

**CHAPTER 168****(HB 520)**

AN ACT relating to the local occupational tax.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 67.750 is amended to read as follows:

As used in KRS 67.750 to 67.790, unless the context requires otherwise:

- (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) "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;
- (3) "Fiscal year" means fiscal year as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (4) "Employee" means any person who renders services to another person or 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 or 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;
- (5) "Employer" means employer as defined in Section 3401(d) of the Internal Revenue Code;
- (6) "Gross receipts" means all revenues or proceeds derived from the sale, lease, or rental of goods, services, or property by a business entity reduced by the following:
  - (a) Sales and excise taxes paid; and
  - (b) Returns and allowances;
- (7) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2004, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, ~~2005~~~~[2004]~~, that would otherwise terminate;
- (8) "Net profit" means gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by Chapter 1 of the Internal Revenue Code, and adjusted as follows:
  - (a) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;
  - (b) Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;
  - (c) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;

- (d) Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes; and
  - (e) Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution, or the Constitution and statutory laws of the United States;
- (9) "Sales revenue" means receipts from the sale, lease, or rental of goods, services, or property;
  - (10) "Tax district" means a 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;
  - (11) "Taxable gross receipts" in case of a business entity having payroll or sales revenues both within and without a tax district means gross receipts as defined in subsection (6) of this section, as apportioned under KRS 67.753;
  - (12) "Taxable gross receipts" in case of a business entity having payroll or sales revenue only in one (1) tax district means gross receipts as defined in subsection (6) of this section;
  - (13) "Taxable net profit" in case of a business entity having payroll or sales revenue only in one (1) tax district means net profit as defined in subsection (8) of this section;
  - (14) "Taxable net profit" in case of a business entity having payroll or sales revenue both within and without a tax district means net profit as defined in subsection (8) of this section, as apportioned under KRS 67.753; and
  - (15) "Taxable year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income or gross receipts is computed.

Section 2. KRS 68.197 is amended to read as follows:

- (1) The fiscal court of each county having a population of thirty thousand (30,000) or more may by ordinance impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing.
- (2) License fees on business, trade, occupation, or profession for revenue purposes, except those of the common schools, may be imposed at a percentage rate not to exceed one percent (1%) of:
  - (a) Salaries, wages, commissions, and other compensation earned by persons within the county for work done and services performed or rendered in the county;
  - (b) The net profits of self-employed individuals, partnerships, professional associations, or joint ventures resulting from trades, professions, occupations, businesses, or activities conducted in the county; and
  - (c) The net profits of corporations resulting from trades, professions, occupations, businesses, or activities conducted in the county.
- (3) In order to reduce administrative costs and minimize paperwork for employers, employees, and businesses, the fiscal court may provide:
  - (a) For an annual fixed amount license fee which a person may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on salaries, wages, commissions, and other compensation earned within the county for work done and services performed or rendered in the county; and
  - (b) For an annual fixed amount license fee which an individual, partnership, professional association, joint venture, or corporation may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on net profits of businesses, trades, professions, or occupations from activities conducted in the county.
- (4)
  - (a) Licenses imposed for regulatory purposes are not subject to limitations as to form and amount.
  - (b) No public service company that pays an ad valorem tax is required to pay a license tax.
  - (c) 1. It is the intent of the General Assembly to continue the exemption from local license fees and occupational taxes that existed on January 1, 2006, for providers of multichannel video

programming services or communications services as defined in KRS 136.602 that were taxed under KRS 136.120 prior to the effective date of this section.

2. To further this intent, no company providing multichannel video programming services or communications services as defined in KRS 136.602 shall be required to pay a license tax. If only a portion of an entity's business is providing multichannel video programming 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.
  - (d) No license tax shall be imposed upon or collected from any insurance company except as provided in KRS 91A.080, bank, trust company, combined bank and trust company, combined trust, banking, and title business in this state, or any savings and loan association whether state or federally chartered, or in other cases where the county is prohibited by law from imposing a license fee.
- (5) No license fee shall be imposed or collected on income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, or on income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections, or upon 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.
- (6) Persons who pay a county license fee pursuant to this section and who also pay a license fee to a city contained in the county may, upon agreement between the county and the city, credit their city license fee against their county license fee. *As used in this subsection, "city contained in the county" shall include a city that is in more than one county.*
- (7) The provisions of subsection (6) of this section notwithstanding, effective with license fees imposed under the provisions of subsection (1) of this section on or after July 15, 1986, persons who pay a county license fee and a license fee to a city contained in the county shall be allowed to credit their city license fee against their county license fee. *As used in this subsection, "city contained in the county" shall include a city that is in more than one county.*
- (8) On July 14, 2000, the provisions of subsection (7) of this section notwithstanding, city license fees not credited against county license fees enacted under this section or KRS 67.083 as of January 1, 2000, shall not be credited against county license fees. However, this exception shall not apply to county license fees enacted for the first time, or increased, on or after January 1, 2000. This provision shall expire July 15, 2002, unless otherwise extended by the General Assembly.
- (9) A county that enacted an occupational license fee under the authority of KRS 67.083 shall not be required to reduce its occupational tax rate when it is determined that the population of the county exceeds thirty thousand (30,000).
- (10) Notwithstanding any statute to the contrary:
  - (a) In those counties where a license fee has been authorized by a public question approved by the voters, there shall be no credit of a city license fee against a county license fee except by agreement between the county and the city in accordance with subsection (6) of this section;
  - (b) Notwithstanding any provision of the KRS to the contrary, no taxpayer shall be refunded or credited for any overpayment of a license tax paid to any county to the extent the overpayment is attributable to or derives from this section as it existed at any time subsequent to July 15, 1986, and the taxpayer seeks a credit for a license tax paid to a city located within such county, if such refund claim or amended tax return claim was filed or perfected after November 18, 2004, except by agreement between the city and county in accordance with subsection (6) of this section;
  - (c) In those counties where a license fee has been authorized by a public question approved by the voters, the percentage rate of the license fee in effect on January 1, 2005, and any maximum salary limit upon which the license fee is calculated shall remain unchanged for subsequent fiscal years. A percentage rate higher than the percentage rate in effect on January 1, 2005, or any change in the maximum salary

limit upon which a license fee is calculated shall be prohibited unless approved by the voters at a public referendum. The percentage rate of a license fee in such counties shall at no time exceed one percent (1%). Any question to be placed before the voters as a result of this paragraph shall be placed on the ballot at a regular election or nominating primary.

- (d) This subsection shall have retroactive application; and
  - (e) If any provision of this subsection or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of this section that can be given effect without the invalid provision or application, and to this end the provisions of this subsection are severable.
- (11) Pursuant to this section, no fiscal court shall regulate any aspect of the manner in which any duly ordained, commissioned, or denominationally licensed minister of religion may perform his or her duties and activities as a minister of religion. Duly ordained, commissioned, or denominationally licensed ministers of religion shall be subject to the same license fees imposed on others in the county on salaries, wages, commissions, and other compensation earned for work done and services performed or rendered.

Section 3. The amendments contained in Section 2 of this Act shall apply retroactively to August 1, 2005.

**Approved April 5, 2006.**