

CHAPTER 70

(HB 277)

AN ACT relating to local occupational license tax forms.

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

➔SECTION 1. A NEW SECTION OF KRS 67.750 TO 67.790 IS CREATED TO READ AS FOLLOWS:

- (1) *Before November 1, 2012, each tax district that imposes an occupational license tax on net profits or gross receipts shall submit either an electronic or hard copy of its occupational license tax return form or forms; accompanying instructions; and a copy of its occupational license tax ordinance to the Secretary of State.*
- (2) *A tax district that imposes a new occupational license tax on net profits or gross receipts or amends its ordinance after November 1, 2012, shall provide a copy of its ordinance to the Secretary of State within thirty (30) days of the adoption or amendment. The tax district may provide any additional information, interpretations, forms, or instructions it deems necessary to clarify or explain its compliance requirements for affected business entities.*
- (3) *The Secretary of State shall include the form or forms, instructions, or the ordinances provided under this section on the one-stop business portal or another public Web site maintained by that office.*

➔SECTION 2. A NEW SECTION OF KRS 67.750 TO 67.790 IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State shall prescribe a standard form or forms, through promulgation of an administrative regulation, which shall be accepted by all tax districts and shall allow for returns of net profits and gross receipts occupational license taxes by all business entities unless the tax district opts out from acceptance in accordance with subsection (2) of this section or is exempted under subsection (3) of this section. The Secretary shall also develop and update as necessary instructions or a set of instructions for business entities on the completion of the standard form or forms so that business entities have the current information necessary to ensure the proper payment of the tax to each tax district.*
 - (a) *The Secretary shall seek advice and comments on the development, amendment, and maintenance of the form or forms and instructions from an advisory committee chaired by the Secretary, or his or her designee, that is composed of a representative from the Kentucky Association of Counties, the Kentucky League of Cities, the Kentucky Occupational License Association, the Kentucky School Boards Association, the Kentucky Society of Certified Public Accountants, urban-county governments, consolidated local governments, and a representative of business entities appointed by the Secretary.*
 - (b) *During the development of the proposed initial form or forms, the Secretary of State shall report in writing to the Interim Joint Committee on Local Government on the progress of the development process. When the proposed administrative regulation is filed with the Legislative Research Commission pursuant to KRS Chapter 13A, the Secretary of State shall also submit a copy thereof, via regular or electronic mail, to the members of the Interim Joint Committee on Local Government, or if during a session of the General Assembly, to the members of the House Standing Committee on Local Government and the Senate Standing Committee on State and Local Government. The submission to the members shall include a note from the Secretary of State stating that the members may submit any comments regarding the proposed administrative regulation in accordance with the deadline established in KRS 13A.270(1)(c).*
 - (c) *Notwithstanding KRS 13A.290(6)(a), after review by the Administrative Regulation Review Subcommittee the Legislative Research Commission shall assign the administrative regulation to the Interim Joint Committee on Local Government for consideration, or if during a session of the General Assembly, to the House Standing Committee on Local Government and the Senate Standing Committee on State and Local Government.*
 - (d) *Once the standard form or forms are adopted or amended, the Secretary of State shall include the form or forms, instructions, and any updates on the one-stop business portal or another public Web site maintained by that office along with information submitted to the Secretary of State pursuant to subsection (2) or (3) of this section. The form or forms and instructions shall be updated and maintained by the Secretary of State at no cost to the tax districts. No fee shall be levied against the*

public or businesses for accessing and downloading forms, instructions, or other information maintained by the Secretary of State under this section.

- (2) *After the form or forms are adopted under subsection (1) of this section but prior to July 1, 2017, a tax district may adopt the standard form or forms as its exclusive return form or forms, may accept the standard form or forms in addition to the tax district's own return form or forms, or may elect to opt out of accepting the standard form or forms through adoption of a written order by the tax district's governing body. If a tax district elects not to accept the standard form or forms, it shall forward the following information to the Secretary of State for inclusion on the one-stop business portal or another public Web site maintained by that office:*
 - (a) *A copy of the written order specifying that the tax district will not accept the standard form or forms within thirty (30) days of its adoption; and*
 - (b) *A copy of occupational license tax forms that the tax district accepts, any accompanying instructions, and any future amendments to those forms and instructions within thirty (30) days of any change.*
- (3) *After July 1, 2017, a tax district shall either adopt the standard form or forms as its exclusive return form or forms or accept the standard form or forms in addition to the tax district's own return form or forms, unless:*
 - (a) *The tax district submits a written request approved by the tax district's governing body to the Secretary of State for an exemption based on documented information that acceptance of the form will impose an undue financial hardship on the tax district; and*
 - (b) *The Secretary of State approves the request for an exemption and obtains the return form or forms that will be accepted by the tax district and any applicable instructions for inclusion on the one-stop business portal or another public Web site maintained by that office. In exercising his or her discretion to grant an exemption under this subsection, the Secretary of State may impose any reasonable terms and limitations upon the exemption.*
- (4) *Upon receipt of an order pursuant to subsection (2) of this section or upon the issuance of an exemption under subsection (3) of this section, the Secretary of State shall provide notice to the Kentucky Society of Certified Public Accountants of the tax districts that have submitted a written order to opt out under subsection (2) of this section or that are granted an exemption under subsection (3) of this section.*
- (5) *The Secretary of State shall, only upon the request of a tax district, include electronic links for the electronic filing of forms with the local tax district by no later than July 1, 2017.*
- (6) *Nothing in this section or Section 1 of this Act shall be interpreted to alter or preempt the requirements imposed by a tax district regarding deadlines, reporting, rates, or other legally imposed procedures regarding the imposition, administration, and collection of local occupational license taxes by a tax district. Nor shall the adoption or use of a standard form or forms developed under this section release the taxpayer from any liability or responsibility to the tax district for the correct payment of taxes, penalties, and any other obligations imposed by the tax district. This section and Section 1 of this Act shall not be interpreted to authorize the collection of local tax revenues by the state government or any other agency of the state.*

➔Section 3. KRS 67.768 is amended to read as follows:

- (1) All business entities' returns for the preceding taxable year shall be made by April 15 in each year, except returns made on the basis of a fiscal year, which shall be made by the fifteenth day of the fourth month following the close of the fiscal year. Blank *copies of local* forms for returns shall be *made available to business entities*~~[supplied]~~ by the tax district.
- (2) Every business entity shall submit a copy of its federal income tax return at the time of filing its return with the tax district. Whenever, in the opinion of the tax district, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the tax district may compel the business entity to produce for inspection a copy of all statements and schedules in support thereof. The tax district may also require copies of reports of adjustments made by the federal government.

➔Section 4. KRS 67.790 is amended to read as follows:

- (1) A business entity subject to tax on gross receipts or net profits 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 tax district; 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 date prescribed under KRS 67.783 may be subject to a penalty in an 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 tax district. A fraction of a month is counted as an entire month.
- (4) Every tax subject to the provisions of KRS 67.750 to 67.790, 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 tax district.
- (5) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return, willfully makes a false return, or 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.
- (6) 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 KRS 67.750 to 67.790 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.
- (7) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the tax district and required to be filed with the tax district by the provisions of KRS 67.750 to 67.790, or by the rules of the tax district or by written request for information to the business entity by the tax district.
- (8)
 - (a) 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.
 - (b) Any person who violates the provisions of paragraph (a) of this subsection 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.
 - (c) Any person who violates the provisions of paragraph (a) of this subsection by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
- (9) ***If a tax district that imposes a net profits or gross receipts occupational license tax fails to comply with the requirements of subsection (1) or (2) of Section 1 of this Act, the Secretary of State shall inform the tax district in writing of its noncompliance. If the tax district is not in compliance within thirty (30) days following the notice from the Secretary, the Secretary shall notify all state agencies which deliver services or payments of money from the Commonwealth to the tax district of the tax district's noncompliance. Those agencies shall suspend delivery of all services or payments to a tax district which fails to comply with the requirements of subsection (1) or (2) of Section 1 of this Act. The Secretary of State shall immediately notify those same agencies when the tax district is in compliance with the requirements of subsection (1) or (2) of Section 1 of this Act, and those agencies shall reinstate the delivery of services or payments to the tax district.***

Signed by Governor April 11, 2012.