

CHAPTER 112: OCCUPATIONAL LICENSE TAX

Section

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§ 112.01 DEFINITIONS.

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

(A) "BUSINESS ENTITY." 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.

(B) "BUSINESS." 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 of 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, corporation, 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 associations, inures to the benefit of any private shareholder or other person.

(C) "CITY." The City of Morehead, Kentucky.

(D) "CODE ENFORCEMENT OFFICER." Any employee of the City of Morehead whom has been designated as a Code Enforcement Officer.

(E) "COMPENSATION." 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 to include the following:

(1) 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(b), 408, 414(h), or 457 of the Internal Revenue Code; and

(2) Any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code.

(F) "CONCLUSION OF FEDERAL AUDIT." The date that the adjustments made by the Internal Revenue Service to net income as reported on the business entity's federal income tax return become final and unappealable.

(G) "EMPLOYEE." 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.

(H) "EMPLOYER." The person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:

(1) 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

(2) 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.

(I) "FINAL DETERMINATION OF THE FEDERAL AUDIT." The revenue agent's report or other document reflecting the final and unappealable adjustments made by the Internal Revenue Service.

(J) "FISCAL YEAR." An accounting period of twelve (12) months ending on the last day of any month other than December.

(K) "INTERNAL REVENUE CODE." The Internal Revenue Code in effect on December 31, of 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.

(L) "ITINERANT MERCHANT." A business which does not maintain a place of business within the city, and does not have a full time employee within the city, but does enter the city to transact business.

(M) "NET PROFIT." 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:

(1) 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;

(2) 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;

(3) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;

(4) 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

(5) 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.

(N) "PERSON." 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.

(O) "RETURN or REPORT." 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.

(P) "SALES REVENUE." Receipts from the sale, lease, or rental of goods, services or property.

(Q) "TAX DISTRICT." 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.

(R) "TAXABLE NET PROFIT" (in case of a business entity having payroll or sales revenue only with the city). Net profit as defined in division (N) of this section.

(S) "TAXABLE NET PROFIT" (in case of a business entity having payroll or sales revenue both within and without of the city). Net profit as defined in division (N) of this section, and as apportioned under § 112.04.

(T) "TAXABLE YEAR." The calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed.

(Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)

§ 112.02 LICENSE APPLICATION REQUIRED.

Every person and business entity engaged in any business in the City of Morehead and every employer required to withhold payroll tax from an employee's compensation shall be required to apply for and obtain an occupational license from the City of Morehead, Kentucky before the commencement of business or in the event of a change of business status. Except as provided herein, the initial application fee shall be ten dollars (\$10.00). This fee shall be credited against the license tax as provided herein. Licensees are required to notify the City of Morehead 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.

(Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)

§ 112.03 OCCUPATIONAL LICENSE TAX PAYMENT REQUIRED.

(A) Except as provided in division (B) 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 one and one-half percent (1.5%) of:

(1) All wages and compensation paid or payable in the city for work done or service performed or rendered in the city by every resident and nonresident who is an employee; and

(2) The net profits from business conducted in the city by a resident or nonresident business entity.

(B) The Occupational License Tax imposed in this section shall not apply to the following persons or business entities:

(1) Any bank, trust company, combined bank and trust company, or trust, banking and title insurance company organized and doing business in this state, any savings and loan association whether state or federally chartered. These entities are exempt pursuant to the franchise and local deposit tax. Wages and compensation of all employees are subject to the tax;

(2) Any compensation received by members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training; assemblies and annual field training;

(3) Any compensation received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections;

(4) 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;

(5) 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 net profits derived from the manufacturing or trafficking in alcoholic beverages; and

(6) Life insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky.

(7) Domestic servants employed in private homes.

(8) Full-time elementary, secondary, or undergraduate students who are regularly employed for fifteen (15) hours or less by all his or her employers. Full-time student as contemplated by this chapter means as follows:

(a) Enrollment in the spring semester and anticipation of enrollment in the fall semester shall constitute full-time enrollment. If a student does not enroll for the fall semester, then his or her exemption is deemed to have ended at the close of his or her spring semester, and the student will be held accountable for the tax which should have been withheld from his or her paycheck;

(b) In the case of elementary or secondary students, any student who can furnish to the city a notarized statement by the principal of the school that the student is enrolled in a full-time course of study;

(c) In the case of undergraduate college or university students, any student who can furnish to the city a notarized statement by the registrar of his/her college or university that he/she is enrolled for a minimum of twelve (12) semester hours or its equivalent;

(d) Any full-time student who is employed for a maximum of fifteen (15) hours a week by Morehead State University under any of its workshop-type programs is automatically exempt from the tax and does not require a notarized statement.

(9) Rental Income. Income received from renting real estate shall be considered non-business income or unearned income and shall not be subject to the license fee or net profit tax.

(Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)

§ 112.04 APPORTIONMENT.

(A) Except as provided in division (D) of this section, net profit shall be apportioned as follows:

(1) For business entities with both payroll and sales revenue in more than one (1) tax district, by multiplying the net profit by a fraction, the numerator of which is the payroll factor, described in division (B) of this section, plus the sales factor, described in division (C) of this section, and the denominator of which is two (2); and

(2) For business entities with sales revenue in more than one (1) tax district, by multiplying the net profit by the sales factor as set forth in division (C) of this section.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the city during the tax period by the business entity for compensation and the denominator of which is the total compensation paid or payable by the business entity everywhere during the tax period. Compensation is paid or payable in the city based on the time the individual's service is performed within the city.

(C) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in the city during the tax period, and the denominator of which is the total sales revenue of the business entity everywhere during the tax period.

(1) The sales, lease, or rental of tangible personal property is in the city if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within the city regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in the city and the purchaser is the United States government.

(2) Sales revenues, other than revenues from the sale, lease or rental of tangible personal property are apportioned to the city based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the city and the denominator of which is the total time spent performing that income-producing activity.

(D) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the city, the

business entity may petition the city or the city may require, in respect to all or any part of the business entity's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one (1) or more of the factors;
- (3) The inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in the city; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of net profits.

(E) When compensation is paid or payable for work done or service 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.

(F) All partnerships, S corporations, and all other entities where income is "passed through" to the owners are subject to this chapter. The occupational license tax imposed in this chapter is assessed against income before it is "passed through" these entities to the owners.

(G) 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 that taxable year during which the business entity had business activity in the city.

(H) If a business entity makes, or is required to make, a federal income tax return, the occupational license tax shall be computed for the purpose of this chapter on the basis of the same calendar or fiscal year required by the federal government, and shall employ the same methods of accounting required for federal income tax purposes. (Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)

§ 112.05 EMPLOYERS TO WITHHOLD.

(A) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation an occupational license tax calculated under § 112.03 of this chapter.

(B) Every employer required to deduct and withhold tax under this section shall do so monthly or more often than monthly, at the time of

payment of salaries, wages, commissions or other compensation paid by the employer to the employee, and shall pay to the city the amount of the license tax so withheld and deducted. The payment required to be made on account of deductions by employers shall be made monthly by all employers withholding one thousand dollars (\$1,000) or more per month and may be paid quarterly for those employers withholding less than one thousand dollars (\$1,000) per month. Payments for the monthly periods shall be made to the city on or before the 15th day of the month next following the month of the deduction. Payments for the quarterly periods ending March 31, June 30, September 30 and December 31 of each year shall be made to the city on or before the last day of the month next following the quarter of the deduction.

(C) Every employer who fails to withhold or pay to the city any sums required by this chapter 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.

(D) 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.

(E) 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 copied 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.

(F) 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.

(G) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.

(H) 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 chapter at the time that the taxes imposed by this chapter becomes or became due.

(I) Notwithstanding divisions (G) and (H) of this section, every employee receiving compensation in the city subject to the tax imposed under § 112.03 of this chapter shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this chapter from the employee, such employee or employees shall be responsible for filing with the city each quarter in the same manner as if they were the employer.

(Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)

§ 112.06 RETURNS REQUIRED.

(A) All business entity returns for the preceding taxable year shall be made by April 15 of 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 forms for returns shall be available at City Hall.

(B) Every business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its occupational license tax return with the city. Whenever, in the opinion of the city, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the city may compel the business entity to produce for inspection a copy of any statements and schedules in support thereof that have not been previously filed. The city may also require copies of reports of adjustments made by the federal government.

(C) Every business entity subject to an occupational license tax governed by the provisions of this chapter 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 of the business entity.

(D) The city may require, for the purpose of ascertaining the correctness of any return or for the purpose 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.

(E) 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.

(F) It shall be the responsibility of persons who make Federal Form 1099 "non-employee compensation" payments to natural persons other than employees for services performed within the city, to maintain

records of such payments and to report such payments to the city. The payments must be reported by remitting Federal Form 1099 by February 28 of the year following the close of the calendar year in which the non employee compensation was paid. If a business entity or person is not required to remit Federal Form 1099 to the IRS, including but not limited to payments less than six hundred dollars (\$600.00), they are still liable to remit the equivalent information to the city. The information required to be reported by said licensee shall include:

- (1) Payer's name, address, social security and/or federal identification number;
- (2) Recipient's name and address;
- (3) Recipient's social security and/or federal identification number;
- (4) Amount of non employee compensation paid in the calendar year; and
- (5) Amount of non employee compensation earned in the city for the calendar year.
(Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)

§ 112.07 EXTENSIONS.

(A) The city may grant any business entity an extension of not more than six (6) months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the city and the business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the occupational license tax, requests the extension and pays the amount properly estimated as its tax.

(B) If the time for filing a return is extended, the business shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due on the return but not previously paid, from the time the tax was due until the return is actually filed and the tax paid to the city. A fraction of a month is counted as an entire month.
(Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)

§ 112.08 REFUNDS.

(A) In the case of an overpayment of tax under this chapter, 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.

(B) 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 the 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. (Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)

§ 112.09 FEDERAL AUDIT PROVISIONS.

(A) 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.

(1) In the case of a failure to file a return or of a fraudulent return, the additional tax may be assessed at any time.

(2) In the case of a return where a business entity understates net profit, or omits an amount properly includable in net profits, or both, which understatement or omission, or both, is in excess of twenty-five percent (25%) of the amount of net profit stated in the return, the additional tax may be assessed at any time within six (6) years after the return was filed.

(3) 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.

(B) 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.

(C) The city may initiate a civil action for the collection of any additional tax within the times prescribed in division (A) of this section.

(Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)

§ 112.10 ADMINISTRATIVE PROVISIONS.

(A) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this chapter.

(B) Any tax collected pursuant to the provisions of this chapter 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:

(1) In any case where the assessment period contained in § 112.07 of this chapter has been extended by an agreement between the business entity and the city, the limitation contained in this subsection shall be extended accordingly.

(2) 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 purpose of this subsection and division (A) 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.

(C) The authority to refund or credit overpayments of taxes collected pursuant to this chapter is vested exclusively in the city. (Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)

§ 112.11 INFORMATION TO REMAIN CONFIDENTIAL.

(A) No present or former employee of the city 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 city 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) 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 right 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.

(C) In addition, the city is empowered to execute similar reciprocity agreements as described in division (B) 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 chapter. (Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)

§ 112.12 RESERVED.

§ 112.13 SPECIAL FEES.

(A) City Council hereby finds the following occupations are of such a nature as to require special regulation and supervision, and therefore the following minimum license fees are imposed on every person engaged in the business, occupation, calling or profession, or using, holding, or exhibiting articles named in this section. Those shall pay in advance to the city in each calendar year or fiscal year or fraction thereof, in accordance with the yearly basis the licensee uses in making a return under the terms of this section, the licensee fee as otherwise provided in this section; however, where a minimum fee is set forth in the following table for a period of less than one (1) year, the fee shall be considered the minimum fee due for the period as set forth in the table and shall be paid in advance of engaging in the activity. However, all license fees with the exception of the transient peddlers and itinerant merchants' fee shall be prorated as necessary. There shall be no proration of the initial ten dollars (\$10), one-time application fee.

(B) In the event that a licensee engages in more than one type of activity in one business entity, the highest minimum license fee shall apply. Under column head "Date Due" in the following table, the words "Before Showing" or "Before Activity" shall, in the case of "Before Showing" mean that the license fee per showing is due prior to the date of each showing and in the case of "Before Activity" mean that the license fee is due prior to each day of engaging in activity. Where the word "yearly" appears under the column head, the same shall mean that the minimum fee shall be due on or before the first day of the taxpayer's accounting year as used in compliance with this section.

(C) Nothing in this provision will be presumed to exclude a person engaging in one of the below-described businesses from paying the occupational license fee imposed in § 112.06 of this chapter.

(D) The occupational license and net profits tax shall include the following special fees:

<u>Subject to Fee</u>	<u>Minimum Fee</u>	<u>Date Due</u>
Circus, regardless of local sponsorship	\$200 per showing	Before showing
Carnival, regardless of local Sponsorship	\$50 per day	Before showing

<u>Subject to Fee</u>	<u>Minimum Fee</u>	<u>Date Due</u>
Amusement, athletic contest, or entertainment not a part of a duly licensed business or not held in a regularly licensed theater or in a publicly-owned or religious or educational building, and not sponsored by a bonafide civic, patriotic, religious or Educational organization.	\$50 per showing or \$200 per day	Before showing
Theater	\$100 per year	Yearly
Dance hall or dancing school	\$5 per dance or \$50 per year	Before showing Yearly
Junk dealers auctioneers and auction houses	\$50 per year	Yearly
Bowling lanes	\$250 per year	Yearly
Skating rink	\$100 per year	Yearly
Milk distributor	\$50 per year	Yearly
Itinerant merchant	\$100 per year or \$10 per day per person	Yearly
Taxicabs	\$20 per cab per year	Yearly
Dealers in cigarettes and soft drinks	\$30 per year per per commodity per location	Yearly
Billiard halls	\$125 for the first table and \$25 for each additional table	Yearly
Itinerant photographers	\$10 per day or \$30 per month	Before activity
Wholesale soft drinks distributors	\$50 per year	Yearly
Wholesale tobacco	\$50 per year	Yearly
Palmistry	\$300 per year	Yearly
Lawn care business	\$100 per year	Yearly

(E) The provisions of division (D) above are waived for participants in the festivals sponsored by the city or a city entity. However, all participants must get approval from the governing body of the festival and must be in good standing with the city.

(F) (1) The city, may in its discretion, enter into a contract with the operator of a flea market, for said operator to collect from his or her tenant-vendors and remit to the city, each calendar quarter, a special fee in lieu of special fee specified in division (D) above, and in lieu of the Occupational License Tax for the tenant-vendors. The special fee shall be fifty cents (\$0.50) per week for each tenant-vendor who rents a sales space on a weekly basis or twenty-five cents (\$0.25) per day for each tenant-vendor who rents a sales space on a daily basis. "Flea Market" shall mean any business which rents sales space to others on a weekly or daily basis. "Sales space" shall mean not more than one hundred fifty (150) square feet inside a building or two hundred fifty (250) square feet not inside a building. In the event a tenant-vendor rents a larger space, he or she shall pay the above special fee for each "sales space" as above defined, or portion thereof. "Tenant Vendor" shall mean any person who rents a sales space from any flea market operator for any business purpose.

(2) If the city enters into such a contract, the same shall be in writing and shall specify that the operator of the flea market shall be personally responsible for and liable for the collection of the fee and remittal of the same to the city and the operator shall account to the city in such manner as shall be specified by the city. The city may, in its discretion, require the operator to post bond with such surety to guarantee the payment of the city's estimate of the special fees for a full calendar quarter.

(Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11; Am. Ord. 14:2011, passed 5-23-11)

§ 112.14 USE OF OCCUPATIONAL LICENSE TAX.

All money derived from the license taxes under the provisions of this chapter shall be paid to the city and placed to the credit of the city's general revenue fund.

(Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)

§ 112.98 SEVERABILITY.

Each section and each provision of each section of this chapter are severable, and, if any provisions, 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 chapter, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of the rest.

(Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)

§ 112.99 PENALTY.

(A) The Code Enforcement Officer shall be notified quarterly of those businesses who have refused to make a return or to purchase a license, or to pay any fee or tax required by this chapter. Upon receipt of this information, the Code Enforcement Officer may proceed with any enforcement option set forth herein.

(B) (1) A business entity subject to tax on net 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.

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

(C) Every employer who fails to file a return or pay the tax on or before the time prescribed under § 112.05 of this chapter 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 section shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

(D) 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 unpaid, 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.

(E) Every tax imposed by this chapter, 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.

(F) The city may enforce the collection of the occupational tax due under § 112.03 of this chapter and any fees, penalties, and interest as provided in divisions (A), (B), (C), and (D) 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 chapter or through the Code Enforcement Board. Should the city choose to enforce said violation through its Code Enforcement Board, the following procedures shall apply:

(1) Upon receipt of notice of a violation, the Code Enforcement Officer may issue a Notice of Violation to the offender. The notice shall specify a period of time the offender has to remedy the violation. If the offender fails or refuses to remedy the violation, the offender shall be issued a citation by the Code Enforcement Officer. If the Code Enforcement Officer believes that

the violation presents a serious threat to the public health, safety, and welfare or if, in the absence of immediate action, the effects of the violation will be irreparable or irreversible, or the violation is a repeated violation, the Code Enforcement Officer may issue a citation without a notice of violation. If the citation is not contested by the business, the following penalties shall apply; however, the Code Enforcement Board may waive all or any portion of a penalty for an uncontested violation if, in its discretion, the Code Enforcement Board determines that such waiver will promote compliance with this chapter:

- | | | |
|-----|----------------|-------|
| (a) | First offense | \$50 |
| (b) | Second offense | \$75 |
| (c) | All others: | \$100 |

(2) If the citation is contested and a hearing before the Code Enforcement Board is required, the following maximum penalties may be imposed at the discretion of the Code Enforcement Board:

- | | | |
|-----|----------------|---------|
| (a) | First offense | \$500 |
| (b) | Second offense | \$750 |
| (c) | All others | \$1,000 |

(G) In addition to the penalties prescribed in this section, any individual or employee, 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.

(H) 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.

(I) 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 chapter or by the rules of the city or by written request for information to the business entity by the city.

(J) Any person violating the provisions of § 112.11 of this chapter 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.

(K) Any person violating the provisions of § 112.11 of this chapter 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.

(Ord. 38:2007, passed 12-10-07; Am. Ord. 10:2008, passed 4-14-08; Am. Ord. 11:2011, passed 4-11-11)