

ORDINANCE NO. 153, SERIES 2022

AN ORDINANCE AMENDING SEVERAL SECTIONS OF CHAPTER 110 OF THE LOUISVILLE/JEFFERSON COUNTY METRO CODE OF ORDINANCES REGARDING OCCUPATIONAL LICENSE TAXES.

SPONSORED BY: COUNCIL MEMBER BILL HOLLANDER

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

WHEREAS, the Louisville Metro Revenue Commission identified updates to be made to Chapter 110, including a requirement for electronic filing for certain tax return preparers and changes needed to conform with state law; and

WHEREAS, the Louisville Metro Council 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:

LMCO § 110.01 DEFINITIONS.

For the purpose 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 of 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 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.

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 business entity for compensation, including an 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 or more of the above. 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 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 and real property. This definition does not apply to taxpayers whose principal business activity is trading in securities.

RACETRACK EXTENSION. Any facility owned, leased, or purchased by an association licensed by the Kentucky Horse Racing Commission under KRS 230.300, that meets the definition of “track” under KRS 230.210(24)(c), and where pari-mutuel wagering on historical horse races is conducted on terminals approved by the Kentucky Horse Racing Commission. RACETRACK EXTENSION does not include a facility or real property used for training horses or at which live horse races are run for stakes, purses, or prizes under the jurisdiction of the Kentucky Horse Racing Commission.

RESIDENT. An individual domiciled in Louisville Metro.

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 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, 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.

TAX RETURN PREPARER. Any person or entity who prepares for compensation or who employs one or more persons to prepare for compensation any occupational license tax return, form, or report on behalf of a third-party taxpayer.

TAXABLE NET PROFIT.

(1) In 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 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) 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. 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 110.03 is hereby amended to read as follows:

§ 110.03 EXEMPTED ACTIVITIES.

(A) The occupational license taxes imposed in this section shall not apply to the following persons or business entities:

(1) 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. Business entities whose business is predominantly non-public service and the public service business is merely incidental to the principal business, are required to pay a license tax on their net profit derived from the non-public service activities apportioned to the Louisville Metro.

(2) Any bank, trust company, combined bank and trust company or combined trust, banking and title business in this state, any savings and loan association whether state or federally chartered.

(3) Any company providing multichannel video programming services or communications services as defined in KRS 136.602. If only a portion of an entity's business is providing multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services including products or services that are related to and provided in support of the multichannel video programming services or communications services.

(4) Any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor.

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

(6) Any income or compensation received by members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training.

(7) Insurance companies who pay a license tax based on premiums under Ordinance 122 or § 38.64 or domestic life insurance companies that pay a tax based on taxable capital under § 38.36 are not required to pay a license tax measured by net profits under the terms of this chapter.

(8) Persons or business entities that have been issued a license under KRS Chapter 243 to engage in the manufacturing or trafficking in alcoholic beverages may exclude the portion of their net profits derived from the manufacturing or trafficking in alcoholic beverages.

(9) A sale of used goods conducted or participated in by the resident of the residential property on which the sale takes place shall not be considered a business for purposes of this chapter unless such sales are conducted for more than three consecutive days or for more than four times a year.

(10) During "Derby Festival Week," that is the week preceding and including the first Saturday in May, residents who provide parking spaces for a fee in the area encompassed by Colorado Avenue on the north, Interstate 264 (Watterson Expressway) on the south, Louisville Avenue (railroad tracks) on the east and Seventh Street Road on the west, shall not be considered to be engaged in an occupation for purposes of this chapter and no license is required.

(11) The occupation of serving as a duly ordained minister of religion is exempted from the terms of this chapter and no occupational license tax is required. It is not the intention of this chapter to exempt a duly ordained minister of religion from the necessity of paying the license tax measured by compensation and net profits earned for activities not connected with his or her regular duties as a minister of religion.

(12) Venture capital funds are exempt from the terms of this section provided, that for purposes of this exemption, a venture capital fund is a limited liability company, limited liability partnership, or limited partnership, formed and operated for the exclusive purpose of buying, holding and/or selling securities (including debt securities), on its own behalf and not as a broker, primarily in non-publicly traded companies, and the capital of the fund is primarily derived from investments by entities and/or individuals which are neither, directly or indirectly, related to nor affiliated with the fund. An annual informational return is required to be filed in order to qualify for this exemption. For purposes of this section, the following provisions shall apply:

(a) **AFFILIATED.** Entities that are part of an affiliated group as defined in 26 U.S.C. § 1504(a) and any applicable federal regulations thereto, as they may be amended from time to time;

(b) **NON-PUBLICLY TRADED COMPANIES.** Any business entity that is not a **PUBLICLY TRADED COMPANY**, as defined by subsection (d)(4);

(c) **PRIMARILY**, as used in this section, means over 80%.

(d) **PUBLICLY TRADED COMPANY.** Any entity that is traded on:

1. A national securities exchange registered under § 6 of the Securities Exchange Act of 1934 or exempted from registration under such act by 15 U.S.C. § 78f because of the limited volume of transactions;

2. A foreign securities exchange operating under principles analogous to a national securities exchange;

3. A regional or local exchange;

4. An interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise; or

5. On a secondary market or the substantial equivalent thereof, if taking into account all of the facts and circumstances, the owners are readily able to buy, sell or exchange their ownership interest in a manner that is comparable, economically, to trading on an exchange.

(e) **RELATED.** Entities and/or individuals that are related as determined by 26 U.S.C. § 267(b) and (f) and any federal regulations applicable thereto as they may be amended from time to time.

(13) Any family-owned non-corporate entity where the sole activity of such entity is the production of investment income is exempted from the terms of this section. An annual informational return must be filed in order to qualify for this exemption. For purpose of this section, the following provisions shall apply:

(a) **FAMILY-OWNED.** At least 95% of the equity of such entity is owned by members of the family, which means, with respect to an individual, only:

1. An ancestor of such individual;

2. The spouse or former spouse of such individual;

3. A lineal descendent of such individual, of such individual's spouse or former spouse, or of a parent of such individual;

4. The spouse or former spouse of any lineal descendent described in subsection 3.; or

5. The estate or trust of a deceased individual who, while living, was as described in any of the above subsections.

6. For purposes of this section, a legally adopted child of an individual shall be treated as the child of such individual by blood.

(b) **INVESTMENT INCOME** means and includes gross receipts derived from dividends, interest, annuities, and sales or exchanges of stock or securities to the extent of any gains therefrom.

(14) Except for the license taxes permitted pursuant to KRS 91.202 for "racetrack extensions", no tax is levied on a track as defined in KRS 230.210(24)(c).

(15) No license tax under this chapter is required where expressly exempted elsewhere in this chapter or prohibited by federal or state law.

(B) The provisions and limitations of this subsection shall not apply to license fees imposed for regulatory purposes as to form and amount.

SECTION III: LMCO 110.10 is hereby amended to read as follows:

§ 110.10 PAYMENT OF TAX NOT DELAYED; CLAIMS FOR REFUND OR CREDIT.

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

(B) Any license tax collected pursuant to the provisions of this chapter may be refunded or credited within two years of the date prescribed by law for the filing of a return or the date the money was paid to the Commission, whichever is the later, except that:

(1) In any case where the assessment period under this section has been extended by an agreement between the business entity and the Commission, the limitation contained in this section shall be extended accordingly.

(2) ~~Credits related to adjustments resulting from a federal audit shall be limited to years covered by the audit or to related audit issues covered by the audit. Refunds will only be paid for credits timely requested within the two-year limitation contained in this section, and only if additional obligations for other years in the audit period have been satisfied; otherwise, the taxpayer will receive a credit to be first applied to all other obligations in the audit period and second to future obligations. 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.

(3) 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.

(C) Exclusive authority to refund or credit overpayments of license taxes collected is vested with the Commission.

SECTION IV: The following section of LMCO Chapter 110 is amended as follows:

§ 110.18 ELECTRONIC FILING.

~~(A) Any employer, employee, business entity, third party payroll reporting agent, natural person or other taxpayer who files more than 25 returns or reports annually shall~~

~~electronically file the following returns or reports with the Commission on or before the due dates specified in § 110.05(B) and (E) and § 110.07(K) and (L):~~The following are required to electronically file all returns, forms, or reports with the Revenue Commission:

~~(1) Tax withholding statements required by § 110.05, including but not limited to Forms W-1, W-2 and W-3; and~~Any employer, employee, business entity, third party payroll reporting agent, natural person or other taxpayer who files more than 25 returns, forms, or reports annually; and,

~~(2) Information returns or statements that reflect payment information, including but not limited to Commission Form 1099-SF and the IRS Forms 1099 series. Beginning January 1, 2024, any tax return preparer that files, or reasonably expects to file, 10 or more returns, forms, or reports annually.~~

~~(B) The Commission may require other returns or reports as defined in § 110.01 to be electronically filed.~~shall have exclusive authority to prescribe or require the returns, forms, or reports filed and the manner in which each is filed.

~~(C) All persons or taxpayers who are required by or pursuant to this section to file returns or reports electronically shall do so in such manner as the Commission may prescribe or require.~~

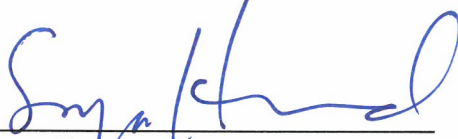
~~(D) Any person or taxpayer required to file a return or report electronically may apply for a waiver from this requirement by submitting a written request on a form prescribed by the Commission. The request shall indicate the lack of one of the following:~~

~~—(1) Compatible computer hardware;~~

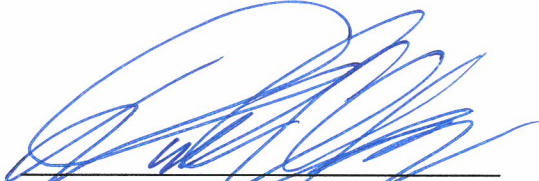
~~—(2) Internet access; or~~

~~—(3) Other technological capabilities determined relevant by the Commission.~~

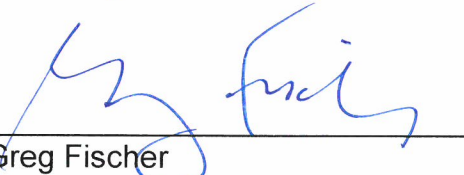
SECTION V: This Ordinance shall take effect upon its passage and approval or otherwise becoming law.



Sonya Harward
Metro Council Clerk



David James
President of the Council



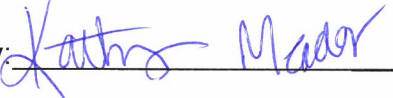
Greg Fischer
Mayor

10/31/2022

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: 

O-290-22 LMCO 110, Series 2022 Changes – bc-hh

