

**Tax Collection Procedures and Regulations for the 0.5% Occupational License Tax for the  
Fayette County Public Schools**

**Section I**

**1. On Whom Imposed**

The Board of Education of Fayette County, Kentucky has imposed an occupational license tax, effective December 1, 1985, of one-half of one percent (0.5%) on salaries, wages commissions and other compensation of individuals who are Fayette County residents for activities performed or rendered in Fayette County and on the net profits of all businesses, professions or occupations from activities conducted in Fayette County as authorized in KRS 160.605, except that the levy will not apply or be collected from any public service company which pays an ad valorem tax nor is the levy imposed upon any insurance company, bank, trust company, combined bank and trust company, combined trust, banking and title business in this state, any savings and loan association whether state or federally chartered or upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training. Every person, business, profession or occupation engaged in said activities shall pay said license tax to the Fayette County Public Schools Tax Collector as designated by the Board of Education of Fayette County. This license tax for school purposes is in addition to, and over and above all other license taxes for school purposes which may be imposed by the Board of Education of Fayette County.

Where salaries, wages, commissions and other compensation of individuals who are Fayette County residents are received for activities performed or rendered both within and without of the County, said license tax shall be measured by such part of the salaries, wages, commission and other compensations as is received as a result of activities performed or rendered in the County. Such license tax shall be computed by obtaining the percentage, which the compensation for activities performed or rendered within the county bears to the total compensation received.

Where net profits of businesses, professions or occupations are conducted both within and without of the county, said license tax shall be computed by multiplying the net profit by a business allocation percentage to be determined as follows:

1. Ascertaining the percentage, which the gross receipts of the licensee from activities performed or rendered within the County, bears to the total gross receipts from activities performed or rendered wherever made.
2. Ascertaining the percentage which the wages, salaries and other personal service compensation of the licensee's employees residing within the Fayette County Public School District for the period by the report for activities performed or rendered within the County bears to total wages salaries and personal service compensation for such period of all the licensee's employees within and without the County.
3. Adding together the percentages determined in accordance with subparagraph 1. and 2. above, and dividing the total so obtained by 2.

**Section II**

## 2. Definitions

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

- (a) **“County”** - Fayette County, Kentucky, consisting of the city of Lexington.
- (b) **“Fayette County Public Schools Tax Collector”** – The person or persons designated by the Board of Education of Fayette County, Kentucky, who is responsible for the collection of the occupational license tax and the accounting thereof to the Board of Education of Fayette County, Kentucky.
- (c) **“Employer”** – an individual, partnership, limited partnership, association, corporation, governmental body or unit or administration or agency, or any other entity, that employs one or more individuals on a salary, wage, commission or other compensation basis.
- (d) **“Net Profit”** – The net income from the operation of a business, profession or occupation, after provision for all costs and expenses incurred in the conduct thereof, which shall be the same as reported for Kentucky income tax purposes excluding items exempted under these regulations but without deduction of taxes based on income or any operating loss carryovers or carrybacks.
- (e) **“Licensee”** – Any individual, business, profession or occupation required hereunder to file a return or to pay an occupational license tax thereon under these regulations.
- (f) **“Resident”** – See page 5.

## Section III

### 3. Method of Deducting and Reporting

Each employer who employs one or more individuals residing within Fayette County shall deduct monthly or more than monthly, at the time of the payment thereof, the license tax due from each employee measured by the amount of salaries, wages, commissions, or other compensation, due by said employer to said employee and shall pay quarterly to the Fayette County Public Schools Tax Collector the amount of license tax so deducted. The payments required to be made on account of deductions by employer shall be made quarterly, for the quarterly periods ending March 31, June 30, September 30, and December 31 of each year, (except for the year of 1985 at which time the last month of the year shall be reported) on or before the last day of the next month following the quarter of said deductions to the Fayette County Public Schools Tax Collector. Said employer shall annually, during the month of January of each year, make a return to the Fayette County Public Schools Tax Collector in which is set forth the name and residence of each employee of said employer who resided in Fayette County during the preceding calendar year, giving the amount of salaries, wages, commissions, or other compensation received during such preceding year by each such employee, together with such other pertinent information as the Fayette County Public Schools Tax Collector or his agents may require. Provided, however, that the failure or omission by any employer to deduct such license tax shall not relieve the employee from the payment of such license tax.

## Section IV

### 4. Time for Filing of Returns

Each individual, business, profession or occupation subject to the license tax shall, on or before the fifteenth (15<sup>th</sup>) day of the fourth month following the close of each calendar year, make and file with the Fayette County Public Schools Tax Collector a return on a form furnished by or obtainable from the Fayette County Public Schools Tax Collector, setting forth the aggregate amount of salaries, wages, commissions and other compensation of net profits received during the preceding year with such other pertinent information as the Fayette County Public Schools Tax Collector may require. Provided, however, that where the fiscal year of the business, profession or occupation differs from the calendar year and such entity files federal income tax returns for such other fiscal period, the license tax shall be measured by the net profits of the fiscal year and where the return is made for a fiscal year or any other period different than the calendar year, the said return shall be made on or before the fifteenth (15<sup>th</sup>) day of the fourth month following the end of the said fiscal year or other period. Such returns shall also show the license tax imposed by these regulations.

The individual, business, profession or occupation making the said return shall, at the time of the filing thereof, pay to the Fayette County Public Schools Tax Collector the amount of license tax shown as due thereon; provided, however, that where any portion of the license tax so due shall have been previously deducted, credit for such amount shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return; and provided further it shall be the duty of each employer who had deducted the license tax from the wages, salaries, commissions, or other compensation referred to in Section III above of each employee, to furnish said employee a statement showing the amount of salary received and license tax deducted and paid by said employer during the preceding calendar year on or before February 15<sup>th</sup> of each year.

The Fayette County Public Schools Tax Collector shall have the authority to extend the time for the filing of said return at his discretion. Such an extension shall be upon the written request of the licensee or by copy of the application for federal extension, which is also honored. Provided, however, that any balance unpaid when payment is due under the terms of these regulations, shall bear a penalty at the rate of 1% per month until paid, plus any additional penalties or interest provided for by these regulations or by law. Anything to the contrary in this section notwithstanding, where all license fees due by an individual under these regulations have been properly withheld and paid to the Fayette County Public Schools Tax Collector and where such withholding represents the entire liability of the individual for the occupational license tax, then neither a return nor any other payment is required by said individual.

## **Section V**

### **5. Duties of the Fayette County Public Schools Tax Collector**

It shall be the duty of the Fayette County Public Schools Tax Collector to collect and receive the license tax imposed by these regulations; to keep records of the amount received from each licensee and employer and the data of such receipt; and to promptly distribute the proceeds of the license tax to the Board of Education of Fayette County, Kentucky.

## **Section VI**

### **6. Duty of Enforcement**

The Fayette County Public Schools Tax Collector hereby is charged with the enforcement of the provisions of these regulations and he is hereby empowered to take all actions which he deems necessary relating to any matter pertaining to the administration and enforcement of the provisions of these regulations, including the right to examine records of individuals, businesses, professions or occupations to determine the accuracy of returns.

## **Section VII**

### **7. Exemptions**

No public service company, which pays an ad valorem tax, is required to pay a license tax hereunder. No license tax shall be imposed upon or collected from any insurance company, bank, trust company, combined bank and trust company, combined trust banking and title business in this state, savings and loan association, whether state or federally chartered, or upon income received by members of the Kentucky National Guard for active duty training, unit training, assemblies and annual field training.

## **Section VIII**

### **8. Confidential Nature of Information**

Any information gained by the Fayette County Public Schools Tax Collector or any employee or agent of said collector or by any official or agent or employee of the Board of Education of Fayette County, Kentucky, as the result of any returns, investigations, hearings or verifications required or authorized by these regulations shall be confidential, except for official purposes and except in accordance with proper judicial orders, or as otherwise provided by law.

## **Section IX**

### **9. Provision for Interest and Penalties for Late Payment**

Any individual, business, profession or occupation who fails to pay on or before the date due of the license tax imposed by these regulations shall pay a penalty of one percent (1%) per month of the amount of such license tax past due until paid. Any individual, business, profession or occupation that fails to file a return or report or furnish any information requested under these regulations or by law shall pay a penalty in the amount of ten dollars (\$10.00) for each such failure.

The foregoing penalties shall not prevent the assessment of any additional penalties or interest provided by law.

## **Section X**

### **10. Severability**

The provisions of these regulations are severable. If any sentence, clause, section or part of these regulations or the application thereof to any individual, business, profession or occupation or state of facts is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect, nullify or repeal any of the remaining provisions of these regulations or of the actions of the Board of Education in levying the occupational license tax or in any way affect, nullify or repeal the application of these regulations to all other cases. It is the intention of the Board of Education of Fayette County, Kentucky to adopt each provision or part hereof separately and independently of each other. Notwithstanding any unconstitutionality, illegality or invalidity of any provision of these regulations, it is the intention of the Board of Education of Fayette County, Kentucky, to make the license tax imposed herein apply to all individuals, businesses, professions or occupations and in accordance with the valid provision of these regulations.

## **Section XI**

### **11. Duration of Occupational License Tax**

The occupational license tax provided for herein shall continue from year to year unless changed as prescribed in KRS 160.635.

### **Definition of Resident**

The Occupational License Tax for Schools is levied upon the compensation of individuals who are Fayette County residents for activities performed or rendered in Fayette County. The term "resident" as used in the Resolution of the Board of Education of Fayette County levying the Occupational License Tax for Schools and the regulations adopted hereunder shall be interpreted to mean an individual who is domiciled in Fayette, County, i.e., an individual who has shown a present intent to make Fayette County his permanent place of residence coupled with an actual residence in Fayette County.

## RULES

### **SECTION I - GENERAL PROVISIONS**

Sec. 1.1 The Fayette County Board of Education, by resolution under authority of KRS 160.605, imposed an Occupational License Tax effective March 1, 1986, of one-half of one percent (.005) on salaries, wages, commissions, and other compensation of individuals who are Fayette County residents for activities performed or rendered in Fayette County and on the net profits of all businesses, professions or occupations from activities conducted in Fayette County.

Sec. 1.2 Compensation Subject to the Occupational License Tax:

The license tax imposed on Fayette County residents "wages" includes a license tax on all payments paid to employees for activities performed or rendered in Fayette County. The following are subject to the license tax:

- (1) Salaries - Salaries, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property for activities performed or rendered;
  - (a) As an officer or employee, or both, of a corporation;
  - (b) As an officer or employee (as distinguished from a partner or member) of a partnership or other association;
  - (c) As an employee (as distinguished from the proprietor) of a business conducted by an individual owner;
  - (d) As an officer or employee (whether elected or appointed, enlisted or commissioned) of a governmental agency;
  - (e) As an officer or employee of any business or other entity.
- (2) Wages - Wages, bonus or incentive payments received by an employee, whether directly or through an agent for activities performed or rendered:
  - (a) Whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece-meal rates; and
  - (b) Whether paid by an individual, non-profit association, corporation, partnership, fiduciary, governmental agency, or any business or other entity.
- (3) Commissions - Commissions received by an employee, from his employer, whether directly or through an agent, for activities performed or rendered regardless of how computed, including any amounts received as a drawing account exceeding the commissions earned.
- (4) Fees - Fees received by an employee, whether directly or through an agent, for activities performed or rendered regardless of how computed.
- (5) Vacation, Sick Leave, Holiday Payments – Vacation, Sick Leave, and Holiday payments made to an employee pursuant to an employer's wage or salary continuation plan during periods of absence by an employee from work
- (6) Employee Contributions to Qualified Federal Tax Deferral Plan - Compensation on which an employee has elected to defer payment of federal income tax under Sections 401(k), 403(b), or 457 of the Internal Revenue

Code. With regard to a 401(k) plan, the amount deferred into the plan pursuant to a cash or deferral election as well as the amount deferred by reason of a salary reduction election are both included as "wages".

(7) 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.

(8) "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.

(9) Contributions to Non-Qualified Plans - Employee 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.

(10) Non-Cash Fringe Benefits - Fringe benefits received by an employee to the extent that such benefits are taxable for federal income tax purposes.

(11) Separation 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 tax 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 tax if they were made to an active employee.

(12) 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.

(13) Payments for Activities Performed or Rendered by Students - Stipends, honorariums, grants and other payments made to students to the extent that such payments are made for activities performed or rendered by the student and an employer/employee relationship exists between the payer and the student.

(14) Ministers Compensation - Any monetary compensation to ministers in the form of salary or other payment for activities performed or rendered and including allowances for house, automobile, or other allowances is subject to the license tax.

(15) Domestic Servants Compensation - Compensation received by domestic servants, whether directly or through an agent and whether in cash or in property for activities performed or rendered is subject to the license tax.

(16) Early Retirement and Similar Inducements - Payments made in consideration for early retirement or other inducements paid by employers to employees arising from the employee's service to the employer.

(17) Property or Services Received As Compensation - The fair market value of property or services received as compensation by an employee and paid to 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.

(18) Other income - All other income paid by an employer and received by an employee for the performance of any activity subject to the license tax.

(a) Flexible Benefit Plans - Section 125 plans, also known as cafeteria plans, provided through a salary reduction agreement, the deferred compensation amounts withheld from an employee's compensation to fund the cafeteria plan would be subject to the license tax.

(b) Funded Solely By Employer Contributions - If the total amount of the benefits an employee selects under a flexible benefit program funded solely by employer contributions is less than the benefit dollars credited to an employee, any difference paid to the employee in cash during the year would be subject to the license tax.

(c) Fees paid to a director or officer of a corporation is subject to withholding of the license tax as in the case of any other employee.

Sec. 1.3 Compensation which is not subject to the license tax on wages includes the following:

- (1) Kentucky National Guard - Income received by members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training;
- (2) Unemployment Compensation - Unemployment compensation payments made by any government agency;
- (3) Workmen's Compensation - Amounts received by employees under the Workman's Compensation Act as a compensation for disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability;
- (4) Insurance Payments - Payments made to employees under a disability, sickness or accident insurance plan;
- (5) Reimbursement for Expenses - If documentation is required, sums allowed and paid by employers to employees for expenses necessarily and actually incurred by the employee in the direct performance of his services;
- (6) Death Benefits - Death benefits payable by an employer to the beneficiary of an employee or to his estate, whether payable in a single sum or otherwise;
- (7) 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;
- (8) Old Age or Retirement Payments - Periodical payments, commonly recognized as old age or retirement pensions, made to persons retired from service after reaching a specified age or after a stated period of employment, are not subject to the license tax;
- (9) Non-residents Compensation - The compensation received by non-residents of Fayette County for activities performed or rendered in Fayette County is not subject to the license tax.

Sec. 1.4 Wages Deemed to Have Been Received in Fayette County - Wages of Fayette County residents are deemed to have been received in Fayette County when the activities for which they are paid were performed or rendered in Fayette County regardless of where the payment was made or received.

Sec. 1.5 Apportionment of Wages when Activities Are Performed or Rendered Both Inside and Outside Fayette County. -Where salaries, wages, commissions and other compensations of employees who are Fayette County residents are received for activities performed or rendered both within and without the County, the withholding agent

shall deduct and withhold the license tax on that portion of the compensation which is received within the County in accordance with the following rules of apportionment:

- (1) If the individual is a traveling salesperson, agent or other employee, whose compensation on the basis of commissions depends directly upon the volume of business transacted by the employee, the deducting and withholding of the license tax shall be attached to the portion of the entire compensation which the volume of business transacted by the employee within Fayette County, bears to the volume of business transacted by the employee both within and outside of Fayette County.
- (2) On other employees the portion of the compensation for activities performed or rendered within the County subject to the License Tax shall be determined by which the total number of working days employed within the County, bears to the total number of working days employed within and outside the County.
- (3) If, because of the peculiar nature of the services of the employer, or of the unusual basis of compensation, it is impossible to apportion the earnings provided above, an apportionment shall be made in accordance with the facts, and the license tax deducted and withheld accordingly. The employer shall mention in their records and shall furnish upon request a detailed statement of facts as to how the apportionment is made.
- (4) An employee, who is a Fayette County resident, that occasionally enters the County, which individual is employed entirely outside the County, but enters the County for the purposes of reporting, receiving instructions, accounting etc., incidental to the individual's duties outside the County, shall be deemed to be an employee of the class rendering their services entirely outside the County.

## **SECTION II - OCCUPATIONAL LICENSE TAX ON NET PROFITS**

Sec. 2.1 The Fayette County Board of Education, by resolution under authority of KRS 160.605, imposed an Occupational License Tax effective March 1, 1986, of one-half of one percent (.005) of the net profits of corporations, partnerships, fiduciaries, sole proprietors and other enterprises engaged in any business, profession, occupation or other activity conducted in Fayette County.

Sec. 2.2 Exemptions to Net Profits License Tax - The following businesses are exempt from the Net Profits License Tax:

- (1) No Net Profits 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.
- (2) No Net Profits License Tax is imposed or collected from insurance companies.
- (3) No Net Profits License Tax is imposed upon or collected from public service companies which pay an ad valorem tax.
- (4) No Net Profits License Tax is imposed upon or collected from and no filing is required of "non-profit organizations" which shall include trade associations, unions, chambers of commerce, boards of trade, corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, educational or civil purposes, or for the prevention of cruelty to children or animals; or clubs or fraternal organization operated exclusively for social, literary, educational, or fraternal purposes where no part of the earnings or income or receipts of such units, groups, or associations inures to the benefit of any private shareholder or individual.

Sec 2.3 Sufficient Nexus - 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 protection of the jurisdiction while doing business or practicing a trade, occupation or profession; as defined in the context of applicable case law. Without excluding by implications other activities, which may create a nexus, the following connections between a person/business entity in Fayette County shall normally establish a sufficient nexus:

- (1) Location of a place of business in Fayette County;
- (2) Frequent and continuing entry in Fayette County in the course of business by an officer or employee of a business;
- (3) Delivery of goods to residents in Fayette County other than through the mails or by common carrier;
- (4) Contracting to sell goods in Fayette County;
- (5) Conducting substantial business activity in Fayette County leading to a contract to buy or sell goods.

Sec 2.4 Determination of Net Profits - The "net profit" of a taxpayer shall be determined and administered as provided in this section with respect to particular classes of taxpayers.

"Net Profits" - The taxable income from the operation of a business, profession, occupation, or enterprise for federal income tax purposes after provision for all costs and expenses incurred in the conduct thereof.

- (1) For corporations (other than S corporations) "net profit" shall mean the taxpayers "taxable income" for federal income tax purposes; plus:
  - (a) any sum deducted for federal income tax purposes as a net operating loss carry forward or carry back;
  - (b) any deductions for federal income tax purposes for state or local taxes based on income;
  - (c) any dividend and interest income and other business income not included in total business receipts for federal income tax purposes;
  - (d) any sum deducted for federal income tax purposes as a capital loss carryover.
- (2) For partnerships and S corporations "net profit" shall mean the taxpayer's gross receipts or sales from its trade, business, profession or occupation including but not limited to interest, dividends, rents, royalties, ordinary and capital gains or losses and other income as defined for federal income tax purposes; less:
  - (a) Except as more expressly provided ordinary and necessary expenses of the trade, business, profession or occupation such as defined for federal income tax purposes including but not limited to depreciation and interest expenses; plus
  - (b) Any deductions for federal income tax purposes for local taxes based on income; plus
  - (c) Income passed through separately on the Federal Income Tax Return from a partnership to the partners, or an S corporation to its shareholders must be added to the gross receipts or sales of a partnership or an S corporation in computing net profits. These items include guaranteed payments to partners, net capital gains, gains from casualty or theft, and other income including special allocations passed through separately by the partnership to the partners or an S corporation to its shareholders.
  - (d) Expenses passed through to partners or shareholders of S corporations. Business expenses passed through separately on the federal return from partnership to its partners or from an S

corporation to its shareholders, are deducted from gross receipts and sales in computing the net profit of a partnership or an S corporation. These expenses include charitable contributions, expense deduction from recovery property pursuant to IRC Section 179, and special allocations passed through separately by the partnership to its partners or by the S corporation to its shareholders. Contributions to a Keogh retirement plan, simplified employee pension plan and other self-employment retirement plan and health insurance premiums paid by a partnership on behalf of a partner or by a S corporation on behalf of a shareholder shall not be deemed business expenses and shall not be deducted from gross receipts and sales in computing the net profits of a partnership or a S corporation.

(e) Professional expenses not reimbursed by the partnership. In computing its net profit, the gross income of a partnership is reduced by professional expenses not reimbursed by the partnership, which, for federal income tax purposes, are claimed on the partner's federal tax returns. In order to reduce gross income by these expenses, they must be of the type which would have been deductible by the partnership for federal income tax purposes had those expense been paid by the partnership and they must actually have been deducted by the partner on his federal income tax return.

(3) For sole proprietors net profit shall mean taxpayer's gross receipts or sales from his/her trade, business, profession or occupation including, but not limited to rental income, royalties, non-employee compensation (including commissions, fees or other compensation for services rendered) less;

(a) Ordinary and necessary expenses of the trade, business, profession or occupation, such as are defined as deductions for federal income tax purposes in computing the net profits of a sole proprietor.

(b) Ordinary gains and capital gains from the sale of property used in the trade, business, profession or occupation must be added to gross receipts less ordinary losses and capital losses from the sale of such property in computing the net profits of a sole proprietor.

(c) Contributions on behalf of the individual taxpayer to Keogh (HR-10) Retirement Plan and contributions to a Simplified Employee Pension Plan as defined in Section 408(k) of the Internal Revenue Code and contributions to any other self-employment retirement plan shall not be deductible for purposes of determining the sole proprietor's net profits.

(d) Income from the rental of real property - 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 Fayette County are presumed to be engaged in business activity which requires a return to be filed and the Occupational License Tax for Schools to be paid, unless the individual or fiduciary's annual gross receipts derived from the rental, ownership, management, or operation of real property located in Fayette County are less than fifty-thousand dollars (\$50,000). The \$50,000 filing threshold is effective for all returns due on or after January 1, 2000 and is based upon aggregated gross rental receipts from properties located in Fayette County.

(4) Limited Liability Company: An entity organized under Chapter 275 of the Kentucky Revised Statutes or comparable laws of the United States or any other state, territory or foreign country or dependency. For purposes of the Fayette County Public Schools Occupational License Tax, a limited liability company shall have the same entity classification as that elected for IRS federal income tax filings and shall be assessed the occupational license tax accordingly.

Sec 2.5 Profits derived from sale of alcoholic beverages within Fayette County. - No statutory or regulatory authority provides for an exemption for the sale of alcoholic beverages from the Occupational License Tax for Schools of the Board of Education of Fayette County. Therefore, the net profits from such activities are subject to the Occupational License Tax for Schools.

Sec 2.6 If the operations of the taxpayers are conducted both inside and outside Fayette County, then the extent to which its net profits shall be considered as having been derived from activities within Fayette County shall be determined by application of the Apportionment Percentage.

"Apportionment Percentage" - The net profits of a business, profession or occupation from activities conducted within Fayette County shall be computed by multiplying the entire net profits from all sources by a business apportionment percentage to be determined by the following two factor formulas:

- (1) Ascertain the percentage, which the gross receipts of the taxpayer from activities performed or rendered within Fayette County, bears to the total gross receipts from activities performed or rendered wherever made.
- (2) Ascertain the percentage which the wages shown as expenses by the taxpayer for the period covered by the report for activities performed or rendered within Fayette County bears to the total wages shown as expenses by the taxpayer for such period to all the taxpayer's employees for activities performed or rendered within and without Fayette County.
- (3) Adding together the percentages determined in accordance with (1) and (2) above and dividing the total so obtained by two.
- (4) If either factor under (1) or (2) above is absent, then the business apportionment percentage shall be equal to the remaining percentage determined under (1) or (2) above. A factor is not deemed to be absent merely because none of the taxpayer's receipts arose within Fayette County or because none of the wages paid by the taxpayer were for activities performed or rendered within Fayette County.

### **SECTION III - SPECIFIC CLASSES OF PERSONS**

Sec 3.1 The following classes of persons have presented particular questions and/or difficulties with respect to their liability for and/or collection of the Occupational and Net Profit License Tax. The provisions of this Section are established to set forth clearly the liability of some of these specific classes of persons and to outline the procedures by which the Fayette County Schools shall collect the license taxes properly due from such persons.

Sec 3.3 Employees of Federal Agencies - Wages received by Fayette County residents who are employees of the federal government for activities performed or rendered in Fayette County are subject to the license tax at the same rate and on the same basis as compensation received by other employees whether or not the employee's activities are performed or rendered on federal reservations situated within the geographical limits of Fayette County. Certain federal agencies, however, citing federal regulations, do not withhold and remit to the Fayette County Public Schools the full amount of their employee's license tax. All federal agencies, whether or not they withhold license taxes on behalf of their employees, shall submit W-2 forms on behalf of each employee by January 31 of each year, reflecting the previous years wages. The Fayette County Public Schools will collect any amounts not withheld by federal agencies on behalf of their employees directly from the employees.

Such employees are required to file Board of Education of Fayette County Form 245-S (Annual Fayette County Resident Individual License Tax Return) by April 15 of the year following the calendar year in which the wages were received. An extension of time to file not exceeding ninety (90) days will be granted by the Fayette County Schools upon written request thereof, which must be postmarked on or before April 15.

The provisions of this section shall be subject to the provisions of Section 1.5 pertaining to apportionment of wages of employees who work both within and without Fayette County.

Sec. 3.4 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 taxes imposed by the Fayette County Public Schools to the

extent the recipient does not perform services in consideration for such payments. Licensees are required to report income deriving from a covenant not to compete to the Fayette County Schools and to show such income is entitled to the exclusion hereunder by attaching a copy of the covenant from which the income is derived. To the extent that income paid pursuant to such an agreement or covenant is paid in consideration for the present value of a business or professional practice said income should be included in the licensee's net profit subject to capital gains treatment.

Sec 3.5 Commissions or Fees received by trustees, executor 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 net profits license tax unless the person receiving such commissions or fee is a bank, trust company, or combined bank and trust company exempted from payment of the net profit license tax by statute.

Sec 3.6 Receipt of Income from any activity - Except as provided in Section 1.5 hereof, any income received that is not subject to employee withholding that is derived from any activity not heretofore mentioned as subject to the net profit license tax, nor herein exempted there from, is subject to the net profit license tax, if the income received derives from an activity conducted, in whole or in part, in Fayette County. Retainers or other payments received for being available to render or provide service are subject to the license tax.

Sec 3.7 Public Service Corporations - No public service activity of a public service corporation which has been classified as such by the Kentucky Revenue Cabinet, whose property is valued and assessed by the Revenue Cabinet pursuant to KRS 136.120, and which pays an ad valorem tax and a franchise tax shall be subject to the license tax hereunder, and no license tax shall be imposed upon or collected from any bank, trust company, combined bank and trust company, or combined trust, banking and title business in this state, or in other cases where the Fayette County Board of Education is prohibited by statute from imposing a license tax.

#### **SECTION IV - PAYMENTS AND REPORTS**

Sec 4.1 Each employer who employs one or more persons residing within Fayette County shall deduct, at the time of the payment thereof, the license tax due from each employee measured by the amount of salaries, wages, commissions, or other compensation due by said employer to said employee. The employer shall report and pay quarterly to the Fayette County Public Schools tax collector the amount of the license tax so deducted. The payments shall be made quarterly for the quarterly periods ending March 31, June 30, September 30 and December 31 of each year, on or before the last day of the month next following the quarter of said deductions to the Fayette County Public Schools tax collector.

(1) Each employer shall, annually on or before January 31 of each year, make a return to the Fayette County Public Schools Tax Collection Office in which is set forth the name, address and social security number of each employee employed during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation received during such preceding year by each such employee and the amount of occupational license taxes withheld.

(2) Each employer shall furnish each employee a statement on or before January 31 of each year showing the amount of salaries, wages, commissions or other compensation received and the license tax deducted and paid by said employer during the preceding calendar year.

(3) The failure or omission by any employer to deduct such license tax shall not relieve the employee from the payment of such license tax.

Sec 4.2 Each business, profession or occupation (including an individual who is a sole proprietor or who is an employee in part or all of whose wages no license tax has been withheld by the employer) who has income which is subject to the license tax on net profits, regardless of whether or not such income is sufficient to result in a license tax liability, shall file a return with the Fayette County Public Schools Tax Office each year.

## **SECTION V - EXTENSION OF TIME FOR FILING**

Sec 5.1 The Fayette County Schools Tax Office may extend the time for filing any annual report or return. Such extension shall be upon the written request of the taxpayer. A copy of the taxpayer's application to the Internal Revenue Service for an automatic extension of time for filing a federal income tax return for the same year is acceptable.

Sec 5.2 An extension of time for filing does not extend the time for payment of the occupational license tax. Any license tax balance unpaid when payment is due shall bear a penalty at the rate of 1% per month, or fraction of a month, until paid plus any additional penalties or interest provided by these rules or law.

## **SECTION VI - RIGHT TO EXAMINE RECORDS**

Sec 6.1 The Fayette County Schools tax collector or any agent or employee designated by the tax collector is hereby authorized to examine the books, papers and records of any employer or supposed employer or of any taxpayer or supposed taxpayer in order to determine the accuracy of any return made or if no return was made, to ascertain the amount of license tax due.

Sec 6.2 Each such employer or supposed employer or taxpayer or supposed taxpayer shall furnish to the tax collector or his/her duly authorized agents and employees, the means, facilities and opportunity for such examinations, investigations and audits.

## **SECTION VII - CONFIDENTIAL NATURE OF INFORMATION**

Sec 7.1 Any information gained by the Fayette County Public Schools tax office or any agent or employee of the Board of Education of Fayette County, Kentucky, as the result of any returns, investigations, hearings or verifications required or authorized by these rules shall be confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law.

## **SECTION VIII - PROVISION FOR INTEREST AND PENALTIES FOR LATE PAYMENT**

Sec 8.1 Any individual, business, profession or occupation who fails to pay on or before the date due, the license tax imposed the Fayette County Schools resolutions, regulations or these rules shall pay a penalty of one percent (1%) per month, or fraction of a month, of the amount of such license tax past due until paid.

Sec 8.2 Any individual, business, profession or occupation who fails to file a return, report information requested under the Fayette County Schools resolutions, regulations or these rules or by law shall pay a penalty in the amount of ten dollars (\$10.00) for each such failure.

Sec 8.3 The foregoing penalties shall not prevent the assessment of any additional penalties or interest provided by law.