

Occupational License Tax

ORDINANCE 2013-09

**AN ORDINANCE AMENDING ORDINANCE 2007-11 TO INCREASE THE
OCCUPATIONAL LICENSE TAX
FROM .5% (ONE-HALF PERCENT) TO 1% (ONE PERCENT)**

Now, therefore, be it ordained by the City Council of the City of Horse Cave, Kentucky as follows:

That the Occupational License Tax as enacted in Ordinance 2007-11 of the City of Horse Cave be hereby increased from .5% (one-half percent) to 1% (one percent).

This ordinance shall be in full effect on January 1, 2014, after its passage and publication according to law.

CITY OF HORSE CAVE
ORDINANCE NO. 2007-11

AN ORDINANCE RELATING TO THE IMPOSITION AND ADMINISTRATION OF A OCCUPATIONAL LICENSE REQUIREMENT, AND PAYMENT OF AN OCCUPATIONAL LICENSE TAX BY PERSONS AND BUSINESS ENTITIES CONDUCTING BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN THE CITY OF HORSE CAVE, KENTUCKY.

WHEREAS, the City Council of the City of Horse Cave, Hart County, Kentucky desires to comply with the requirements of KRS 67.750 to 67.790 and KRS 67.083 pertaining to localities under 30,000 in population deems it necessary and desirable that certain changes be made to existing ordinances imposing occupational license taxes on persons and businesses entities conducting businesses, occupations, and professions within the City of Horse Cave that the assessment and payment of Occupational License Taxes can be administered more efficiently.

Now, therefore, be it ordained by the City Council of the City of Horse Cave, Kentucky as follows:

Ordinance No. 2007-11 is hereby enacted and shall read in full as follows:

Sections:

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§ 1 - Definitions

As used in this ordinance, the following terms and their derivatives shall have the following meanings unless the context clearly indicates that a different meaning is intended:

- (1) “Business entity” means each separate corporation, limited liability company business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (2) “Business” means any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. “Business” shall not include the usual activities of board trade, chambers of commerce, trade associations, or unions, or other associations performing services usually performed by trade associations or unions. “Business” shall not include funds, foundations, corporations, or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic or fraternal purposes, where no part of the earnings, incomes or receipts of such unit, group, or association, inures to the benefit of any private shareholder or other person.

Business includes the leasing and rental of real or tangible property and a person shall be deemed to be engaged in the business of leasing real property if the person holds by fee, lease, sublease, license or otherwise any interest in real estate in Horse Cave

used for residential rental, commercial or industrial purposes or for the extraction of minerals and derives gross receipts there from.

- (3) “City” means the city of Horse Cave, Kentucky.
- (4) “Compensation” means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:
 - (a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and
 - (b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code;
- (5) “Fiscal year” means an accounting period of 12 months ending on the last day of any month other than December;
- (6) “Employee” means any person who renders services to another person or any business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency of instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.
- (7) “Employer” means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:
 - (a) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term “employer” means the person having control of the payment of such wages, and
 - (b) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in

trade or business within the United States, the term “employer” means such person;

- (8) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, the year in which the tax is due, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31 of the year in which the tax is due, that would otherwise terminate;
- (9) “Person” shall mean every natural person, whether a resident or non-resident of the city. Whenever the word “person” is used in a clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to corporations, shall mean the officers and directors thereof;
- (10) “Return” or “Report” means any properly completed and, if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with the city;
- (11) “Tax district” means any city of the first to fifth class, county, urban county, charter county, consolidated local government, school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license taxes;
- (12) “Taxable year” means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed.

§ 2 - Occupational License Application Required

- (1) Every person and business entity engaged in any business in the city of Horse Cave shall be required to apply for and obtain an occupational license from the city of Horse Cave before the commencement of business or in the event of a change of business status. Licensees are required to notify the city of any changes in address, the cessation of business, or any other changes which render the information supplied to the city in the license application inaccurate.
- (2) Every person and business entity engaged in any business in the city of Horse Cave shall

be required to pay a clerk's fee of \$1 for bookkeeping and processing fees.

§ 3 - Occupational License Tax Payment Required

- (1) Except as provided in subsection (2) of this section, every person or business entity engaged in any business for profit and any person or business entity that is required to make a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to the city an occupational license tax for the privilege of engaging in such activities within the city. The occupational license tax shall be measured by 1% (one percent) of all wages and compensation paid or payable in the city for work done or services performed or rendered in the city by every resident and nonresident who is an employee;
- (2) The occupational license tax imposed in this ordinance shall not apply to the following persons or business entities:
 - (a) Any bank, trust company, combined bank and trust company, combined trust, banking and title insurance company organized and doing business in this state, any savings and loan association whether state or federally chartered;
 - (b) Any compensation received by members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training;
 - (c) Any compensation received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections;
 - (d) Public Service Corporations that pay an ad valorem tax on property valued and assessed by the Kentucky Department of Revenue pursuant to the provisions of KRS 136.120. Licensees whose businesses are predominantly non-public service who are also engaged in public service activity are required to pay a license fee on their net profits derived from the non-public service activities apportioned to the city;
 - (e) Persons or business entities that have been issued a license under KRS Chapter 243 to engage in manufacturing or trafficking in alcoholic beverages. Persons engaged in the business of manufacturing or trafficking in alcoholic beverages are required to file a return, but may exclude the portion of their gross receipts derived from the manufacturing or trafficking in alcoholic beverages;
 - (f) Life insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky.

- (g) Any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor.
- (h) Any company providing multichannel video programming services or communications services as defined in KRS 136.602. If only a portion of an entity's business is providing multichannel video programming services or communications services including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services including products or services that are related to and provided in support of the multichannel video programming services or communications services.
- (i) Because of the undue burden of administration, no license fees under this ordinance shall be required of domestic workers employed in private homes or temporary or casual farm labor.
- (j) No license fee under this ordinance shall be imposed in the area making up the industrial park so long as the occupational tax imposed as to the industrial park is at the rate of 2.3% (County-0.8%, Industrial Park Tax-1.5%).

§ 4 - Apportionment

- (1) When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without the city, the license tax shall be measured by that part of the compensation paid or payable as a result of work done or service performed or rendered within the city. The license tax shall be computed by obtaining the percentage which the compensation for work performed or services rendered within the city bears to the total wages and compensation paid or payable. In order for the city to verify the accuracy of a taxpayer's reported percentages under this subsection, the taxpayer shall maintain adequate records.
- (2) All partnerships, S corporations, and all other entities where income is "passed through" to the owners are subject to this ordinance. The occupational license tax imposed in this ordinance is assessed against income before it is "passed through" these entities to the owners.
- (3) If any business entity dissolves, ceases to operate, or withdraws from the city during any taxable year, or if any business entity in any manner surrenders or loses its charter during

any taxable year, the dissolution, cessation of business, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of any occupational license tax for the period of that taxable year during which the business entity had business activity in the city

§ 5 - Employers to Withhold

- (1) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation an occupational license tax calculated under Section (3) of this ordinance. Amounts withheld shall be paid to the city in accordance with this section.
- (2) Every employer required to deduct and withhold tax under this section shall, for the quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter, make a return and report to the city, and pay to the city, the tax required to be withheld under this section, unless the employer is permitted or required to report within a reasonable time after some other period as determined by the city.
- (3) Every employer who fails to withhold or pay to the city any sums required by this ordinance to be withheld and paid shall be personally and individually liable to the city for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.
- (4) The city shall have a lien upon all the property of any employer who fails to withhold or pay over to the city sums required to be withheld under this section. If the employer withholds, but fails to pay the amounts withheld to the city, the lien shall commence as of the date the amounts withheld were required to be paid to the city. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the city.
- (5) Every employer required to deduct and withhold tax under this section shall annually on or before February 28 of each year complete and file on a form furnished or approved by the city a reconciliation of the occupational license tax withheld where compensation is paid or payable to employees. Either copies of federal forms W-2 and W-3, transmittal of wage and tax statements, or a detailed employee listing with the required equivalent information, as determined by the city, shall be submitted.
- (6) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and occupational license tax deducted by the employer from the compensation paid to the employee for payment to the city during the preceding calendar year.

- (7) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.
- (8) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this section shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid or payable to one or more employees of the business entity, and neither the corporate dissolution or withdrawal of the business entity from the city, nor the cessation of holding any corporate office, shall discharge that liability; provided that the personal and individual liability shall apply to each and every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally and individually liable under this subsection unless such person had authority to collect, truthfully account for, or pay over the tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due.
- (9) Notwithstanding subsections (7) and (8) of this section, every employee receiving compensation in the city subject to the tax imposed under Section (3) of this ordinance shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this ordinance from the employee, such employee or employees shall be responsible for filing with the city of Horse Cave, Hart County, Kentucky each quarter in the same manner as if they were the employer. If a employer fails to or is not required to withhold, report, or pay the License Fee it shall become the duty of the employee to file with the City of Horse Cave, Hart county, Kentucky. The only employer that is not required to withhold, report, and pay the occupational license tax is the Federal Government including the United States Postal Service. The payment required to be made by and employee, can be made quarterly, for the periods ending March 31st, June 30th, September 30th, and December 31st each year, or at any time the employee wishes to make an estimated payment for the year in which wages are earned. All license fees must be received by February 28th for the preceding calendar year, together with a copy of the employee's W-2 form. Employers not required to withhold, report, or pay the license fee must annually during the month of January of each year, make a return to the Occupational Tax Administrator, in which is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation earned during such preceding year by each such employee. This list shall include all current full time employees, part time employees, temporary employees, and terminated employees whether it be voluntary or involuntary.

§ 6 - Returns Required

- (1) Every business entity subject to a occupational license tax governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply

with rules as the city from time to time may prescribe. Whenever the city deems it necessary, the city may require a business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as the city deems sufficient to determine the tax liability the business entity.

- (2) The city may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or of any other person having knowledge in the premises.
- (3) The full amount of the unpaid tax payable by any business entity, as appears from the face of the return, shall be paid to the city at the time prescribed for filing the occupational license tax return, determined without regard to any extension of time for filing the return.

§ 7 - Refunds

- (1) Where there has been an overpayment of tax under Section (5) of this ordinance, a refund or credit shall be made to the employer to the extent of overpayment only if a written application for refund or credit is received by the city from the employer within two (2) years from the date the overpayment was made.
- (2) An employee who has compensation attributable to activities performed outside the city, based on time spent outside the city, whose employer has withheld and remitted to this city, the occupational license tax on the compensation attributable to activities performed outside the city, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the city may confirm with the employer the percentage of time spent outside the city and the amount of compensation attributable to activities performed outside the city prior to approval of the refund.

§ 8 - Federal Audit Provisions

- (1) As soon as practicable after each return is received, the city may examine and audit the return. If the amount of tax computed by the city is greater than the amount returned by the business entity, the additional tax shall be assessed and a notice of assessment mailed to the business entity by the city within five (5) years from the date the return was filed, except as otherwise provided in this subsection.
 - (a) In the case of a failure to file a return or of a fraudulent return the additional tax

may be assessed at any time.

- (b) In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this subsection, or six (6) months from the date the city receives the final determination of the federal audit from the business entity, whichever is later.

The times provided in this subsection may be extended by agreement between the business entity and the city. For the purposes of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day. Any extension granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.

- (2) Every business entity shall submit a copy of the final determination of the federal audit within thirty (30) days of the conclusion of the federal audit.
- (3) The city may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (1) of this section.

§ 9 - Administrative Provisions

- (1) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this ordinance.
- (2) Any tax collected pursuant to the provisions of this ordinance may be refunded or credited within two (2) years of the date prescribed by law for the filing of a return or the date the money was paid to the city, whichever is the later, except that:
 - (a) In any case where the assessment period contained in Section (9) of this ordinance has been extended by an agreement between the business entity and the city, the limitation contained in this subsection shall be extended accordingly.
 - (b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

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

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

§ 10 - Information to Remain Confidential

- (1) No present or former employee of any tax district shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the tax district or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the tax district from testifying in any court, or from introducing as evidence returns or reports filed with the tax district, in an action for violation of a tax district tax laws or in any action challenging a tax district tax laws.
- (2) The city reserves the right to disclose to the Commissioner of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent all such information and rights to inspect any of the books and records of the city if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the city the reciprocal right to obtain information from the files and records of the Kentucky Department of Revenue and maintains the privileged character of the information so furnished. Provided, further, that the city may publish statistics based on such information in such a manner as not to reveal data respecting net profits or compensation of any person.
- (3) In addition, the city is empowered to execute similar reciprocity agreements as described in subsection (2) of this section with any other taxing entity, should there be a need for exchange of information in order to effect diligent enforcement of this ordinance.

§ 11 - Penalties

- (1) A business entity subject to tax on gross receipts may be subject to a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof if the business entity:
 - (a) Fails to file any return or report on or before the due date prescribed for filing or as extended by the city; or

- (b) Fails to pay the tax computed on the return or report on or before the due date prescribed for payment.

The total penalty levied pursuant to this subsection shall not exceed twenty- five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

- (2) Every employer who fails to file a return or pay the tax on or before the time prescribed under Section (5) of this ordinance may be subject to a penalty in amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).
- (3) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the city. A fraction of a month is counted as an entire month.
- (4) Every tax imposed by this ordinance, and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to the city.
- (5) The city may enforce the collection of the occupational tax due under section (3) of this ordinance and any fees, penalties, and interest as provided in subsections (1), (2), (3), and (4) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the city shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this ordinance.
- (6) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return or willfully makes a false return, or who willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.
- (7) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under this ordinance of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.
- (8) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the city and required to be filed with the city by the provisions of this ordinance, or by the rules of the city or by written request for information to the business

entity by the city.

- (9) Any person violating the provisions of section (11) of this ordinance by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred dollars (\$500) or imprisoned for not longer than six (6) months, or both
- (10) Any person violating the provisions of section (11) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand (\$1000) or imprisoned for not more than one (10) year, or both.

§ 12- Use of Occupational License Tax

- (1) All money derived from the license taxes under the provisions of this ordinance shall be paid to the city and placed to the credit of the city's general revenue fund.
- (2) The occupational license tax revenues shall be published on a quarterly basis in the Hart County Herald.

§ 13 - Sever ability

Each section and each provision of each section of this ordinance are severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any person licensee, class or group, is held by a court of law to be unconstitutional or invalid for any reason, such holding shall not affect or impair the remainder of this ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of the rest.

This amendment shall be in effect from and after January 1, 2014 with the first quarter payments due March 30, 2014.

CITY OF HORSE CAVE

Randall Curry, Mayor

ATTEST

Elizabeth C. Matera, City Clerk

First Reading	October 14, 2013
Second Reading	November 11, 2013
Publication	November 21, 2013

