

ORDINANCE NO. _____, SERIES 2021

AN ORDINANCE AMENDING SEVERAL SECTIONS OF CHAPTER 110 OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES (“LMCO”) REGARDING OCCUPATIONAL LICENSE TAXES.

SPONSORED BY: COUNCIL MEMBER BILL HOLLANDER

WHEREAS, Chapter 110 of the Louisville/Jefferson County Metro Government Code of Ordinances pertains to the levy of occupational license taxes as authorized by KRS 68.180, KRS 91.200 and KRS Chapter 96A; and

WHEREAS, on November 11, 2021, the Louisville/Jefferson Metro Revenue Commission (the “Revenue Commission”) has approved an update to its occupational license tax regulations, such regulations to go into effect on January 1, 2022 (the “Regulations”); and

WHEREAS, during the process of revising of the Regulations, the Revenue Commission identified several minor updates that needed to be made to Chapter 110, including some changes needed to conform with language used in KRS 67.750; and

WHEREAS, the Legislative Council the Louisville/Jefferson County Metro Government desires to make these updates.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: LMCO 110.01 is hereby amended to read as follows:

§ 110.01 DEFINITIONS.

For the purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS. Any enterprise, activity, trade, profession, occupation or undertaking of any nature conducted for gain or profit. However, this term shall not include the usual activities of boards of trade; chambers or commerce; trade associations or unions, or other association performing the services usually performed by trade associations or unions. Business shall not include funds or 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, income or receipts of such units, groups, or associations inures to the benefit of any private shareholder or individual except to the extent that there is unrelated business income.

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.

COMMISSION. The Louisville/Jefferson County Metro Revenue Commission.

COMMISSIONERS. The Commissioners of the Louisville/Jefferson County Metro Revenue Commission.

COMPENSATION. Wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee as defined in KRS 67.750(2). **COMPENSATION** shall also include any amount designated by a unit of government of any state or political subdivision thereof or by any agency or instrumentality of any of the foregoing as an employee contribution to an employees' trust

described in Section 401(a) of the Internal Revenue Code or to a plan described in Section 403(a) of the Internal Revenue Code, where the employing unit has picked up the employees' contribution pursuant to the provisions of Section 414(h) of the Internal Revenue Code. **COMPENSATION** shall also include non-cash fringe benefits taxable for federal income tax purposes as provided in this section.

CONCLUSION OF THE FEDERAL AUDIT. The date that 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.

COUNTY. Jefferson County, Kentucky.

DOMICILE. That place where a person has his or her fixed, permanent home, and to which he or she has, whenever absent, the intention of returning and from which he or she has no present intention of moving.

DULY ORDAINED MINISTER OF RELIGION. A natural person 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 doctrines or to administer its rites in public worship and who regularly performs one or more of those duties.

EMPLOYEE. Any person who renders services to another person or ~~any~~ business entity for compensation, ~~except for independent contractors,~~ including an officer, employee, or elected official of the United States, a state, or any political subdivision thereof of a state, ~~or the District of Columbia,~~ or any agency or instrumentality of any one (1) or more of the ~~foregoing~~ above. The term **EMPLOYEE** also includes an officer or ~~corporation.~~ A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee. If there is a dispute as to the status of a

worker, the Commission will require a copy of the federal SS-8 determination and follow the federal determination.

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 compensation for such services, the term employer for withholding tax purposes means the person having control of the payment of such compensation; and

(2) In the case of a person paying compensation 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.

FINAL DETERMINATION OF THE FEDERAL AUDIT. The revenue agents report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

FISCAL YEAR. An accounting period of 12 months ending on the last day of any month other than December.

INDIVIDUAL. A natural person.

INTERNAL REVENUE CODE. The Internal Revenue Code as defined by KRS 67.750.

LICENSE TAX. An occupational license fee or tax for revenue purposes.

LOUISVILLE METRO. Jefferson County, Kentucky.

METRO GOVERNMENT. Louisville/Jefferson County Metro Government.

NET PROFIT. For a business entity 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:

(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 carry back or carry forward 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;

(5) Include contributions to Keogh (HR-10) Retirement Plans and contributions to a Simplified Employee Pension Plan as defined in Section 408(k) of the Internal Revenue Code and contributions to any other self-employment retirement plan and other deductions that benefit non-employee individuals;

(6) Exclude any sum elected by the business entity as a credit against its federal income tax liability in lieu of a deduction for business expenses that were otherwise available to the business entity;

(7) Exclude the amount of foreign dividend gross-up under Section 78 of the Internal Revenue Code;

(8) Exclude the amount of Subpart F income included under Section 951 of the Internal Revenue Code but not actually received;

(9) Exclude for taxable years beginning on or after July 1, 1986, the amount of dividends described in Section 862(a)(2) of the Internal Revenue Code after deducting from such dividends the expenses and other deductions properly apportioned or allocated thereto as provided under Section 862(b);

(10) Exclude for taxable years beginning on or after July 1, 1987 interest income described in Section 862(a)(1) of the Internal Revenue Code, rental or royalty income described in Section 862(a)(4) of the Internal Revenue Code and other gains and profits described in Sections 862(a)(5) and 862(a)(6) of the Internal Revenue Code, after deducting from such interest, rental, royalty, gain or profit the expenses, losses and other deductions properly apportioned or allocated thereto as provided in Section 862(b) of the Internal Revenue Code;

(11) Include for taxable years beginning on or after July 1, 1987 any deduction claimed by the licensee on its federal income tax return for any loss arising from the sale of its interest in any corporation other than a corporation described in Section 861(a)(2) of the Internal Revenue Code;

(12) Include for taxable years beginning on or after July 1, 1987 any deduction claimed by the licensee on its federal income tax return for any loss arising from default under any bond, note or other obligation bearing interest of a type described in Section 862(a)(1) of the Internal Revenue Code, and for any loss arising from any

property described in Section 862(a)(4), Section 862(a)(5) and Section 862 (a)(6) of the Internal Revenue Code;

(13) 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.

PASS-THROUGH ENTITY. Any business entity that is a pass-through entity for federal tax purposes per 26 U.S.C. §1(h)(10).

PERSON. Every individual, partnership, fiduciary, association or corporation. Whenever the word **PERSON** is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to partnerships 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.

PROPERTY. For purposes of the sales factor shall include tangible personal property. This definition does not apply to taxpayers whose principal business activity is trading in securities.

RESIDENT. An individual domiciled in Louisville Metro.

RETURN or REPORT. Any properly completed and, and if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with the Commission.

SALES REVENUE. Receipts from the sale, lease or rental of goods, services, or property. See definition of “property” above.

SECRETARY-TREASURER. The Secretary-Treasurer of the Louisville/Jefferson County Metro Revenue Commission.

SOLE PROPRIETOR. An individual engaged in any business, profession or occupation, but not as an employee.

TAX DISTRICT. A city ~~of the first to fifth class~~, county, urban-county, charter county, consolidated local government, school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license taxes.

TAXABLE NET PROFIT.

(1) In the case of a business entity having payroll or sales revenue only within Louisville Metro, the term means “net profit” as defined above in this section.

(2) In the case of a business entity having payroll or sales revenue both within and without Louisville Metro, the term means “net profit” as defined above in this section, and as apportioned under §110.06 of this chapter.

TAXABLE YEAR. The calendar year or fiscal year ending during the calendar year, upon the basis of which net profit is computed.

THIRD PARTY PAYROLL REPORTING AGENT. Each business entity (as defined in this section ~~herein~~) through which another business entity processes its employee payroll, including deductions of occupational license taxes mandated by law, and files its occupational license tax withheld returns.

UNRELATED BUSINESS INCOME. ~~Unrelated business income is~~ income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the organization’s exemption.

SECTION II: LMCO §110.11 is amended to read as follows:

§ 110.11 RULES AND REGULATIONS.

(A) The Commission is hereby charged with the enforcement of the provisions of this chapter and are hereby empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to all matters pertaining to the administration and enforcement of the provisions of this chapter, including without limitation rules and regulations clarifying, construing, and supplementing the provisions of this chapter in a manner not inconsistent with any of the provisions of this chapter. The Commission shall give written notice of its intention to adopt or amend any regulations to the Mayor, the Council Clerk, the Chairman of the Board of the Transit Authority of River City, the Superintendent of the Jefferson County Public School System, the Superintendent of the Anchorage Public School System, the Executive Director of the Kentucky Society of Certified Public Accountants, and the President of Greater Louisville, Inc. at least 30 days prior to the final adoption of any proposed regulations or amendments and shall allow an opportunity for comment on each proposed regulation or proposed amendment prior to adoption. The rules and regulations promulgated by the Commission and the rulings made by the Commission shall be binding on all business entities, employers, and employees affected.

(B) Notwithstanding any other provision of this chapter, the Commission shall have the authority to resolve occupational license tax controversies, taking into consideration the facts and circumstances of each particular matter, but only to the extent of waiving penalties or interest, in whole or in part, and only where the business entity, employer or employee demonstrates to the satisfaction of the Commission reasonable cause for the failure of the business entity, employer or employee to file or pay timely. The Commission

shall also have the authority to resolve occupational license tax controversies based on the hazards and cost of litigation and/or doubt as to collectability.

SECTION III: This Ordinance shall take effect upon its passage and approval or otherwise becoming law.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____