license fee.

Occupations, trade, profession or other activity: The doing of any kind of work, the rendering of any kind of personal service, to the holding of any kind of position or job within the county, by any clerk, laborer, tradesman, manager, official or other employee, including any non resident of the county who is employed by an employer as defined in this section, where the relationship between the individual performing the services and the person for who such services are rendered is, as to those legal services, the legal relationship, or employer and employee, including also a partner of a firm or an officer of a firm or corporation if such partner or officer receives a salary for his personal services rendered in the business of such firm or corporation, and shall also include and mean the holding of any kind of office or position either by election or appointment by the federal, state, county or county officer or employee, where the services of such official or employee are rendered within the county.

Person: Any natural person, co-partnership, fiduciary, association or corporation. Whenever the word "person" is used in any clause prescribed and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to corporations, shall mean the officers and directors thereof.

Salaries, wages, commissions and other compensations: The total gross amount of all salaries, wages, commissions, bonuses, share of net partnership receipts or withdrawals, corporate

dividends paid in lieu of salaries or wages, and all other payments of other consideration which a person receives from or is entitled to, for any work done or personal services rendered in any trade, occupation or profession or any other activity, including all deductions whether for tax, insurance or other. Amounts paid to traveling salesmen or other workers as allowance or reimbursement for travel or other expenses incurred in the business of the employee to his employer, are excluded from the foregoing definition.

Treasurer: Treasurer of the county.

SECTION 2: USE OF PROCEEDS; UNLAWFUL IMPOSITION OF OCCUPATIONAL TAX

All monies derived from the occupational license fee tax pursuant to the provisions of this ordinance shall be paid to the county treasurer and placed to the credit of the general revenue fund of the county and shall be used for the health, education, safety, welfare and convenience of the inhabitants of Gallatin County, Kentucky including but not limited to ALS ambulance service, quality fire protection, improved police protection, animal control, senior services, mandatory jail, capital improvements, improved parks and related recreational services. It is the purpose of this chapter to provide revenue for the general fund of the county and it is not the intention of the county or of this ordinance to impose and require an occupational license fee tax prohibited by law.

SECTION 3; LEVY GENERALLY

There is hereby levied and imposed an annual occupational tax upon each person, association, corporation, trade, profession and other activity in the county, for the privilege of engaging in such occupation, trade, profession and other activity, which occupational tax shall be measured by and be equal to one percent (1%) of the gross salaries, wages, commissions and other compensations earned by such person for work done or services performed or rendered in the county. ~~provided, however, that such person shall be entitled to an exemption of \$5,000.00 of said gross salaries, wages etc per calendar year before the application of the license fee after December 31, 2004. For the period beginning October 1, 2004 through December 31, 2004, such person shall be entitled to an exemption of \$1,250.~~

Where such salaries, wages, commissions, and other compensations are earned for work done or services rendered both within and without the county, said occupational tax shall be measured by such part of the salaries, wages, commissions and other compensations as is earned as a result of work done or services performed or rendered in Gallatin County. The occupational tax shall be computed by obtaining the percentage of the compensation for work performed or services rendered within the county as relates to the total compensation earned. Every person or business entity engaged in any business for profit and

any person or business entity that is required to make a filing with the IRS or the Kentucky Revenue Cabinet shall be required to file and pay to Gallatin County an occupational license tax for the privilege of engaging in such activities within Gallatin County. The occupational license tax shall be measured by 1% with the \$5,000.00 exemption of:

(a) all wages and compensation paid or payable in Gallatin County for work done or services performed or rendered in Gallatin County by every resident and non-resident who is an employee. This is not intended as a "net profits tax" but as an occupational license for the privilege of employment within Gallatin County.

SECTION 4: EMPLOYER WITHHOLDING AND PAYMENT; RETURNS

(a) Each employer who employs one or more persons within the county shall deduct monthly, or more often than monthly, at the time of payment thereof, the occupational tax due from each employee measured by the amount of salaries, wages, commissions, or compensations, due by said employer to said employee and shall pay to the treasurer the amount of occupational tax so deducted. The payment required to be made unto the treasurer on account of deduction by employers shall commence and be made quarterly for the quarterly periods beginning October 1, 2004 and each and every quarter thereafter, on or before the fifteenth (last) day be it the 30th or 31st of the first month next following the preceding three month quarterly period of said deduction. The aforesaid required quarterly payments shall be for the quarterly periods ending March 31st, June 30th, September 30th and December 31st of each year. Each employer shall, annually no later than the 31st day of January of each year, make a return to the finance officer in which shall be 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 employee.

However, the failure or omission of any employer to deduct such occupational tax shall not relieve the employee from the payment of such occupational tax in compliance with respect to making returns and payment thereof as may be fixed in this ordinance or established by the finance officer.

(b) Every person whose earnings are subject to the occupational tax imposed by this ordinance, shall, on or before April fifteenth of each year, make and file a return with the finance officer on a form obtained from the treasurer. In the return filed, there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees, and other compensation received (all as hereinbefore defined), by and during the preceding year within the county and subject to the said occupational tax, together with such other pertinent information as the collection officer may require.

(c) Where the entire earnings for the year are paid by one and the same employer and the occupational tax has in each instance been withheld or deducted by the employer from the gross amount of compensation without adjustment for expenses it shall

not be necessary for such employee to file a return for the year unless required or requested to do so by the collection officer.

(d) If the return is made for a fiscal year for any period other than a calendar year, said return shall be made within one hundred thirty-five (135) days from the end of the said fiscal year or other period.

(e) The return shall also show the amount of the occupational tax imposed by this ordinance on such earning, or both.

(f) The person making the return shall, at the time of filing thereof, pay to the treasurer the amount of tax shown to be due by the return.

(g) Where any portion of the occupational tax otherwise due shall have been deducted at the source and shall have been paid to the treasurer by the person making said deduction, a credit equal to the amount so paid 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.

(h) If a licensee shall terminate his business or employment for which the occupational tax has not been withheld, during the calendar or fiscal year, the proper return shall be filed and the tax paid within one hundred thirty-five (135) days after the termination of said business or employment.

(i) Persons temporarily engaged in business within the county, or temporarily performing services within the county, shall file a return and pay the occupational tax based upon the completion of said business or employment; **or at quarterly intervals as fore-mentioned schedule, but not to exceed 90 days.**

(j) The collection officer shall have authority to extend the filing of said returns in his or her discretion. Such extension shall be upon the written request of the licensee. Provided, however any balance unpaid when payment is due under the terms of this chapter shall bear interest at the rate of twelve (12) percent per annum until paid.

SECTION 5: COLLECTION OF OCCUPATIONAL TAX AT SOURCE

It is the duty of each employer (as hereinbefore defined) who employs one or more persons on a salary, wage, commission or other compensation basis, to deduct monthly or more often, at the time of the payment, of such compensation, the occupational tax on such salary, wage, bonus, incentive payment, commission or other compensation paid to employees for activities in the county. However, the mere fact that the occupational tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation received. A nonresident employer, either maintaining in the county an office, business address or, doing business therein, or is otherwise subject to service of legal process, is subject to the withholding

provision of this action.

SECTION 6: COMPENSATION EXCLUDED; SPECIFIC COVERAGE

(1) The following money receipts are not deemed to be "salaries" within the meaning of this chapter;

(a) Old age or retirement payments: Periodical payments commonly recognized as old age or retirement pensions, made to persons retired from service after reaching a specified age or after a stated period of employment are not subject to the occupational tax.

(b) Disability, sickness, accident benefits and unemployment compensation; Payments made to employees by an employer under a disability, sickness and accident plan, are not subject to the occupational tax. Unemployment compensation payments by the state or any other agent are not subject to the occupational tax.

(c) Death benefits: Death benefits payable by an employer to the beneficiary of any employee or to his estate, whether payable in a single sum or otherwise, are not subject to the occupational tax.

(d) Benefits arising under the Workmen's Compensation Act as compensation for disabilities sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability, are not subject to this occupational tax.

SECTION 7: OFFICIALS TO COLLECT AND KEEP RECORDS

It shall be the duty of the designated collection officer, as appointed by the Fiscal Court to collect and receive the occupational taxes imposed by this ordinance. The said collection officer shall also keep records showing the amount received by them from each licensee and employer and the date of such receipt. The County Treasurer or Finance Officer shall keep record of the balance received.

SECTION 8: INQUISITORIAL POWERS OF FINANCE OFFICER; ENFORCEMENT

(a) The collection officer is charged with the enforcement of the provisions of this ordinance, and is empowered to prescribe, adopt and promulgate and enforce rules and regulations relating to any matter, pertaining to the administration and enforcement of the provisions of this ordinance, including but not limited to provisions for the reexamination and correction of returns to which an underpayment or overpayment is claimed or found to have been made and the rules and regulations as promulgated by him or her shall all be binding upon the licensee and employers. However all such rules, regulations and decisions shall be subject to the consent and approval of the judge executive.

(b) The designated collection officer personally, or their agents or employees, is authorized and empowered to examine the books, papers and records of any employer, or supposed employer, or of any license payer, or supposed license payer, in order to verify the accuracy of any return made; or, if no return was made,

to ascertain the occupational taxes imposed by this ordinance when he or she deems this reasonably necessary for the purposes incident to the performance of his or her duties hereunder. The collection office may enforce this right by application to the appropriate court having jurisdiction over these matters.

(c) Every employer or supposed employer, and every license payer or supposed license payer, is required to furnish to the collection officer or his or her duly authorized agent, and employees, the means, facilities and opportunity for such examinations, investigations and audits as are authorized in and by this chapter.

(d) The designated collection officer is further authorized to examine, under oath, any person, concerning any income which was or should have been returned for assessment of occupational tax, and to this end, the designated collection officer has the right and power to compel the production of books, papers and records and the attendance of all persons before him or her, whether as parties or witnesses, whom he or she believes to have knowledge of such income.

(c) Refusal of such examination of any employer or person subject to the occupational tax, or presumed to be such employer or person so subject, constitutes a Class A Misdemeanor.

SECTION 9: COLLECTION OF DEFICIENCIES; ALLOWANCE OF CREDIT FOR OVERPAYMENT

(a) If as a result of investigation conducted by the designated collection officer a return is found to be incorrect, the designated collection officer is authorized to access and collect any underpayment of occupational tax withheld at source or any underpayment of occupational tax owing by any license payer, with respect to earnings. If no return has been filed and an occupational tax is found to be owing, the tax actually owing may be assessed and collected with or without the formality of obtaining a delinquent return from the employer or taxpayer.

(b) Should it be disclosed, either as a result of an investigation by the collection officer or through the medium of the filing of a claim or petition for refund or credit, that an overpayment has been made, the county will refund such overpayment.

(c) The employer will in every instance be required to pay the full occupational tax which should have been withheld, even though he may fail to withhold from the employee. If too much has been withheld the excess shall be refunded by the employer to the employee. While the withholding agent (employer) will be expected to maintain complete records of such adjustments with employees, any such adjustments made during any month will not need to be reflected in the withholding return or disclosed by schedules or statements, thereto attached. However, where adjustments are made between employer and employee, disclosure shall be made in a statement supporting the annual schedule or schedules filed pursuant to these regulations.

SECTION 10: RECORDS TO BE KEPT BY EMPLOYERS AND LICENSE PAYERS

Employers and others subject to the occupational taxes, pursuant to this ordinance, are required to keep such records as will enable the filing of true and accurate returns, whether of fees withheld at source or of fees payable upon earning and such records are to be preserved to enable the designated collection officer or any agent or employee of the designated collection officer to verify the corrections of the return filed.

SECTION 11: PENALTIES

All occupational taxes imposed by this ordinance which remain unpaid after they become due shall bear interest at the rate of twelve per cent (12%) per annum and any person who fails to pay such occupational tax when same become due shall also be charged a penalty of one per cent per month thereof not to exceed ten per cent (10%) of the amount of such unpaid occupational tax. Any person whom shall fail, neglect, or refuse to pay any taxes or make any return required by this ordinance, any employer who shall fail to withhold said occupational tax or to pay over to the county those so withheld under the terms of this ordinance, of any person, who shall refuse to permit the designated collection officer or any agent, employee designated by them in writing, to examine books, records and papers pertaining to information required under this chapter, or who shall knowingly make any incomplete, false or fraudulent return, or shall attempt to do anything whatever to avoid the full disclosure of the amount of earnings in order to avoid the payment of the whole or any part of the occupational tax shall become liable to the county for such taxes as well as the interest and penalty thereof.

The failure of any employer or payer to receive or procure returns or other forms is not an excuse for failure to make any return or to pay the occupational tax.

Further, in addition to payment of the taxes, interest and penalties aforesaid, said non-complying person shall also be guilty of a Class A Misdemeanor according to the laws of the Commonwealth of Kentucky and upon conviction, shall be subject to punishment of imposition of a fine of no less than \$250.00 nor more than \$500.00 and jail incarceration of no less than 90 days nor no more than 12 months or at both fine and jail incarceration. Such criminal penalties shall be in addition to the civil penalties imposed above.

SECTION 12: CONFIDENTIAL INFORMATION

Any information gained by the treasurer, designated collection officer, 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 in accordance with proper judicial order, and any person or agent divulging such information shall, upon conviction, be subject to punishment as provided in section 13, and shall be dismissed from employment by the county upon conviction. However, such person may disclose to the commissioner of revenue of the state of his duly authorized agent all such information and the right to inspect any of the books and records of the county if said commission grants to the county the

reciprocal right to obtain information from the files and records from the department of revenue of the state and maintains the privileged character of the information so furnished to him.

SECTION 13: PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION

Occupational Tax Returns and all audits connected therewith are confidential. Any information gained by the designated collection officer and treasurer and their agents or employees, or by any other official or agent of the county as a result of any returns, investigations, hearings, or verifications required or authorized by this chapter, shall be held confidential, except for official purposes and except in accordance with proper judicial order or as otherwise provided in Section 11 and by dismissal from employment by the county. Every such breach of confidence constitutes a separate offense.

SECTION 14: SEVERABILITY

The provisions of this ordinance are severable. If any sentence, clause or section or part of this ordinance with application thereof of any particular state or case is for any reason is found to be unconstitutional, illegal, or invalid, shall not effect 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 15: EFFECTIVE DATE

This Ordinance shall take effect and be in full force immediately upon adoption and all ordinances or parts of other ordinances which conflict with this ordinance are hereby repealed as so allowable by applicable law. Any ordinance or parts thereof not in conflict with the foregoing remain valid and in full force and effect.

AMENDMENT FIRST READ AND APPROVED on this 13th day of October, 2011.

AMENDMENT SECOND READING, APPROVED AND ADOPTED on this the 10th day of November, 2011.