

**CITY OF GEORGETOWN
ORDINANCE #04-019**

**AN ORDINANCE RELATED TO THE REPEAL AND REPLACEMENT OF
ORDINANCE 03-026, AN ORDINANCE RELATED TO THE CITY'S
OCCUPATIONAL AND NET PROFITS TAX**

WHEREAS: Ordinance 2003-026, an ordinance related to the imposition and administration of an occupational and net profits tax, was adopted in order to bring Georgetown's tax regimen into conformity with House Bill 107, enacted by the state legislature in 2003. In 2004, the legislature enacted House Bill 458, which further modified the law necessitating additional changes to the local occupational and net profits tax. This Ordinance is required to conform to the more recent state law and to repeal Ordinance 2003-026.

The proposed Ordinance does not modify the actual tax rate or the income upon which the tax applies. This Ordinance merely continues the effort to make Georgetown's occupational and net profits tax regimen conform to state law, the standard for such ordinances around the state and be generally consistent with the license tax structure of Scott County and the Scott County Public School District.

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GEORGETOWN,
KENTUCKY:**

Section 1. The following expressions, when used in this ordinance, shall have the meaning ascribed to them in this section, except where the context clearly indicates or requires a different construction.

(1) "Business" means any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. "Business" shall not include the usual activities of boards 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, corporations, or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic or fraternal purposes, where no part of the earnings, incomes, or receipts of such unit, group or association, inures to the benefit of any private shareholder or other person;

(2) "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;

(3) "City" means the City of Georgetown, Kentucky;

(4) “Compensation” means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:

(a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and

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

(5) “Domestic servant” means an individual employed to drive his employer in the capacity of a chauffeur or employed on the grounds or in the home of his employer in activities to care for or wait upon the employer, the employer’s family or guests, or to care for the home, grounds, and/or vehicle of the employer or the employer’s family or guests, not including such individuals who are employed by a cleaning service, personal nursing service, chauffeuring service or other entity which offers the services of its employees to the public;

(6) “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;

(7) “Employer” means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:

(a) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term “employer” means the person having control of the payment of such wages, and

(b) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term “employer” means such person;

(8) “Fiscal year” means an accounting period of 12 months ending on the last day of any month other than December;

(9) “Internal Revenue Code” means the Internal Revenue Code in effect on December 31, 2003, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2003, that would otherwise terminate;

(10) “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;

(11) “Person” means 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 a corporations, shall mean the officers and directors thereof;

(12) “Return” means any properly completed and, if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with the City;

(13) “Revenue Commission” means the Georgetown/Scott County Revenue Commission.

(14) “Sales revenue” means receipts from the sale, lease, or rental of goods, services, or property;

(15) “Taxable net profit” in case of a business entity having payroll or sales revenue only in the City means net profit as defined in subsection (10) of this section;

(16) “Taxable net profit” in case of a business entity having payroll or sales revenue both within and without the City means net profit as defined in subsection (10) of this section, and as apportioned under Section 2; and

(17) “Taxable year” means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed.

Section 2.

(1) Except as provided under Section 3 of this ordinance, 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 Department of Revenue 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 percent (1%) of:

(a) all wages and compensation paid or payable in the City for work done or services performed or rendered in the City by every resident and nonresident who is an employee;

(b) the net profit from business conducted in the City by a resident or nonresident business entity.

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

(3) Except as provided for in subsection (6) of this section, net profit shall be apportioned as follows:

(a) For business entities with both payroll and sales revenue within and without the City, by multiplying the net profit by a fraction, the numerator of which is the payroll factor, described in subsection (4) of this section, plus the sales factor, described in subsection (5) of this section, and the denominator of which is two (2); and

(b) For business entities with sales revenue within and without the City, by multiplying the net profit by the sales factor as set forth in subsection (5) of this section.

(4) 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.

(5) 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.

(a) The sale, lease, or rental of tangible personal property is in the City if:

1. 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

2. 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.

(b) Sales revenue, other than revenue from the sale, lease, or rental of tangible personal property or the lease or rental of real 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.

(c) Sales revenue from the lease or rental of real property is allocated to the City if the real property is located within the City.

(6) 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:

(a) Separate accounting;

(b) The exclusion of any one (1) or more of the factors;

(c) The inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in the City; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of net profit.

(7) When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without the City, the license tax shall be measured by that part of the compensation paid or payable as a result of work done or service performed or rendered within the City. The license tax shall be computed by obtaining the percentage which compensation for work performed or services rendered within the City bears to the total wages or 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.

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

Section 3.

(1) Because of the undue burden of administration, no license tax imposed under Section 2 of this ordinance shall be required of domestic servants employed in private homes, or for temporary or casual farm labor.

(2) No license tax imposed under Section 2 of this ordinance shall be required of a minister of religion who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect or religious organization, to teach and preach its religious doctrines or to administer its rites in public worship, in the performance of one (1) or more of those duties; however, it is not intended to exempt such ordained minister of religion from the necessity of paying a license tax for work done or services performed in the City in activities not connected with his regular duties as a minister of religion.

(3) No license tax imposed under Section 2(1)(b) of this ordinance shall be required of nonresidents who sell farm products, other than trees, shrubs or ornamental plants, in the City, or nonresident owners who sell livestock in the City or who board their livestock in the City for breeding purposes.

(4) No license tax imposed under this ordinance is required of natural persons of the age of sixty-five (65) and older as to the first ten thousand dollars (\$10,000.00) of compensation earned by such persons in the City for work done or services performed or rendered in the City or the first ten thousand dollars (\$10,000) of net profit from business conducted in the City by such persons as a sole proprietor.

(5) No license tax imposed under Section 2(1)(b) of this ordinance shall be required of any person or business entity authorized by the City of Georgetown, City of Stamping Ground, City of Sadieville, City of Oxford or the Scott County Fiscal Court to demonstrate, sell or offer for sale any goods, wares or merchandise at an annual, semi-annual or other festival or arts and crafts show.

(6) No license tax imposed under Section 2 of this ordinance is required of any compensation received by a member of the Kentucky National Guard for active duty training, unit training, assemblies and annual field training.

(7) No license tax imposed under Section 2(1)(b) of this ordinance is required of any bank, trust company, combined bank and trust company, or trust, banking and title insurance company organized and doing business in this state, or any savings and loan association whether state or federally chartered.

(8) No license tax imposed under Section 2 of this ordinance is required of any compensation received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.

(9) No license tax imposed under Section 2(1)(b) of this ordinance is required of 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 tax on their net profit derived from the non-public service activities apportioned to the City.

(10) No license tax imposed under Section 2(1)(b) of this ordinance is required of 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 profit derived from the manufacturing or trafficking in alcoholic beverages.

(11) No license tax imposed under Section 2(1)(b) of this ordinance is required of life insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky.

Section 4.

(1) Every business entity, other than a sole proprietorship, subject to a net profit tax imposed by the City shall make quarterly estimated tax payments on or before the fifteenth day of the fourth, sixth, ninth and twelfth month of each taxable year if the tax liability for the taxable year exceeds five thousand dollars (\$5,000).

(2) The quarterly estimated tax payments required under subsection (1) of this section shall be based on the lesser of:

- (a) Twenty-two and one-half percent (22.5%) of the current taxable year tax liability;
- (b) Twenty-five percent (25%) of the preceding full year taxable year tax liability; or
- (c) Twenty-five percent (25%) of the average tax liability for the three (3) preceding full year taxable year's tax liabilities if the tax liability for any of the three (3) preceding full taxable years exceeded twenty thousand dollars (\$20,000).

(3) Any business entity that fails to submit the minimum quarterly payment required under subsection (2) of this section by the due date for the quarterly payment shall pay an amount equal to twelve percent (12%) per annum simple interest on the amount of the quarterly payment required under subsection (2) of this section from the earlier of:

- (a) The due date for the quarterly payment until the time when the aggregate quarterly payments submitted for the taxable year equal the minimum aggregate payments due under subsection (2) of this section; or
- (b) The due date of the annual return.

A fraction of month is counted as an entire month.

(4) The provisions of this section shall not apply to any business entity's first full or partial taxable year of doing business in the City or any first taxable year in which a business entity's tax liability exceeds five thousand dollars (\$5,000).

Section 5.

(1) In the case where the tax computed under Sections 1 to 22 is less than the amount which has been declared and paid as estimated tax for the same taxable year, a refund shall be made upon the filing of a return.

(2) (a) Overpayment resulting from the payment of estimated tax in excess of the amount determined to be due upon the filing of a return for the same taxable year may be credited against the amount of estimated tax determined to be due on any declaration filed for the next succeeding taxable year or for any deficiency or nonpayment of tax for any previous taxable year;

(b) No refund shall be made of any estimated tax paid unless a complete return is filed as required by Sections 1 to 22.

(3) At the election of the business entity, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

Section 6.

(1) For purposes of Sections 1 to 22 computations of gross income and deductions therefrom, accounting methods, and accounting procedures shall be as nearly as practicable identical with those required for federal income tax purposes.

(2) Every business entity subject to an occupational license tax governed by the provisions of Sections 1 to 22 shall keep records, render statements under oath, 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.

(3) The City may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or of any other person having knowledge in the premises.

(4) Every business entity required to file IRS Form 1099-MISC with the Internal Revenue Service shall provide a copy of those Forms 1099-MISC to the City for work done or services performed or rendered within the City. The Forms 1099-MISC required to be filed with the City under this subsection shall be due on or before February 28 of the year following the close of the calendar year in which such payments were paid or payable.

Section 7.

If any business entity dissolves 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, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of net profit taxes or tax withheld for the period of that taxable year during which the business entity had net profit or tax withheld in the City.

Section 8.

If any business entity makes, or is required to make, a federal income tax return, the net profit shall be computed for the purposes of Sections 1 to 22 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.

Section 9.

(1) For purposes of the tax imposed under Section 2(1)(b) of this ordinance, 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 forms for returns shall be supplied by the City or its agent the Revenue Commission.

(2) Every business entity shall submit a copy of its federal income tax return at the time of filing its 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 all statements and schedules in support thereof. The City may also require copies of reports of adjustments made by the federal government.

Section 10.

(1) 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 tax, requests the extension and pays the amount properly estimated as its tax.

(2) If the time for filing a return is extended, the business entity 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.

(3) The estimated tax required under this Section is presumed properly estimated and the penalties provided for under Section 18(1) of this ordinance shall not apply if the taxpayer pays with the timely filed extension request fifty percent (50%) or more of the tax liability as

shown on the extended net profit return filed with the City and provided further that the extended net profit return is filed with the City and the additional tax and interest are paid to the City on or before the extended due date.

Section 11.

(1) As used in this Section and Section 13, unless the context requires otherwise:

(a) “Conclusion of the federal audit” means 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; and

(b) “Final determination of the federal audit” means the revenue agent’s report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

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

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

(b) In the case of a return where a business entity understates net profit or omits an amount properly includable in net profit, 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.

(c) 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.

(3) 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.

(4) The City may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (2) of this section.

Section 12.

Except as provided under Section 10 of this ordinance 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 tax return, determined without regard to any extension of time for filing the return.

Section 13.

(1) No suit shall be maintained in any court to restrain or delay the collection or payment of any tax subject to the provisions of Sections 1 to 22.

(2) Any tax collected pursuant to the provisions of Sections 1 to 22 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 later, except that:

(a) In any case where the assessment period contained in Section 11 has been extended by an agreement between the business entity and the City, the limitation contained in this subsection shall be extended accordingly.

(b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

For the purposes of this subsection and subsection (3) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

(3) Exclusive authority to refund or credit overpayments of taxes collected pursuant to this ordinance is vested in the City.

Section 14.

Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation any tax imposed against the compensation by the City. Amounts withheld shall be paid to the City in accordance with Section 15.

Section 15.

(1) Every employer required to deduct and withhold tax under Section 14 shall, for the quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter make a return and report to the City the tax required to be withheld under Section 14, unless the employer is permitted or required to report within a reasonable time after some other period as determined by the City. Any employer withholding three hundred dollars (\$300.00) or more license tax during any quarter shall file a return and pay the license tax withheld monthly.

(2) Every employer who fails to withhold or pay to the City any sums required by Sections 1 to 22 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 Section 14.

(3) 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 Section 14. 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.

(4) Every employer required to deduct and withhold tax under Section 14 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 tax required to be deducted and withheld under Section 14. Either copies of federal forms W-2 and W-3, transmittal of wage and tax statements, or a detailed employee listing with the required equivalent information as determined by the City shall be submitted.

(5) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and license tax deducted by the employer from the compensation paid to the employee for payment to the City during the preceding calendar year.

Section 16.

(1) An employer shall be liable for the payment of the tax required to be deducted and withheld under Section 14.

(2) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to Section 14 shall be personally and individually liable, both jointly and severally, for any tax required to be withheld under Sections 1 to 22 from compensation paid or payable to one or more employees of any 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 of any person; provided that the personal and individual liability shall apply to each or 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 who had no authority to collect, truthfully account for, or pay over any tax imposed by Sections 1 to 22 at the time that the taxes imposed by Sections 1 to 22 become or became due.

(3) Notwithstanding the provision of subsections (1) and (2) of this section, every employee receiving compensation in the City subject to the tax imposed under Section 2 shall be liable for the tax. In all cases where the employer does not withhold the tax imposed under this ordinance 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.

Section 17.

- (1) Where there has been an overpayment of tax under Section 14, refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under Section 14 by the employer.
- (2) Unless 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, no refund or credit shall be allowed.
- (3) 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 the occupational license tax on the compensation attributable to activities performed outside the City to 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.

Section 18.

- (1) A business entity subject to tax on net profit may be subject to a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof if the business entity;
 - (a) Fails to file any return or report on or before the due date prescribed for filing or as extended by the City; or
 - (b) Fails to pay the tax computed on the return or report on or before the due date prescribed for payment.

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

- (2) Every employer who fails to file a return or pay the tax on or before the date prescribed under Section 15 may be subject to a penalty in the amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).
- (3) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the City. A fraction of month is counted as an entire month.

(4) Every tax subject to the provisions of Sections 1 to 22, and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to the City.

(5) The City may enforce the collection of the occupational tax due under Section 2 of this ordinance and any fees, penalties, and interest as provided in subsections (1), (2), (3), and (4) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the City shall be entitled to recover all court costs and reasonable attorney fees incurred by the City in enforcing any provision of this ordinance.

(6) In addition to the penalties prescribed in the 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.

(7) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under Sections 1 to 22 of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.

(8) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the City and required to be filed with the City by the provisions of Sections 1 to 22, or by the rules of the City or by written request for information to the business entity by the City.

(9) (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 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 City from testifying in any court, or from introducing as evidence returns or reports filed with the City, in an action for violation of the City tax laws or in any action challenging the City 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.

(10) The City reserves the right to disclose to the Commissioner of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent all such information and rights to inspect any of the books and records of the City if the Commissioner of Revenue of the Commonwealth of Kentucky grants 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 profit or compensation of any person or business entity.

(11) In addition, the City is empowered to execute similar reciprocity agreements as described in subsection (10) of this section with any other taxing entity, should there be a need for exchange of information in order to effect diligent enforcement of this ordinance.

Section 19.

The license taxes imposed by this Ordinance are carried over from Ordinance 2003-026, and as such are effective for tax years beginning on or after January 1, 2004, and shall remain in force and effect until repealed or modified according to law.

Section 20.

The provisions of this ordinance are severable. If any sentence, clause or section or part of this ordinance or the application thereof to any particular case is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or repeal any of the remaining provisions, sentences, clauses, or sections or parts of this ordinance, it being the legislative intent of this body to ordain and enact each provision, section, paragraph, sentence, and part hereof separately and independently of each other.

Section 21.

The Revenue Commission shall collect the license fees or taxes imposed by the City as agent for the City. The Revenue Commission is authorized to act as agent of the City on its behalf and has all the powers of the City to collect the fees or taxes imposed under the provisions of this ordinance, including but not limited to interpreting the license tax provisions of the City, promulgating regulations (subject to City Council approval) and issuing tax forms and instructions as necessary to aid in the collection and reporting of license taxes and all other powers granted to the Revenue Commission by the Interlocal Cooperation Agreement dated November 11, 2003, as amended from time to time, between and among the Scott County Public School District, the City and Scott County.

Section 22.

All orders, resolutions or ordinances or any part thereof in conflict with the provisions of this ordinance are hereby amended, repealed and replaced with the provisions of this ordinance.

Section 23.

This Ordinance shall take effect upon passage and publication.

The foregoing Ordinance was introduced and read for the first time at the Council's special meeting August 3, 2004, and for the second time, adopted and approved at the Council's regular meeting, August 19 2004.

APPROVED BY

EVERETTE VARNEY, MAYOR

ATTESTED BY:

SUE LEWIS, CITY CLERK