

Boone County OL Regulations

Boone County Finance Department

These regulations are a working tool for interpreting and administering the Boone County Ordinance 07-27. We have made every attempt to address the most common concerns however the regulations do not address every issue. As always, any interpretation of the Regulations which is inconsistent with the Ordinance is to be resolved in favor of the Ordinance.

Boone County Regulations

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AUTHORITY AND APPLICABILITY

Authority

Chapter 110 of the Code of Ordinances adopted by the Boone County Fiscal Court requires that every business entity engaged in any occupation, trade, profession, or other activity in Boone County shall pay to the County Government for the purpose of the general fund, an annual general business certificate fee and an occupational license tax for the privilege of engaging in such activities.

Under the authority of Chapter 110, the Occupational Tax Administrator (hereinafter referred to as "Administrator") is charged with the enforcement of the Code of Ordinances (hereafter referred to as the "Ordinance"), as amended and is empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of the Ordinance. This edition of the License Fee Regulations (hereinafter referred to as the "Regulations") is issued pursuant to the authority of Chapter 110. The Regulations are intended to document the policies and procedures for the administration and enforcement of Chapter 110.

Effective Date

These Regulations are effective for returns due on and after January 1, 2008 except as otherwise expressly provided.

DEFINITIONS

In addition to the words and terms defined in the Ordinance, as amended, and elsewhere herein, the following words and terms, when used in these Regulations, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the terms in this section shall have the meanings hereinafter given. Throughout these Regulations, unless the context shall clearly indicate otherwise, the singular shall include the plural, and the masculine shall include the feminine and the neuter.

- (1) **"ADMINISTRATOR"** means an official Administrator of the occupational tax, to be appointed by the Fiscal Court.
- (2) **"AGENT"** shall mean a person who acts for or in place of another by authority for him. This relationship may exist between businesses, individuals, corporations, partnerships, employers, or any combination thereof
- (3) **"BUSINESS ALLOCATION OR APPORTIONMENT PERCENTAGE"** shall mean the portion of net profits subject to the County as having been made in the County, under the two-factor formula of sales revenue and payroll provided for in the Ordinance and Regulations.
- (4) **"BUSINESS, PROFESSION OR OCCUPATION"** shall mean an enterprise, activity, trade, profession, occupation or undertaking of any nature conducted for gain or profit, whether conducted by a

natural person, partnership, limited liability company, registered limited liability partnership, association, corporation, fiduciary or any other entity. However, this term shall not include the usual activities of boards of trade; chambers of commerce; trade associations or unions, or other associations performing the services usually performed by trade associations or union; 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 for social, 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 individual.

(5) **“CAPITAL ASSETS”** shall mean property which is held by the licensee but not offered for sale to customers in the regular course of business,

(6) **“CAPITAL GAIN OR LOSS”** shall mean the gain or loss which is realized from the sale or exchange of a capital asset.

(7) **“COUNTY”** shall mean the County of Boone, Kentucky including the cities of Florence, Walton and Union.

(8) **“COMMON CARRIER”** shall mean a carrier that expressly and publicly offers to undertake, for all persons indifferently, and for a fee or reward, the transportation of goods in intrastate or interstate commerce. The definition of common carrier shall not include a “private carrier” that does not expressly and publicly offer and provide transportation services.

(9) **“CONSTRUCTIVE RECEIPT”** shall mean the recognition of the legal right to property, even though actual, physical transfer may be delayed, deferred, or transferred by other means.

(10) **“DESIGNEE”** shall mean any person that is duly authorized to act on behalf of the Administrator.

(11) **“GENERAL BUSINESS CERTIFICATE”** shall mean the annual license every business entity is required to obtain.

(12) **“GOVERNMENTAL AGENCY”** shall mean any administration, agency, arm, authority, board, body, branch, bureau, department, division, section, unit of any government (federal, state or local) or political subdivision thereof, or any corporation created and owned or controlled by any government or political subdivision thereof.

(13) **“INDEPENDENT CONTRACTOR”** shall mean a person who provides services who is not subject to the control and direction of another except as to the final result of his work, and not as to means, and who is therefore not an employee as defined in the Ordinance.

(14) **“INDIVIDUAL”** shall mean a natural person.

(15) **“LICENSEE”** shall mean any person required to file a return with or to pay the Annual General Business Certificate Fee or Occupational License Tax to the County.

(16) **“NEXUS”** as defined in applicable case law, shall mean a minimum connection between a person/business entity and the County brought about when the person/business entity purposefully avails itself of the privileges and protection of the County while doing business or practicing a trade, occupation or profession.

- (17) **“OCCUPATIONAL LICENSE” or “OCCUPATIONAL TAX” or “OCCUPATIONAL LICENSE TAX” or “LICENSE TAX OR LICENSE FEE”** shall mean the employee license fee on compensation and/or the net profits license fee as the context shall indicate.
- (18) **“OFFICER”** shall mean a person who holds a position of trust or authority, appointed or elected, for a business, corporation, and partnership or employer organization.
- (19) **“OTHER ACTIVITY”** shall mean any undertaking not otherwise specifically defined herein which is normally entered into for profit.
- (20) **“PARTNERSHIP”** shall mean any unincorporated enterprise of two or more persons engaged in any business, profession or occupation recognized as a partnership for federal income tax purposes.
- (21) **“PRIVATE CARRIER”** shall mean a carrier, or independent contractor that only provides transportation services to an individual business or individual class of businesses and may or may not do so on a regular basis. The private carrier does not publicly offer its transportation services indifferently to all persons.
- (22) **“SOLE PROPRIETOR”** shall mean a natural person engaged in any business, profession or occupation, but not as an employee.
- (23) **“TRADE OR BUSINESS ASSET”** shall mean the tangible property used in a trade or business which is subject to the allowance for depreciation as provided in the Internal Revenue Code.
- (24) **“WAGES”** shall include all salaries, wages, commissions, and other compensation earned by an employee as more precisely defined in the Ordinance and these Regulations.

WHO MUST OBTAIN; BASIS OF COMPUTATION

License fee on wages and net profits distinguished

The occupational license fee is measured by 8/10 of 1% (0.8%) of all wages, salaries, commissions and other compensation earned for work done or services performed or rendered in the County by a resident or nonresident employee. The occupational license fee is measured by 8/10 of 1% (0.8%) of the net profits of a resident or nonresident business, partnership, fiduciary, corporation, other association, sole proprietor, or natural person performing activities as an independent contractor.

Although the wage/net profits license fee is authorized by KRS 68.197 as a single fee, there are important distinctions between the license fee on wages and the license fee on net profits. A clear understanding of these distinctions is important to every licensee and every accountant or attorney who has dealings with the County. The reader who bears in mind the following points will be greatly aided in understanding these Regulations.

- (1) The license fee on wages is imposed on employees only. All others pay the license fee on net profits.
- (2) This clarification is to help taxpayers understand that even if you have local payroll taxes out of your paycheck as an employee and run a side business as a sole proprietor they will have to pay local tax

on the net profits of their business and cannot use the payroll wage assessment withholding to offset the net profit tax liability.

(3) The burden of obtaining the County General Business Certificate and corresponding account number is on all persons engaged in a business, trade, occupation, profession, enterprise or other activity in any County other than that of an employee (whether or not such persons actually have net profits). Employers are required to file with the County on behalf of their employees. The employee is not required to file a return or other document with the County unless (1) the employer fails to properly withhold the license fee from the employee's wages or (2) the employee has occupational income other than wages.

(4) No person shall be exempt from the application of the occupational license fee except if

(a) Specifically excluded or exempted by state or federal law, or

(b) Specifically excluded by the Ordinance or by these Regulations.

(5) The taxpayer bears the burden of proof to the Boone County Fiscal Court that the income is specifically exempt and/or the deduction is specifically allowed. A taxpayer must provide in writing the justification for the adjustment including the below specific references:

(a) Specifically excluded or exempted by state or federal law, or

(b) Specifically excluded by the Ordinance or by these Regulations.

GENERAL BUSINESS CERTIFICATE

Initial Licensing

(1) Corporations, partnerships, and other associations, sole proprietorships, estates and trusts, independent contractors, farms and individuals subject to the occupational net profits license fee and all employers must apply for a general business certificate and by completing an Occupational Business License Application. The applicant, unless not subject to the license fee on net profits, shall remit the twenty-five dollar (\$25) general business certificate fee with the application.

(2) Each separate legal entity conducting business in the County requires a separate application and separate account number. When a corporation becomes a new legal entity, as when it dissolves and incorporates again, a new application must be completed and executed. However, an individual engaged in more than one business activity as a sole proprietor is permitted to use the same account number for the two or more activities in which the individual is engaged.

(3) Identifying account numbers are assigned and licenses are processed on the basis of the information supplied by the completed Occupational Business License Application. Licensees are required to notify the County of any change in address, of the cessation of business activity and of other significant changes which render inaccurate the information previously supplied in the completed questionnaire. Failure of the licensee to notify the County of such changes may result in the initiation of legal action by the County.

- (4) Licensees must complete the Occupational Business License Application and obtain their identifying account number prior to engaging in any business, trade, occupation, profession, enterprise or other activity in the County.
- (5) 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 fee.
- (6) The General Business Certificate is renewed each year for twenty-five dollars (\$25.00) on the net Profit Tax Return.

OCCUPATIONAL LICENSE FEES ON WAGES

Pursuant to the authority vested in it by Section 181 of the Kentucky Constitution, KRS 68.197, the County has imposed an occupational license fee measured by 8/10 of 1% of all compensation of a resident or nonresident employee from businesses, trades, occupations, professions and other activities in the County.

Compensation subject to the occupational license fee – General

As set forth in KRS 68.197 the license fee required to be withheld on an employee's wages by the employer and remitted to the County includes a license fee on, "wages, salaries, commissions, or any 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 to include:

- (1) Any amounts contributed by an employee to any retirement, profit sharing, 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
- (2) 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) Employer contributions to a Qualified Plan Arising from Employee Elections- Amounts contributed by an employer to a qualified plan or a section 403(b) plan which would be received as wages taxable in the year earned by the employee except for the employee's election to have the employer contribute the amount to said plan.
- (4) "Picked Up" Employee Contributions - Employee contributions to Section 401(a) or Section 403(a) plans which are "picked up" by an employer pursuant to Section 414(h) of the Internal Revenue Code.
- (5) Contributions to Non-Qualified Plans - Employer contributions and /or assignments to any plan other than a plan described by Section 401(a), Section 401(k), Section 403(b), Section 414(h) or Section

457 of the Internal Revenue Code. Each employer who employs one or more persons within the County who participate in any non-qualified deferred compensation plan (any plan under which the employer is not permitted for federal income tax purposes to deduct its expenses arising from its contributions or assignments into such plan during the year in which such contributions or assignments are made) shall withhold the license fee from employee's wages and pay to the County the license fee on the amounts contributed or assigned to any such plan on behalf of any said employee. Such employers may, however, apply (and upon request of the employee, shall apply) for a refund of all such license fees withheld and paid on behalf of any employee whose employment is terminated before he becomes eligible to receive benefits under such a non-qualified plan and who in fact does not receive such benefits and loses all right to future benefits arising from the non-qualified plan upon termination from employment.

(6) Separation Payments/Severance Payments -Including (a) payments made by an employer to an employee at the time of retirement to the extent that said payments represent accrued vacation pay, unused sick pay, severance pay and, if such benefits would be subject to the license fee if they were paid to an active employee, other benefits accrued pursuant to any employment contract between the employee and the employer; and (b) payments which are made in lieu of any payment which the employer is obligated to make to or on behalf of the employee arising from the employment to the extent that such payments would be subject to the license fee if they were made to an active employee. Payments made to employees by an employer at the time of a voluntary or involuntary separation (dismissal) of the employee from the service of the employer, are to be regarded as subject to the license fee. This shall always be the case regardless of the name assigned to the fund from which separation payments are made.

(7) Expense Accounts - Sums allowed and paid by employers to employees for expenses, which sums are required to be recognized as wages for federal income tax purposes.

(8) Payments for Services Rendered to Students -Stipends, honorariums, grants and other payments made to students to the extent that such payments are made for services rendered by the student and an employer/employee relationship exists between the payer and the student.

(9) Property and Services Received as Compensation -The fair market value of property or services received as compensation by an employee and paid by the employer including board and lodging and similar items where such board and lodging is considered part of the compensation paid and is not afforded for the convenience of the employer.

(10) Other Income -All other income paid by an employer and received by an employee for the performance of any activity subject to the license fee, not otherwise exempt, unless such income is to be reported and a net profit license fee paid thereon.

(11) Non-Cash Fringe Benefits -Each employer who employs one or more persons within the County 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 fringe benefits by the employee is required to be reported by the employer for federal income tax purposes, the occupational license fee arising from the employees receipt of such compensation; and the employer shall remit to the Administrator with the deposit made for the period in which such non-cash benefits are so reported the occupational license fee due on such non-cash fringe benefits. All fringe benefits except those which pursuant to Section 132 of the Internal Revenue Code qualify as: (1) no additional cost services; (2) qualified employee discounts; (3) working condition fringes; and (4) de minimus fringes; are subject to the license fee.

(12) Vacation, Holiday, Bonus Benefits -Compensation paid to employees by an employer as vacation, holiday and/or bonus benefits are subject to the occupational license fee at the time such compensations are paid to the employee.

- (13) Life Insurance Premiums - For coverage in excess of \$50,000, where premiums are paid by the employer are subject to the occupational license fee and the employee withholding requirements.
- (14) Transportation Fringe Benefits-Cash option amounts received as a transportation fringe benefit, as described in Section 132 (f) of the Internal Revenue Code, are subject to the Occupational License Fee.
- (15) Stock Option -If an employer grants an option to purchase stock of the employer or other property to an employee for any reason connected with the employment of such employee in the County, and if (i) the option is not a stock option as defined by Section 421(a) of the Internal Revenue Code or (ii) the option was a stock option as defined by said Section 421(a) at the time it was granted but was subsequently exercised or otherwise disposed of in a way that disqualifies the option pursuant to Section 421(b) of the Internal Revenue Code from treatment under Section 421(a), then the fair market value of the option so granted shall be subject to occupational license fees on the wages of said employee. The fair market value of the option so granted shall be includable in the employee's wages at the time it is granted if the option had a readily ascertainable fair market value at the time it was granted. The fair market value of the option shall be deemed readily ascertainable at the time it was granted if it was actively traded on an established market, in which case its value shall be determined by the Administrator in the same manner as is prescribed in Section 20.2031-2 of the Internal Revenue Code Regulations. If the option does not have a readily ascertainable fair market value at the time it was granted the employee shall include in his wages the value of the option at the time the employee disposes of the option for value or at the time that (i) the employee exercises the option and (ii) the employee acquires an additional right to receive the property subject to the option. The value of the option thus included in the employee's wages shall be the difference between the fair market value of the property at the time and the amount payable for the property pursuant to the option. The employee has an unconditional right to receive the property subject to the option when his right to receive such property is not subject to any conditions, other than conditions which may be performed by him. For determining the extent, if any, to which compensation paid to an employee in the form of an option has been paid for work done or services performed within the County, the full amount of the said compensation shall be multiplied by the percentage determined pursuant to Section 2.6 of these Regulations applicable for the year in which the option was granted.

(16) Sick Leave -Amounts paid to employees as sick leave under an employer provided sick leave plan. By definition "sick leave" shall mean any amount which:

- (a) Is paid to an employee pursuant to a plan to which the employer pays the premium regardless if the employer pays a third party or is self-insured.
- (b) Constitutes remuneration or a payment in lieu of remuneration for any period during which an employee is temporarily absent from work on account of sickness or personal injuries.

Compensation not subject to the occupational license fee

As set forth in KRS 68.197 the license fee required to be withheld on an employee's wages by the employer and remitted to the County includes a license fee on, "wages, salaries, commissions, or any 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 to exclude:

- (1) Allowances and Reimbursement for Expenses -Sums allowed and paid by employers to employees for expenses necessarily and actually incurred by the employee in the direct performance of his services, including meals and lodging allowances, if the employee is not required to include such receipts as income on his federal income tax return.

- (2) Strike Benefits - Strike pay benefits paid from a fund which is established and/or replenished, in whole or in part, from the employee's wages.
- (3) Kentucky National Guard - Compensation paid members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training. (See KRS 68.197)
- (4) Fringe Benefits Not Taxable for Federal Income Tax Purposes -Non-cash fringe benefits which pursuant to Section 132 of the Internal Revenue Code qualify as (a) no additional cost services, (b) qualified employee discounts, (c) working condition fringes, and (d) de minimus fringes and are therefore not taxable for Federal income tax purposes.
- (5) Employer Contributions to Qualified Plans Not Arising from Employee Election - Employer contributions to qualified plans, other than contributions made pursuant to an employee election to defer compensation into a plan, under Section 401(a), Section 401(k), Section 403(b), or Section 457 of the Internal Revenue Code.
- (6) Amounts paid from Qualified and Non-Qualified Plans -Amounts paid from retirement plans, profit sharing plans, and stock bonus plans or employee stock ownership plans whether or not such plans are "qualified" plans pursuant to the Internal Revenue Code.
- (7) Student Grants - Stipends, honorariums, grants and other payments made to students to the extent that such payments are conditioned only upon the recipient's pursuit of studies and/or participation in athletic or other intercollegiate competition, and scholarships and other non-cash benefits received by duly registered students from the school, college or university in which they are enrolled.
- (8) Exemptions afforded by Treaty - Any wages, salaries, or other compensation paid to a foreign national to the extent that such payments are exempt from state and local taxation by a treaty of the United States.
- (9) Payments to Non-Resident Military Personnel -Payments to non-resident military personnel exempt from state and local taxation under the Soldiers and Sailors Relief Act (50USCA 574).
- (10) Unemployment Compensation - Unemployment compensation payments made by the state or any other government agency are not subject to the occupational license fee.
- (11) Precinct Workers – Compensation paid to employees for election training or work at election booths in state, county, and local primary, regular, or special elections within the County.
- (12) Employer Payments for Employee Benefits – Employer's payments for employee's life insurance premiums not treated as wages for federal income tax purposes, employer's payments for employee's health insurance benefits.

Tip Income and Directors Fees

Compensation which is not "wages" for purposes of the imposition by Ordinance or hereunder of a duty on the employer to withhold and remit a license fee thereon, but which nevertheless is subject to the license fee which must be paid by the employee if not withheld and remitted by the employer includes, but is not limited to, the following:

- (1) **Tip Income** - 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 a license fee, 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 a license fee. An

individual who receives tip income not reported by his employer is deemed to be engaged in an activity which requires such person to file a Net Profit return and remit the license fee due as shown on said return.

(2) **Directors Fees** - Corporations are permitted but not required to withhold and remit fees paid to directors, provided that such corporations submit information indicating that such payments are directors' fees, and state the amount of the license fee withheld.

Apportionment of wages for activities both inside and outside the County

(1) Wages are deemed to be allocable to the County when the activities to which they are attributable were performed or rendered in the County regardless of where the payment was made or received.

(2) Wages attributable to activities both inside and outside the County shall be subject to the occupational license fee on wages in the same proportion that the activities within the County bear to total employment time.

(3) The duties imposed on employers of the Ordinance shall apply with respect to wages paid employees who work both inside and outside the County. County wages shall be computed by multiplying the total wages paid each said employee by a fraction whose numerator is the time spent on the job in the County and whose denominator is the total time spent on the job by the employee inside and outside the County and shall treat the result as the wages subject to the occupational license fee imposed by the County. Time spent "on the job" includes any time an employee is actually performing activities on behalf of his employer. Time spent "on the job" shall not include time for which an employee is compensated for sick and accident leave pay, vacation leave pay, holiday leave pay, compensatory pay or other similar compensation.

(4) Every employer with one or more employees employed both inside and outside the County shall require each said employee to keep accurate records of time spent inside and outside the County. These records must be available for inspection by the Administrator or his designee.

(5) Pursuant to Chapter 110 of the Ordinance, every employer with one or more employees employed both inside and outside the County shall remit quarterly the amount of license fee withheld.

(6) Apportionment of sick and accident leave pay, vacation leave pay, holiday, leave pay, compensatory pay and other pay.

Compensation received by an employee for accrued unused vacation leave, unused holiday leave, unused sick and accident leave, compensatory time, bonus benefits or other payment made under an employer's wage or salary continuation plan during any period of absence from work shall be multiplied by the fraction determined pursuant to Paragraphs (1) through (3) of this Section applicable for the most recent twelve month period compensation was includable in wages subject to occupational license fee.

(7) Apportionment of Separation pay

Compensation received by an employee for separation pay shall be multiplied by the fraction determined pursuant to paragraphs (1) through (3) of this Section applicable for:

(a) the year the compensation is includable in wages subject to occupational license fee if the year in which payment is received is a full calendar year, or

(b) if the year in which the payment is received is less than a full calendar year, the portion of the year that the compensation is includable in wages plus the entire previous calendar year.

(8) Exception to apportionment method

If it is impossible to apportion the compensation as provided above because of the peculiar nature of the activities of an employee, or of the unusual basis of compensation, apportionment shall be made in accordance with the facts. Each employer or employee seeking an exception under this paragraph shall furnish the Administrator a detailed written statement of facts prior to the due date of the return covering the first period for which an exception to the apportionment method is sought.

Liability of Employer for Employee Withholding

Every employer is deemed to be a trustee of Boone County who by employing persons within the County undertakes an obligation to collect and hold the employee license fee, and the funds so collected are deemed to be trust funds. Every such employer required to deduct and withhold the employee license fee is liable directly for failure to file the Employer's Return of Occupational License Fees Withheld and for failure to make payment of such fees, whether actually withheld by such employer or not. If the funds are actually withheld by the employer and not remitted, the employer may be criminally prosecuted for theft by failure to make required disposition.

Any corporate officer or other individual required to withhold, or truthfully account for and remit any license fee required to be withheld from employee wages, who willfully fails to withhold such fee, or truthfully account for and remit such fee or willfully attempts in any manner to evade or defeat the payment of any such fee, in addition to the administrative and criminal penalties provided by County Ordinance and by any other penalties provided by law, shall be civilly liable for the total amount of the fee evaded, or not collected, or not accounted for and remitted, plus applicable penalties and interest. Neither the corporate dissolution nor withdrawal of the corporation from the State of Kentucky nor the cessation of holding any such corporate office shall discharge the foregoing liability of any such person.

NET PROFIT LICENSE FEE

Occupational License Fee on Net Profits

Pursuant to the authority vested in it by Section 181 of the Kentucky Constitution, KRS 68.197, the County has imposed an occupational license fee of eight tenths of one percent (0.8%) of the net profits of resident and non-resident corporations, partnerships, fiduciaries, sole proprietors (including natural persons performing activities as independent contractors) and other enterprises engaged in any business, trade, occupation, profession or other activity in the County.

Each person subject to the County occupational license fee on net profits shall, on or before the fifteenth day of the fourth month following the closing of their federal tax year, make and file a return, on a form furnished or obtainable from the County, setting forth the aggregate amount of salaries, wages, commissions and other compensation or net profits it had during the preceding year, with such other pertinent information as the Administrator may require. No return shall be required of any person classified as an employee under the provisions herein, if such employee compensation earned had all occupational license fee due the County withheld at the source.

Sufficient Nexus Test

(1) A person practicing a business, profession, trade or occupation shall be deemed to be subject to the net profit license fee if the person has a nexus with the County sufficient to justify the imposition of the license fee in a manner consistent with the commerce clause and the due process clause of the Fourteenth Amendment to the Constitution of the United States and other applicable federal law. If the person has a sufficient nexus with the County, but also has a sufficient nexus with other taxing local, state and federal and international taxing jurisdictions, then the net profits derived from activities conducted within the County shall be determined by the apportionment formula set out in Section 110 of the Ordinance. It shall not be necessary that there be an independently established nexus between the County and each activity from which the licensee has derived income subject to apportionment.

(2) The term “nexus” shall be defined in the context of applicable case law. In general a “nexus” shall be defined as a minimum connection between a person/business entity and the taxing jurisdiction brought about when the person/business entity purposefully avails itself of the privileges and protections of the jurisdiction while doing business or practicing a trade, occupation or profession, enterprise or other activity. Without excluding by implication other activities which may create a nexus, the following connections between person/business entities in the County shall normally establish a sufficient nexus:

(a) Location of a place of business in the County;

(b) Frequent and continuing entry into the County in the course of business by an owner, officer or employee of a business; Any entity will be subject to Boone County Occupational net profit taxes if its employees or independent contractors work in the county for a longer duration than would be considered de minimis. A de minimis activity is one deemed to be trivial or inconsequential. Employees working remotely typically exceed the de minimis threshold, even if there are no other business connections with the county in which the employee resides.

(c) Delivery of goods to residents in the County other than through the US Postal Service or by common carrier. Delivery by mail or common carrier beginning at a point within the County, to residents in the County, shall be considered a delivery of goods in the County;

(d) Contracting to sell goods in the County; or

(e) Conducting substantial business activity in the County leading to a contract to buy or sell goods or provide services.

(3) The absence of a branch, office, store, warehouse or other permanent place of business within the County shall not exempt or render non-licensable the net profits of any business, trade, profession, occupation, enterprise or other activity on which a license fee is imposed by the Ordinance.

(4) Any person engaged in the business of transporting people, stock, goods or documents both inside and outside the County will be deemed to be subject to the occupational license fee imposed on net profits if the person has a nexus with the County sufficient to justify the imposition of the license fee.

(5) Common carriers and others who have a sufficient nexus with the County are subject to the net profits license fee on a fairly apportioned share of their net profits even though engaged in interstate commerce.

Business Filing Considerations

- (1) All corporations, partnerships, fiduciaries and associates with a nexus in the County pay the full 8/10 of 1 % (0.8%) net profits license fee regardless of whether individual officers, directors, partners or associates have a nexus with the County.
- (2) Each separate legal entity conducting business in the County requires a separate net profit tax return. Consolidate returns are not permitted in filing the net profit tax return. If a corporation that is subject to the occupational tax is included in a consolidated return that corporation must submit the net profit tax return upon the taxable income of the corporation subject to the occupational tax, not the consolidated return income, a copy of the consolidated 1120 tax form or its equivalent, and a computation sheet allocating all revenue and expense items on the consolidated federal return to each corporation included in that consolidated return.
- (3) An entity that is classified as “a disregarded entity” for Federal tax purposes is considered for Federal income tax purposes as a division of the parent corporation and not as a separate subsidiary. The net profit return will be filed under the parent company.
- (4) Sole Proprietors that have multiple Schedule C’s may file one net profit tax return for all of the business activity under the single tax identification number.
- (5) The lack of a federal filing requirement does not exempt a business from filing a net profit tax return on the business activity. A copy of the financial statements, ledgers or other recordkeeping documents are required to be submitted in lieu of the federal form to verify income and expenses. This is only applicable for persons that have no federal tax filing requirement.
- (6) Kentucky Revised Statute 67.753 (4), Boone County Ordinance # 07-27 §4, Boone County Ordinance #07-26 §110.28(d), and Boone County Board of Education Resolution dated May 13, 2010 provide for the division of net profit for tax purposes for business entities with both payroll and sales revenue in more than one tax district. The statute, ordinances, and resolution state if the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the county, the business entity may petition the county or the county may require, in respect to all or any part of the business entity's business activity, if reasonable, an alternative method of apportionment. This administrative regulation establishes alternative apportionment request procedures.

Section 1. Petition for Alternative Apportionment Variance

1. Before a taxpayer may file a return with an alternative method, allocation, or apportionment pursuant to Kentucky Revised Statute 67.753 (4), Boone County Ordinance # 07-27 §4, Boone County Ordinance #07-26 §110.28(d), and Boone County Board of Education Resolution dated May 13, 2010, a taxpayer shall file a petition for the use of alternative apportionment with the County, and the petition shall have been approved or denied by the County. If the taxpayer chooses to be represented by a person or firm outside of its business entity, a written declaration of representative shall be submitted to the County naming the taxpayers representative(s). Taxpayers are encouraged to file the petition as early as possible before the original due date of the return.
2. All petitions shall be in written form and submitted to the attention of the Boone County Occupational Tax Administrator, Boone County Fiscal Court, P.O. Box 960, Burlington, KY 41005. A petition submitted as an attachment to a return shall not be considered a valid petition. If the County process a return which uses an unapproved alternative apportionment method, the action shall not be construed as the County’s acceptance of the taxpayer’s proposed alternative method.

3. The petition must clearly state all relevant facts and a full and precise statement of the specific reasons that the taxpayers believes the statutory apportionment formula does not fairly represent the extent of the taxpayer's business activity in the county. The petition must include a notarized verification signed by the taxpayer that the statements contained within the petition are true and accurate under penalty of law. The individual who signs for a taxpayer that is a corporation, trust or estate, or partnership must be a corporate officer, fiduciary, or general partner, respectively.
4. The taxpayer shall have the burden of establishing, by clear and cogent evidence that the statutory allocation and apportionment provisions contained in Kentucky Revised Statute 67.753 (4), Boone County Ordinance # 07-27 §4, Boone County Ordinance #07-26 §110.28(d), and Boone County Board of Education Resolution dated May 13, 2010 does not fairly represent the extent of the taxpayer's business activity in the County.
5. Taxpayers filing a petition must propose an alternate apportionment formula and state the specific reasons that the taxpayer believes the alternate formula will provide a more equitable apportionment of income. Petitioner may request deleting or adding factors, changing the weight granted to a factor, adding new factors, or any other method that the taxpayer believes will fairly address the alleged problem created by the statutory apportionment formula.
6. The County shall notify the taxpayer, in writing, if the requested alternative method has been approved or denied.

Section 2. Approval of Alternative Apportionment

1. If a taxpayer is permitted or required to use an alternative apportionment, taxpayer will use the approved method on prospective tax return filings. No retroactive application of the approved alternative apportionment method is allowed.
2. A taxpayer may continue to use the approved alternative apportionment method if the facts as laid out in the original petition remain materially unchanged. Taxpayer must attach annually to their net profit tax return attestation, signed by an officer of the company, that the alternative apportionment fact pattern has remained materially unchanged as laid out in the original petition.
3. If the alternative fact pattern changes and the approved method of alternative apportionment used on the net profit tax return no longer reflects the petition brought forth to Boone County, taxpayer must use the statutory apportionment factors allowed under the current Boone County ordinance on the net profit tax return. Taxpayer must notify Boone County by attaching a statement to the net profit explaining the change in fact pattern.
4. Boone County's acceptance of a taxpayer's alternative apportionment method does not set precedent for other taxpayer's due to the unique fact pattern of each taxpayer.

Section 3. Denial of Alternative Apportionment

1. A taxpayer is permitted to appeal the denied alternate apportionment method to the Boone County Treasurer. Appeals must be made in writing and received by the Boone County Treasurer within thirty (30) days of the mailing of the denial of taxpayer's request of alternative apportionment by the Tax Administrator.

Common Carriers and Others Engaged in Interstate Commerce

Common Carriers are not excluded from the net profit license fee even though engaged in interstate commerce. Common carriers and others engaged in interstate commerce are subject to taxation on a fairly apportioned share of their net profit if they have a sufficient nexus with the County to support the imposition of the license fee. The provisions of this Section are subject to the limitations of Public Law 86-272 (15 U.S.C.S. 381) which prohibits states and political subdivisions thereof from attributing taxable nexus to persons who do not maintain an office within the jurisdiction and whose sole activity within the jurisdiction consists of solicitations of sales by employees or agents not empowered to enter binding contracts within the jurisdiction.

Exemptions to License Fee on Net Profits

The following classes of business are exempt from payment of the net profit occupational license tax:

- (1) No net profits occupational license tax is imposed upon or collected from and no filing is required of any bank, trust company, combined bank and trust company or combined trust, banking and title business in Kentucky or upon any state or federally chartered savings and loan association because these entities are expressly exempted from the license fee by KRS 68.197.
- (3) No net profits occupational license tax is imposed by the County on insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky. The license fee on insurance premiums is authorized by KRS 68.197 and is imposed in lieu of, and not in addition to, the County net profits license fee.
- (4) No net profit occupational license tax is imposed on and no filing is required of the activities of boards of trade, chambers of commerce, 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, income, or receipts of such units, groups, or associations inures to the benefit of any private shareholder or individual and/or the organization does not earn "unrelated business income" as defined at Internal Revenue Code 511. To qualify for this exemption, the organization must submit satisfactory proof of their exempt status for federal income tax purposes.
- (5) No net profit occupational license tax is imposed and no filing is required of companies (doing business in the County) "that pay an ad valorem tax and a franchise tax". The exemption from the license fee for companies that "pay an ad valorem tax and a franchise tax" refer to companies and only to companies that are subject to the public service corporation tax as set forth at KRS 136.120. This tax is applied only to utility companies and to certain common carrier companies. To be entitled to this exemption, companies are required to show that they are actually assessed as public service companies by the Kentucky Revenue Cabinet and that they in fact pay an ad valorem tax based on this assessment. Licensees whose business is 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 County.

Determination of Net Profits in General

- (1) The provisions in the definitions of net profits discussed in this Section have general application to all types of licensees.
 - (a) Net Profit – As set forth in ordinance #07-27.
 - (b) Expenses Associated with Income not Subject to License Fee are not deductible – Any expenses attributable to income not subject to the occupational license fee shall not be allowed as deductions from the remaining net profits. In the absence of records showing the actual expenses attributable to income not subject to the license fee, the minimum shall be all expenses up to the amount of income not subject to the license fee.
 - (c) Federal Tax Credit in Lieu of Deduction – Business expenses for which a licensee has, for federal income tax purposes, elected a credit in lieu of a deduction may be deducted from net profits. Some current examples of federal credits are the investment tax credit, foreign tax credit, jobs credit, and rehabilitation expenses credit. The deduction for the expense is allowable in the year(s) the expenses would have been deductible for federal income tax purposes had the credit not been taken. Thus, for example, the credit for rehabilitation expenses is not excluded from net profit in the year the credit is allowed for federal tax purposes, but in the year the amount of the basis reduction would otherwise have been allowed as a depreciation expense had the credit not been taken. The foreign tax credit may only be excluded from net profit where the related foreign income is included in determining net profit.
 - (d) State and Local Taxes Based on Income – Corporations, partnerships and sole proprietors may not deduct state or local taxes or license fees based on income. State or local franchise, license or gross receipts taxes or other taxes not based on income, but are costs of doing business, are allowed as a deduction in determining net profits.
 - (e) Net Operating Losses – Net operating loss carrybacks and carryforwards allowed under IRC Section 172(a) are not deductible in determining net profits.
 - (f) Capital Gain Income – Capital gain income related to business activity shall be subject to the license fee and be reported in the same manner as for federal income tax purposes.
 - (g) Capital Gains Arising from Sale of Business –Gains realized from the sale of a business are subject to the license fee if the person receiving the gain has been engaged in the business within the County at any time; the license fee on the gain shall be included in the net profits of the person receiving the gain for the year in which the gain is recognized regardless of whether the person receiving the gain was otherwise engaged in that business within the County during that year and regardless of whether or not the business was active during the year the gain was recognized.
 - (h) Deductions for profits from Kentucky sale of Alcoholic beverages -Net profits from the sale of alcoholic beverages in Kentucky are exempt from occupational license fee. To the extent that a licensee's net profit is from the sale of alcoholic beverages within Kentucky, a deduction may be taken from the licensee's total net profits derived from all sources. This deduction shall be calculated by dividing receipts from Kentucky alcoholic beverage sales by receipts from total sales (whether of alcoholic beverage products or otherwise). This percentage is then multiplied by the licensee's gross/total income as determined on the net profit license fee return, thereby arriving at the deduction available to the licensee for sale of alcoholic beverages in Kentucky.

(i) Interest on U.S. Obligations – Corporations and partnerships are allowed to exclude from net profit the amount of interest on U.S. obligations reduced by any expenses definitely related thereto. The word “definitely” contemplates an exclusive connection between the expenses and the interest earned. Thus, for example, fees charged by an investment advisor to manage an account consisting of only U.S. obligations would be “definitely” related to interest earned on the U.S. obligations. However, if the account consisted of other investments in addition to the U.S. obligations, there would be no definite relationship between the fee and the U.S. obligations. The word “definitely” does not contemplate any allocation of expenses among various types of income.

(j) Deduction of Certain Expenses -In calculating net profits subject to occupational license fee all ordinary and necessary expenses of doing business, unless specified as not being deductible by Ordinance, Regulation or otherwise by law, including reasonable compensation of employees, shall be allowed, but no deductions may be claimed for salary or withdrawal of a sole proprietor or of the partners, members or other owners of an unincorporated business or enterprise.

(A) If not claimed as a part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, loss resulting from theft or casualty, not compensated for by insurance or otherwise, of property used in the trade or business, but the amount may not exceed that recognized for the purpose of federal income tax.

(B) Where depreciable property is voluntarily destroyed, only the cost of such demolition and the undepreciated balance thereof will be allowed as an expense in the year of such demolition to the extent allowable for federal income tax purposes.

(C) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the Administrator. If the reserve method is used, a reasonable addition to the reserve may be claimed, but in no event shall the amount exceed the amount allowable for federal income tax purposes.

Determination of Net Profits for Corporations other than S Corporations

(1) For corporations (other than S Corporations), "net profit" shall mean the licensee's "taxable income" for federal income tax purposes adjusted as follows:

- (a) plus any sum deducted for federal income tax purposes as net operating loss carryforwards or carrybacks,
- (b) plus any deductions for federal income tax purposes for state or local taxes or license fees based on income,
- (c) plus any expense attributable to income not subject to the occupational license fee,
- (d) plus the total deduction for dividends paid and the Section 857(b) (2)(E) deduction used in the determination of real estate investment trust taxable income,
- (e) plus the total income distribution deduction used in the determination of Estate and Trusts taxable income
- (f) less interest on U.S. obligations,

- (g) less the amount of foreign dividend gross-up under Section 78 of the Internal Revenue code,
- (h) less the amount of subpart F income included under Section 951 of the Internal Revenue Code but not actually received,
- (i) less business expenses for which a licensee has for federal income tax purposes, elected a credit in lieu of expenses.

(2) Net profits are subject to such other adjustments as may be required by County Ordinance or otherwise by law.

(3) The corporation's annual Net Profit License Fee Return must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or other authorized officer. The name and title of said officer must be printed legibly or typed underneath the signature.

(4) Copies of applicable federal schedules or their equivalent must be attached as evidence supporting a licensee's statement of income and expenses.

(5) Corporations with business activity in the County must file an annual net profits license fee return whether or not they have net profits from the business, trade, occupation, profession, enterprise or other activity in which they are engaged during the year.

Determination of Net Profits for Partnerships and S Corporations

(1) For partnerships and S Corporations "net profit" shall mean a licensee's "ordinary income" for federal income tax purposes adjusted as follows:

- (a) plus income passed through separately on the federal income tax return from a partnership to the partners or from an S corporation to the shareholders, including, but not limited to, guaranteed payments to partners, dividends qualifying for exclusion, net capital gains, gains from casualty or theft, IRC 1231 gains,
- (b) plus any deductions for federal income tax purposes for state or local taxes or license fees based on income,
- (c) plus any expense attributable to income not subject to the occupational license fee,
- (d) less interest on U.S. obligations,
- (e) less non-business interest and dividend income,
- (f) less professional expenses not reimbursed by the partnership" which for federal income tax purposes are claimed on the partners federal income tax return. In order to reduce gross receipts or sales revenues by these expenses, they must be of the type which would have been deductible by the partnership for federal income tax purposes had those expenses been paid by the partnership and they must actually have been deducted by the partner on his federal income tax return. These expenses would, for example, include professional liability expenses and automobile expenses.
- (g) less the amount of foreign dividend gross-up under IRC Section 78,
- (h) less the amount of Subpart F income included under IRC Section 951 but not actually received,

(i) less business expenses for which a licensee has, for federal income tax purposes, elected a credit in lieu of expenses,

(j) less business expenses passed through separately on the federal tax return from a partnership to the partners or from an S corporation to the shareholders including, but not limited to charitable contributions, expense deduction from recovery property pursuant to IRC Section 179, and special allocations passed through separately by the partnership to the partners or by the S corporation to the shareholders.

(k) and for purposes of this Ordinance the following items when passed through separately to the partner or shareholder, when paid on behalf of the partners, or when paid on behalf of the shareholders: health and life insurance premiums, amounts contributed to a Keogh (HR-10) retirement plan, amounts contributed to a SEP as defined in Section 408(k) of the Internal Revenue Code, amounts contributed to any other self-employment retirement plan, amounts paid for self-employment taxes of a partner, shall not be deductible for purposes of determining net profit for partnerships and S corporations,

(l) and for purposes of the Ordinance, the license fee is imposed on the partnership or S corporation, not the partner or shareholder.

(2) Net profits are subject to such other adjustments as may be required by County Ordinance or otherwise by law.

(3) Copies of applicable federal schedules or their equivalent must be attached as evidence supporting a licensee's statement of income and expenses.

(4) Partnerships and S corporations with business activity in the County must file an annual Net Profit License Fee Return whether or not they have net profits from the business, trade, occupation, profession, enterprise or other activity in which they are engaged during the year. Partnerships are required to file one annual Net Profit License Fee Return on behalf of all individual partners, and S corporations are required to file one annual Net Profit License Fee Return on behalf of all shareholders.

(5) A partnership's annual Net Profit Return must be signed by a general partner. An S corporation's annual Net Profit Return must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or other authorized officer.

Determination of Net Profits for Sole Proprietors

(1) For sole proprietors net profits shall mean a licensee's gross receipts or sales revenues from his business, trade, occupation, profession, enterprise or other activity including, but not limited to, royalties, rental income and nonemployee compensation, less ordinary and necessary expenses of the business trade, occupation, profession, enterprise or other activity such as defined as deductions for federal income tax purposes adjusted as follows:

(a) plus ordinary gains and capital gains from the sale of property used in a licensee's business, trade, occupation profession, enterprise or other activity including, but not limited to Section 1231, 1245 and 1250 of the Internal Revenue Code,

(b) plus any sum deducted for federal income tax purposes as a net operating loss carryforward or carryback,

- (c) plus any deductions for federal income tax purposes for state or local taxes or license fees based on income,
- (d) plus any expense attributable to income not subject to the occupational license fee,
- (e) less ordinary losses and capital losses from the sale of property used in the licensee's business, trade, occupation, profession, enterprise or other activity,
- (f) less business expenses for which a licensee has, for federal income tax purposes, elected a credit in lieu of expenses,
- (g) and for purposes of this Ordinance, contributions on behalf of the licensee to a Keogh (HR-10) retirement plan, amounts contributed to a SEP, as defined in Section 408(k) of the Internal Revenue Code, amounts contributed to any other self-employment retirement plan, amounts paid for self-employment taxes of an individual owner shall not be deductible for purposes of determining the sole proprietors net profit. Contributions by the licensee to a Keogh retirement plan, Simplified Employee Pension Plan or other self-employment retirement plans are deductible from gross receipts or sales of a sole proprietor in computing net profits to the extent that they are on behalf of his common law employee.

- (2) Net profits are subject to such other adjustments as may be required by County Ordinance or otherwise by law.
- (3) Single return for two or more businesses; exception – Sole proprietors, including single owner LLC's filing as sole proprietors for federal income tax purposes, may combine on a single Net Profit License Fee Return the net profits from two or more distinct businesses with activities within the County. However, if a sole proprietor engages in one or more activities, businesses, trades, professions or occupations as a sole proprietor in the County and in addition engages in one or more distinct and separate business activities, trades, professions or occupations as a sole proprietor wholly outside the County, only the net profits and/or losses from the business activities, trades, professions or occupations engaged in by the sole proprietor in the County are subject to the net profit license fee; no fee is due and no offset is permitted with respect to any profit or loss arising from the sole proprietors activity outside the County.
- (4) Copies of applicable federal schedules or their equivalent must be attached as evidence supporting a licensee's statement of income and expenses.
- (5) A sole proprietor conducting a business, trade, occupation, profession, enterprise or other activity in the County must file an annual Net Profit License Fee Return whether or not they have net profits from the activity, business, trade, occupation or profession in which they are engaged during the year.
- (6) A sole proprietor must personally sign the County Net Profit Return reporting said net profits.

Determination of Net Profits for Trusts, Estates and Real Estate Investment Trusts

The net profit of a Trust, Estates and/or Real Estate Investment Trusts (REIT) which is engaged in a business activity is subject to the net profits license fee as is the net profits of any other business, trade, occupation, profession, enterprise or other activity. The rules of the occupational license fee Ordinance and Regulations applicable to individuals engaged in renting real property is also applicable to trusts and estates engaged in the management of real property and in the event the trust or estate is deemed thereby to be in the business of renting real property, the profit derived there from shall be subject to the license fee.

Income distribution deductions arising from distributions to beneficiaries and/or deduction for dividends paid arising from dividend distributions to shareholders of a REIT shall be added back to its income in determining the taxable income of the trust, estate or real estate investment trust subject to the occupational license fee.

Trusts that are part of qualified retirement plans and individual retirement accounts who pool their assets in a group trust and are engaged in an enterprise, activity or business which is productive of income, that income shall be considered subject to the license fee.

Determination of Net Profits for Limited Liability Companies

A limited liability company shall have the same entity classification as that elected for IRS federal income tax filings.

Net Profits Apportionment

(1) Determination of Net Profits Apportionment Percentage

This Section describes the method by which a licensee engaged in business both inside and outside the County is to apportion its net profits. As discussed in this Section, the apportionment percentage is determined by a two-part formula using a “sales factor” and a “payroll factor”.

(2) Net Profits Apportionment – Introduction and Overview

If the operations of a licensee are conducted both inside and outside the County, then the extent to which its total net profits from all sources shall be considered as having been derived from activities within the County (and hence being subject to the occupational license fee imposed by the County) shall be determined by application of the business apportionment percentage to be determined by averaging the percentage of sales revenue and percentage of compensation within the County.

(3) Apportionment Factors

(a) Sales Factor – The sales factor is the percentage computed by determining the licensee’s sales revenue attributable to activities within the County and dividing by the licensee’s total sales revenue.

(b) Payroll Factor – The payroll factor is the percentage computed by determining the licensee’s compensation paid to employees attributable to activities within the County and dividing by the licensee’s total compensation paid.

(4) Determination of Sales Factor

(a) Definition of “Business Receipts”

“Business receipts” are “sales revenues as defined in Section 16-21 of the Ordinance” and is inclusive of all cash payments, the fair market value of all property and services received and all receivables from transactions and activities of the licensee’s trade or business operations. “Business receipts” shall be computed on the cash or accrual basis in accordance with the method

of accounting used for federal income tax purposes. "Business receipts" shall not include any item of income which is excluded from the licensee's net profits.

(b) Receipts from the Sale of Tangible Personal Property

Receipts within the County shall include the sales of tangible personal property delivered to a purchaser within the County, regardless of F.O.B. point or other conditions of sale, unless otherwise specified by the Ordinance or these Regulations.

(c) Property Ordered from outside Boone County

Sales are attributable to activities within the County when property is delivered to a purchaser within the County even though the property is ordered from outside the County.

Example: B Corporation with inventory in Henderson, Kentucky, sold \$100,000 of its products to a purchaser with branch stores in several locations, including the County. The purchase order was placed by the purchaser's central purchasing department located in Louisville, Kentucky. \$25,000 of the purchase order was shipped directly to the purchaser's branch store in the County. The branch store in the County is the "purchaser within the County" with respect to \$25,000 of B Corporation's sales. Therefore, B Corporation has \$25,000 of business receipts within the County.

(d) Shipment Terminating in the County later transferred

Sales are attributable to activities within the County when property is delivered or shipped to a purchaser in the County even though the property is later transferred by the purchaser to another location.

Example: D Corporation makes a sale to a purchaser who maintains a central warehouse in the County where all merchandise purchases are received. The purchaser reships the goods to its branch stores in other localities for sale. All products shipped to the purchaser's warehouse in the County are property "delivered or shipped to a purchaser within the County". Therefore, these are business receipts within the County for D Corporation.

(e) When Property is Physically Delivered to a Purchaser Outside the County

Sales are not attributable to activities within the County when property is delivered or shipped to a purchaser outside the County.

Example: A new car dealer located within the County sells used vehicles taken in trade to a wholesaler located in Henderson, KY. The new car dealer physically delivers these vehicles to the Henderson location using a commercial carrier service. These sales are not "in the County".

(f) Other County Business Receipts

Business receipts from sales, other than sales of tangible personal property, are attributed to the County as follows:

- (i) Gross Business Receipts from the Sale, Lease, Rental or other use of Real Property
Gross business receipts from the sale, lease, or rental or other use of real property are in the County if the real property is located in the County; except that commissions or other gross business receipts paid as a result of the fulfillment of a contract to sell, or provide other services related to the sale of the real property, shall be in the County based on the time spent in fulfilling such contract or providing said services.

(ii) Gross Business Receipts from Rental, Lease, Licensing or Other Use of Tangible Personal Property

Gross business receipts from rental, lease, licensing or other use of tangible personal property shall be attributable to the County if the property is in the County during the entire period of rental, lease, license or other use. If the property is within and without the County during such period, gross business receipts attributable to the County shall be based upon the ratio which the time in the County bears to the total time or use of the property everywhere during such period.

(iii) Gross Business Receipts for the Performance of Services

Gross business receipts for the performance of services are attributable to the County based on the time spent in performing such services in the County. Time spent in performing services includes time spent in performing contracts or other obligations which gave rise to such gross business receipts.

(iv) Gross Business Receipts from the Sale of Intangible Personal Property

For persons whose business includes the sale of intangible personal property, gross business receipts from the sale of such property shall be attributed to the County based on time spent in selling such intangible personal property in the County. Time spent in selling includes time spent in performing contracts or other obligations which gave rise to such sales.

(g) Determination of Sales Factor – Particular classes of persons

The following classes of persons have presented particular questions and/or difficulties with respect to determining their County business receipts. The provisions of this Subsection (g) are established to set forth clearly which business receipts are attributable to activities within the County for those particular classes of persons.

(i) Persons engaged in Transportation of Goods or Documents

Receipts from the service of transporting goods or documents are attributable to the County if 1) the party contracting with the licensee for the provision of such services is located within the County; and 2) such goods or documents are placed in the control of the licensee at such location or are delivered to such location. With respect to goods or documents transported "C.O.D.", the party contracting with the licensee shall be deemed to be the party who placed the goods or documents in the control of the licensee.

(ii) Persons Engaged in the Transportation of People

The receipts of any licensee which arise from the service of transporting people shall be deemed to have arisen in the County if the origination point of the ride is in Boone County.

(iii) Persons Furnishing Advertising

The receipts of any licensee which arise from advertising services are attributable to the County as follows:

(1) printed media, radio and television broadcast advertising, 100 % of advertising revenue received from customers whose principal places of business are in the County and a percentage of advertising revenues received from customers whose principal place of business are outside the County equal to the proportion of the licensee's audience/circulation which is within the County.

(2) Billboard advertising, if the billboard is located within the County.

(iv) Loan Companies

Business receipts of any licensee doing business as a loan company shall be receipts derived from loans negotiated through offices in the County.

(v) Residual Payments

Residual payments received by insurance agents, authors, performers, salespersons and others are subject to the license fee to the extent that such payments were earned in the County. Such payments shall be rebuttably presumed to have been earned in the entirety in the County, unless a claim is made that such income was earned, in part, outside the County; in which case the licensee must furnish undisputable evidence to support such a claim.

(5) Determination of Payroll Factor

(a) Definition of "Payroll"

Payroll shall include all wages paid to or payable to employees. Payroll shall be computed on the cash or accrual basis in accordance with the method of accounting used for federal taxable income.

(f) What is included in County Payroll?

Payroll within the County shall include all wages attributable to activities within the County as defined in the Ordinance and Regulations and otherwise by law.

(6) Computation of Apportionment Percentage

(a) Apportionment Percentage Formula

The apportionment percentage is determined by adding together the sales factor and the payroll factor then dividing the total by two (2). (However see Paragraph (b) below in the event one factor is absent.) This apportionment percentage is applied to the entire net profits of the licensee, wherever derived, to arrive at subject net profits.

(b) If either the sales factor or the payroll factor is missing the remaining factor is the apportionment percentage. A factor is not deemed to be absent merely because none of the licensee's sales revenue arose inside the County or none of the compensations paid by the licensee were attributable to activities inside the County.

SPECIAL CASES

Introduction

The following special cases have presented particular questions and/or difficulties with respect to liability for and/or collection of the general business certificate fee and net profits occupational license tax. The provisions of this Section are established to set forth clearly the liability in these special cases and to outline the procedures by which the County shall collect the license fees.

Income from the Rental of Real Property

- (a) The definition of real property, as the term is used in this Regulation, shall include commercial property, residential property, farm property, and any and all other types of real estate.
- (b) Rental income received by a licensee is subject to license fee to the extent that the rental, ownership, management or operation of the real estate from which such rental income is derived (whether so rented, managed or operated by the licensee individually or through agents or other representatives) constitutes a business activity of the licensee in whole or in part.
- (c) Corporations, partnerships and other associations who have business activity in the County and receive income from the rental, ownership, management or operation of real property, wherever located, are presumed to be in the business of renting said property, regardless of the amount of gross annual rental income or the number of residential or other units held or offered for rent. The net profits from such rental, ownership, management or operation shall be included in the corporation, partnership or other association's Net Profits License Fee Return.
- (d) Individuals as well as fiduciaries acting on behalf of individuals or deceased individuals who receive income from the rental, ownership, management or operation of real property located in the County are refutably presumed to be engaged in a "business activity" which requires a license fee to be paid and a return filed
- (e) Licensees shall include in net profits any capital gain arising from the sale of any real property included in the licensee's business of renting real property. An individual's or fiduciary's real property is presumed to be included in the licensee's business of renting property.

Waiters, Waitresses, Bellhops and Others Receiving Tip Income

Waiters, waitresses, bellhops and others receiving tip income not reported by his employer is deemed to be engaged in a business activity. They are required to obtain their own Occupational Business License and file the annual Net Profit License Fee Return as required and to remit the license fee due, with respect to the unreported tip income.

Income Deriving from a Covenant not to Compete

Payments deriving from a covenant not to compete are excluded from a licensee's net profits subject to the license fee to the extent that the recipient does not perform services in consideration for such payments. Licensees are required to report income deriving from a covenant not to compete and to show that such income is entitled to the exclusion hereunder by attaching a copy of the covenant from which the income is derived.

Commissions or Fees Received by Trustees, Executors and Administrators

Monies received as commissions or fees by a person who holds in trust property or monies to which another has the beneficial title or interest or who receives and controls income for another person or persons are subject to the net profits license fee unless the person receiving such commission or fees is a bank, trust company, or combines bank and trust company exempted from payment of the net profits license fee by statute.

Exception Request for Net Profit Determination

Kentucky Revised Statute 67.753 (4), Boone County Ordinance # 07-27 §4, Boone County Ordinance #07-26 §110.28(d), and Boone County Board of Education Resolution dated May 13, 2010 provide for the division of net profit for tax purposes for business entities with both payroll and sales revenue in more than one tax district. The statute, ordinances, and resolution state if the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the county, the business entity may petition the county or the county may require, in respect to all or any part of the business entity's business activity, if reasonable, an alternative method of apportionment. This administrative regulation establishes alternative apportionment request procedures.

Section 1. Petition for Alternative Apportionment Variance

Before a taxpayer may file a return with an alternative method, allocation, or apportionment pursuant to Kentucky Revised Statute 67.753 (4), Boone County Ordinance # 07-27 §4, Boone County Ordinance #07-26 §110.28(d), and Boone County Board of Education Resolution dated May 13, 2010, a taxpayer shall file a petition for the use of alternative apportionment with the County, and the petition shall have been approved or denied by the County. If the taxpayer chooses to be represented by a person or firm outside of its business entity, a written declaration of representative shall be submitted to the County naming the taxpayers representative(s). Taxpayers are encouraged to file the petition as early as possible before the original due date of the return.

All petitions shall be in written form and submitted to the attention of the Boone County Occupational Tax Administrator, Boone County Fiscal Court, P.O. Box 960, Burlington, KY 41005. A petition submitted as an attachment to a return shall not be considered a valid petition. If the County process a return which uses an unapproved alternative apportionment method, the action shall not be construed as the County's acceptance of the taxpayer's proposed alternative method.

The petition must clearly state all relevant facts and a full and precise statement of the specific reasons that the taxpayers believe the statutory apportionment formula does not fairly represent the extent of the taxpayer's business activity in the county. The petition must include a notarized verification signed by the taxpayer that the statements contained within the petition are true and accurate under penalty of law. The individual who signs for a taxpayer that is a corporation, trust or estate, or partnership must be a corporate officer, fiduciary, or general partner, respectively.

The taxpayer shall have the burden of establishing, by clear and cogent evidence that the statutory allocation and apportionment provisions contained in Kentucky Revised Statute 67.753 (4), Boone County Ordinance # 07-27 §4, Boone County Ordinance #07-26 §110.28(d), and Boone County Board of Education Resolution dated May 13, 2010 does not fairly represent the extent of the taxpayer's business activity in the County.

Taxpayers filing a petition must propose an alternate apportionment formula and state the specific reasons that the taxpayer believes the alternate formula will provide a more equitable apportionment of income. Petitioner may request deleting or adding factors, changing the weight granted to a factor, adding new factors, or any other method that the taxpayer believes will fairly address the alleged problem created by the statutory apportionment formula.

The County shall notify the taxpayer, in writing, if the requested alternative method has been approved or denied.

Section 2. Approval of Alternative Apportionment

If a taxpayer is permitted or required to use an alternative apportionment, taxpayer will use the approved method on prospective tax return filings. No retroactive application of the approved alternative apportionment method is allowed.

A taxpayer may continue to use the approved alternative apportionment method if the facts as laid out in the original petition remain materially unchanged. Taxpayer must attach annually to their net profit tax return attestation, signed by an officer of the company, that the alternative apportionment fact pattern has remained materially unchanged as laid out in the original petition.

If the alternative fact pattern changes and the approved method of alternative apportionment used on the net profit tax return no longer reflects the petition brought forth to Boone County, taxpayer must use the statutory apportionment factors allowed under the current Boone County ordinance on the net profit tax return. Taxpayer must notify Boone County by attaching a statement to the net profit explaining the change in fact pattern.

Boone County's acceptance of a taxpayer's alternative apportionment method does not set precedent for other taxpayer's due to the unique fact pattern of each taxpayer.

Section 3. Denial of Alternative Apportionment

A taxpayer is permitted to appeal the denied alternate apportionment method to the Boone County Treasurer. Appeals must be made in writing and received by the Boone County Treasurer within thirty (30) days of the mailing of the denial of taxpayer's request of alternative apportionment by the Tax Administrator. Please review the "appeal" section for additional information on the Appeal Process.

Unrelated Business Income; Non-Profit Organization

Any organization classified as a "Nonprofit Organization" as defined in the Ordinance that earns "unrelated business income" as defined and administered in Section 511 of the Internal Revenue Code, is required to file the net profit tax return and pay the license fee on the "unrelated business income" The applicable Form 990/990-T must accompany the net profit tax return and be filed on or before the 15th day of the fifth month following the close of the organizations accounting period.

Receipt of Income from any Activity

Unless exempted by Ordinance, Regulation, or otherwise by law, any earned income not having the occupational license fee paid through employee withholding, that is derived from any activity not heretofore mentioned as subject to the net profit license fee, is subject to the net profit license fee, if the earned income derives from an activity conducted, in whole or in part, in the County. Retainers or other payments received for being available to render or provide services are subject to the license fee.

Residual Payments

Residual payments received by insurance agents, authors, performers, salespersons and others are subject to the license fee to the extent that such payments were earned in the County. Such payments shall be rebuttably presumed to have been earned in the entirety in the County and all recipients of such payments

are required to report them to the Boone County occupational Tax Department and, in the event a claim is made that such income was earned, in part, outside the City/County, to furnish evidence sufficient to establish such claim.

Global Intangible Low-Taxed Income (GILTI)

Based on a review of relevant provisions of the 2017 Tax Cuts and Jobs Act (TCJA) and Boone County Ordinance Chapter 110, income reported on the federal return attributable to Global Intangible Low-Taxed Income (GILTI) is excludable from the net profit for Occupational License tax purposes. Any expenses related to foreign income as determined by IRC Section 250 and reported on IRS Form 8993 must also be excluded from the Adjusted Net Profit. Receipts derived from GILTI are not to be included in the calculation of the receipt factor for purposes of determining the average apportionment percentage. A copy of the federal Schedule C and Form 8993 must be attached to the Occupational License tax return for any taxpayer who has reported GILTI on the federal tax return.

IRC § 743(b) basis adjustment as part of an IRC § 754 election

For Boone County Net Profit, tax is assessed at the entity level. Partnerships that acquire assets have basis in the assets (partnership basis), while the partners have basis in their individual interest in the partnership (partner basis). Sales of partnership interests can create disparity between partnership and transferee partner basis. IRS Section 754 allows some remedy for this disparity at the partnership level by allowing the partnership to increase its basis and related depreciation. However, this allowance is allocated (through Schedule K and K-1) to only the involved partner(s). While the form of the Section 754 election is a partnership transaction, in substance it is deemed to be a partner-level transaction because it relates directly to the calculation of transferee partner basis.

IRC § 743(b) and Treas. Reg. § 1.743-1(j)(1) provide that the IRC § 743(b) basis adjustment constitutes an adjustment to the basis of partnership property with respect to the transferee partner only; no adjustment is made to the common basis of partnership property. As a result, the adjustment to the purchasing partners inside basis under IRC § 743(b) has no effect on the partnership's computation of its taxable income. See Treas. Reg. § 1.743-1(j)(3)(ii) (Examples 1- 3). Rather, the IRC § 754 election affects only the purchaser's distributive share of items of partnership income, deduction, gain, or loss that relate to a partnership asset that was allocated a portion of the basis adjustment pursuant to the IRC § 754 election.

A deduction for the step up in basis for partnership assets related to an Internal Revenue Code (IRC) Section 754 election (which allows IRC Section 743 adjustments) is not allowed for the calculation of Boone County Net Profit tax. The stepped-up basis applies to the transferee individual partner(s) only and is reflected on the partner's Schedule K-1, regardless of the fact that it may have also been reported on Schedule K of the partnership's return. IRS Form 1065 instructions for tax year 2019 (subject to change) state the adjustments must be on an attached statement to Schedule K-1 using the codes for Other Income or Other Deductions Box 13 and/or box 20. Similar to when one owner of a C Corporation sells his/her interest (stock) to a new owner, the C Corporation does not take any deduction on its return related to that transaction. Thus, a partnership cannot claim an IRC Section 754 adjustment given the fact pattern above.

Pass-thru income (loss)

For Boone County Net Profit, an adjustment for pass-thru income is only allowable if that entity has already been taxes in Boone County.

DEDUCTIONS FROM EMPLOYEE COMPENSATION, PAYMENT, RECORDS REQUIRED

Liability of Employers Who Fail to Comply with County Requirements

- (1) Every employer is deemed to be a trustee of the County who by employing persons within the County undertakes an obligation to collect and hold the employee occupational license fee, and the funds so collected are deemed to be trust funds. Every such employer required to deduct and withhold the employee license fee shall file and remit the amount of license fee withheld to the County using the Employer's Return of License Fee Withheld form.
- (2) Every such employer required to deduct and withhold the employee license fee is liable jointly and severally with the employee directly to the County for failure to file the Employer's Return of License Fee Withheld and for failure to make payment of such fees, whether actually withheld by such employer or not. If the funds are actually withheld by the employer and not remitted to the County, the employer may be criminally prosecuted for theft by failure to make required disposition (KRS 514.070)
- (3) No employee shall be liable to the County for any license fee actually withheld from the employee's wages by the employer.

REFUNDS

There is a two year statute of limitations within which a refund request must be submitted to the Boone County Fiscal Court.

All refunds for employee withholding taxes can be initiated through the employer or the employee. A Refund Request Form will need to be filed by any employee seeking a refund directly from Boone County Fiscal Court. A separate form is required for each employee for each year involved. The employee is required to complete the appropriate area on the request, sign the form and have the form notarized by the payroll manager verifying that all the information on the document is correct. A 1099-G form will be issued to all employees at the end of the tax year on any refund over ten dollars (\$10.00).

WAIVER OF PENALTY AND/OR INTEREST

- (1) The Administrator shall have the authority to resolve occupational license fee controversies to the extent of waiving penalty or interest, or both, in whole or in part where it is shown to the satisfaction of the Administrator that failure to file or pay timely is due to reasonable cause and not willful neglect. In exercising such authority, the Administrator will consider the fact and circumstances of each particular matter and the hazards and costs of litigation. The Administrator has no authority to waive any tax due.

(2) “Reasonable Cause” exists if the licensee establishes to the satisfaction of the Administrator that either (1) there was significant mitigating factors for the failure or (2) the failure arose as a result of an event, happening or circumstance entirely beyond the knowledge or control of a licensee who has exercised due care and prudence in the filing of a return and in the payment of the license fee due.

(3) Events which will be generally considered beyond the licensee’s knowledge or control include, but are not limited to, the following:

(a) Unavoidable Absence -The absence (e.g. due to death or serious illness) of the person with sole responsibility for filing the return in issue or for payment of the fee. The duration of the absence and its proximity to the due date of the return or payment will be taken into account in the Administrator’s determination.

(b) Unavailability of relevant business **records** -Necessary business records must have been unavailable under such conditions, in such manner and for such period as to prevent timely compliance.

(4) Events which will not generally be considered as establishing reasonable cause include, but are not limited to, the following:

(a) Actions of agent or employee -The filing of a license fee return and the payment of fee due are both personal, no delegable duties of the licensee. Reasonable cause is not established by merely showing that the licensee relied upon an employee, accountant, attorney, payroll service or other person, who failed to file the return or pay the fee.

(b) Ignorance of the Law - Neither ignorance of the law, nor ignorance of the necessity of filing the return or paying the fee is sufficient in and of itself to relieve the licensee from liability for penalty or interest.

(c) No tax forms - Failure to receive or obtain license fee forms.

(5) In addition to establishing that an event beyond the licensee’s knowledge or control caused the failure to file or pay timely, the licensee must also establish that the licensee acted in a responsible manner both before and after the failure occurred. The licensee must demonstrate that the licensee undertook appropriate steps to avoid or mitigate the failure and that the licensee rectified the failure as promptly as possible once the impediment to compliance was removed or the failure discovered.

(6) In evaluating the hazards and cost of litigation, the Administrator will consider waiving penalties and interest, in whole or in part based on doubt as to collectability. To establish such doubt, a licensee must demonstrate lack of both present and future income and assets (inability to pay must be permanent or long term and the licensee’s lack of present ability to pay is not sufficient). That the licensee will suffer hardship by reason of payment of penalty or interest is not in and of itself a sufficient basis to waive penalty or interest.

(7) Circumstances which will generally be considered in evaluating collectability include, but are not limited to, the following:

(a) The licensee is in receivership or is the subject of any proceeding under the Bankruptcy Act, taking into account the priority of Boone County’s claim.

(b) The licensee has made or is making an assignment for the benefit of creditors or other arrangement or composition with the licensee’s creditors.

(c) The licensee is involved in any other insolvency or liquidation proceedings.

(d) The licensee is seriously ill, disabled or deceased.

- (e) Any lien rights and other security Boone County may possess.
- (f) Any court proceedings involving the licensee, pending substantial claims against the licensee outside of the ordinary course of business, and other unusual circumstances impacting the licensee's financial condition.
- (8) In considering requests for waiver of interest and penalties, the Administrator will take into account the history, if any, of the licensee in complying with its obligations to Boone County in the past. Other evidence demonstrating a lack of willful neglect on the part of the licensee with respect to the licensee's failure to comply will also be considered.
- (9) Since interest represents merely a charge for the benefit realized by the taxpayer from retaining money beyond the date it should have been paid to Boone County and the loss incurred by Boone County from not having use of the money for the same period of time, the Administrator will generally be more disposed to granting waivers of penalties as opposed to waivers of interest.
- (10) In order to obtain a waiver of penalty or interest, a licensee must submit to the Administrator a written request for the waiver of assessment of the penalty and/or interest. In such request, the licensee shall set forth all of the facts and circumstances believed by the licensee to constitute reasonable cause for the non-compliance on the part of the licensee giving rise to the penalty or interest. The licensee should submit to the Administrator with the request all documentation, affidavits, and other material the licensee deems necessary or relevant in support of the licensee's position. The Administrator will not generally consider a request for waiver of interest or penalty unless the licensee has paid the entire fee to which the interest or penalty relates before or at the same time as the taxpayer submits the request.

APPEALS

Instructions for Filing a Notice of Appeal

1. An appeal from the ruling of the Tax Administrator by a taxpayer or employer is effectuated by filing a notice of appeal in writing with the Boone County Treasurer, 2nd Floor Room 205, 2950 Washington St, Burlington. KY 41005 within thirty days after the date of the Administrator's ruling or decision from which the appeal is taken. A copy of such appeal must be filed with the Boone County Tax Administrator. The Boone County Treasurer will not review an appeal not filed correctly or timely.
2. No particular form of notice of appeal is required, provided that the notice contains all of the following information:
 - o A copy of the Administrator's final ruling or determination;
 - o A statement that the taxpayer or employer appeals from the final assessment or the denial of the request to use an alternate apportionment variance of the Tax Administrator;
 - o The tax year or years and the amount of tax involved in the final assessment if applicable;
 - o The date of receipt by the taxpayer of the final assessment appealed from or the date of the denial of the request for an Alternative Apportionment Variance;

- The reason or reasons why the taxpayer believes the decision or final assessment is objectionable, incorrect, or illegal; Citing the specific Kentucky Revised Statute or County ordinance section that is applicable.
 - The name and address of the representative, if any, of the taxpayer or employer that is authorized discuss the appeal with the Boone County Treasurer.
 - The name, address and phone number of the taxpayer or employer.
3. The notice of appeal must be signed by the taxpayer or employer and filed in duplicate to the Boone County Treasurer.
 4. The notice of appeal should be filed in a sealed envelope plainly marked "Appeal to the Boone County Treasurer" and mailed or delivered to the Boone County Treasurer.
 5. All papers filed with the Boone County Treasurer need to be legible, preferably typewritten.
 6. In the absence of the Boone County Treasurer, or the Boone County Treasurer determines there is a conflict of interest, all appeals will be directed to the Boone County Judge Executive.