

NOTICE

Notice is hereby given that the First Reading of an Ordinance of the Fiscal Court of Caldwell County, Kentucky, relating to the Imposition and Administration of an Occupational License Requirement, Payment of an Occupational License Tax by Persons and Business Entities Conducting Businesses, Occupations and Professions within Caldwell County, Kentucky was held on the 10th day of June, 2014, at the hour of 8:00 a.m., c.s.t. by the Caldwell Fiscal Court, in the Caldwell Fiscal Courtroom, Caldwell County Courthouse, Princeton, KY 42445. Proposed Second Reading and Adoption of the above Ordinance is tentatively scheduled to be held on the 24th day of June, 2014, at the hour of 8:00 a.m., c.s.t., in the Caldwell Fiscal Courtroom, Caldwell County Courthouse, Princeton, KY 42445. A copy of the aforesaid adopted Ordinance, with full text, is available for public inspection at the Office of the Caldwell County Judge Executive, Caldwell County Courthouse, Princeton, KY during normal business hours. Said Ordinance is set forth below, in summary form, as follows:

**CALDWELL FISCAL COURT
CALDWELL FISCAL COURTROOM
ORDINANCE NO. 06-10-14**

**AN ORDINANCE RELATING TO THE IMPOSITION AND
ADMINISTRATION OF AN OCCUPATIONAL LICENSE REQUIREMENT AND
PAYMENT OF AN OCCUPATIONAL LICENSE TAX BY PERSONS AND BUSINESS
ENTITIES CONDUCTING BUSINESSES, OCCUPATIONS AND PROFESSIONS
WITHIN CALDWELL COUNTY, KY**

Said Ordinance is set forth, in summary form, with the applicable provisions therewith, as follows:

Sections 1, 2, and 3: Definitions, License Application Required and Occupational License Tax Payment Required

Sets forth the terms and their definitions as contained within the Ordinance, the license application required and the Occupational License Tax Payment to be made. The occupational tax rate is established at 1.5%.

Section 4, 5, 6 & 7: Apportionment, Employers to Withhold,
Returns Required and Extensions

Sets forth apportionment of the applicable license tax among work performed within and without Caldwell County, requirement upon the employers to withhold the license tax on wages and compensation paid, the time periods for the returns to be filed and requested extensions.

Sections 8, 9 and 10: Refunds, Federal Audit Provisions and Administrative Provisions

Sets forth the refunding of payments made, compliance with federal audit provisions upon investigation and administration provisions for over payments, if any, made and their recoupment thereof.

Section 11: Information to Remain Confidential

Sets forth the provisions regarding confidentiality for the occupational license tax payors.

Section 12: Penalties

Sets forth the penalties for failure to timely file, pay, interest on the amounts due and owing same constituting a personal indebtedness to the payor, the requirements for initiation of civil legal action for the collection of the tax, penalties, interest, cost, attorney fees and other damages. Provisions are included for making willful nonpayment and noncompliance indicative of a criminal action, to and including but not limited to a Class A Misdemeanor as a penalty.

Section 13: Use of Occupational License Tax

Sets forth that the proceeds from the occupational license fee tax shall be used and credited to the general fund of Caldwell County, Kentucky for the payment of current, general and incidental expenses of the county and for capital acquisitions and improvements.

Section 14 and 15: Officials to Collect and Keep Records and Enforcement and Inquisitorial Powers

Sets forth the requirements of the Caldwell County Tax Administrator and County Treasurer regarding the collection and accounting of occupational taxes and the Caldwell Tax Administrators authority

regarding enforcement and inquisitorial powers along with duties of the Caldwell Fiscal Court for the collection thereof.

Sections 16 and 17: Severability and Effective Date

Sets forth the severability clause and establishing the effective date of this ordinance to be immediately upon adoption with the occupational tax rate to be effective as of the 1st day of July, 2014.

FIRST READ AND APPROVED ON THIS THE 10th DAY OF JUNE, 2014.

**PROPOSED SECOND READING, APPROVAL AND ADOPTION
TENTATIVELY SCHEDULED FOR THE 24th DAY OF JUNE, 2014.**

**BROCK THOMAS,
Caldwell County Judge Executive**

ATTEST:

TONI C. WATSON, Clerk

It is hereby certified that the above summary of Ordinance No.06-10-14 of the County of Caldwell, Kentucky has been prepared in accordance with the requirements of KRS 66.077, by the undersigned attorney who is licensed to practice law in the Commonwealth of Kentucky.

Signed:

**JAMES S. MILLER,
Caldwell County Attorney
Caldwell County Courthouse
P.O. Box 605
Princeton, KY 42445
270-365-5613**

CALDWELL FISCAL COURT
Caldwell Fiscal Courtroom
ORDINANCE NO. 06-10-14

AN ORDINANCE RELATING TO THE IMPOSITION AND ADMINISTRATION OF AN OCCUPATIONAL LICENSE REQUIREMENT AND PAYMENT OF AN OCCUPATIONAL LICENSE TAX BY PERSONS AND BUSINESS ENTITIES CONDUCTING BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN CALDWELL COUNTY, KENTUCKY.

WHEREAS, the Caldwell County Fiscal Court desires to comply with the requirements of KRS 67.750 to 67.795, and any and all other applicable law and deems it necessary and desirable that certain changes be made to existing ordinances imposing occupational license taxes on persons and business entities conducting businesses, occupations, and professions within all of Caldwell County, Kentucky, so that the assessment and payment of Occupational License Taxes can be administered more efficiently;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CALDWELL FISCAL COURT, of Caldwell County, Kentucky that Ordinance No. 04-27-99 and Ordinance 06-24-08 are hereby amended, re-adopted and re-published (now Caldwell Fiscal Court Ordinance No. 06-10-14) in full to read as follows:

Caldwell Fiscal Court Ordinance No. 06-10-14 is hereby enacted and shall read in full as follows:

Sections:

- 1 Definitions
- 2 License Application Required
- 3 Occupational License Tax Payment Required
- 4 Apportionment
- 5 Employers to Withhold
- 6 Returns Required
- 7 Extensions
- 8 Refunds
- 9 Federal Audit Provisions
- 10 Administrative Provisions
- 11 Information to Remain Confidential
- 12 Penalties
- 13 Use of Occupational License Tax
- 14 Officials to Collect and Keep Records
- 15 Enforcement and Inquisitorial Powers
- 16 Severability
- 17 Effective Date

Section No. 1 – Definitions:

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

(1) "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;

(2) "Business" means any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. "Business" shall not include a board of trade, chambers of commerce, trade associations, or unions, or other associations performing services usually performed by trade associations or unions as recognized by the Internal Revenue Service. "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.

(3) "County" means Caldwell County, 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) Includes 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) "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;

(6) "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;

(7) "Fiscal year" means fiscal year as defined in Section 7701(a)(24) of the Internal Revenue Code;

(8) "Employee" means 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.

(9) "Employer" means employer as defined in Section 3401(d) of the Internal Revenue Code – to-wit: "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, as set forth within 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;

(10) "Internal Revenue Code" means the Internal Revenue Code as defined in KRS 67.750 (7).

(11) "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 carry back or carry forward 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;

(12) "Person" shall mean every natural person, whether a resident or non-resident of Caldwell County, Kentucky. 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;

(13) "Return" or "Report" 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 {county or city};

(14) "Sales Revenue" means receipts from the sale, lease, or rental of goods, services, or property;

(15) "Tax Administrator" means the duly appointed tax administrator of Caldwell County, Kentucky, or any other person designated to administer the occupational tax program and perform the functions set forth by this ordinance.

(16) "Tax district" means any county or city with the authority to levy net profits or occupational license taxes;

(17) "Taxable net profit" in case of a business entity having payroll or sales revenue only within Caldwell County, Kentucky means net profit as defined in subsection (11) of this section;

(18) "Taxable net profit" in case of a business entity having payroll or sales revenue both within and without Caldwell County, Kentucky means net profit as defined in

subsection (11) of this section, and as apportioned under Section (4) of this Ordinance; and

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

(20) "Treasurer" means the duly appointed Treasurer of Caldwell County, Kentucky.

Section No. 2 -Occupational License Application Required

(1) Every person or business entity engaged in any trade, occupation, or profession, or other activity for profit or anyone required to file a return under this ordinance in Caldwell County, Kentucky shall be required to complete and execute the questionnaire prescribed by the Occupational Tax Office. Each person shall be required to complete a separate questionnaire for each separate business before the commencement of business or in the event of a status change, other than change of address. Licensees are required to notify the Occupational Tax Office of changes of address, or the cessation of business activity, and of other changes which render inaccurate the information supplied in the completed questionnaire.

Section No. 3 - Occupational License Tax Payment Required

(1) Except as provided in subsection (2) and subsection (5) 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 Caldwell County, Kentucky an occupational license tax for the privilege of engaging in such activities within Caldwell County, Kentucky. The occupational license tax shall be measured by ONE AND ONE-HALF PERCENT (1.5) % of:

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

(b) the net profit from business conducted in Caldwell County, Kentucky by a resident or nonresident business entity.

(2) 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.

(3) If any business entity dissolves, ceases to operate, or withdraws from Caldwell County, Kentucky 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 of that taxable year during which the business entity had business activity in Caldwell County, Kentucky.

(4) If a business entity makes, or is required to make, a federal income tax return, the occupational license tax shall be computed for the purposes of this ordinance 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.

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

(a) Any bank, trust company, combined bank and trust company, combined trust, banking and title business organized and doing business in this state, any savings and loan association whether state or federally chartered;

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

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

(d) 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 profit derived from the non-public service activities apportioned to Caldwell County, Kentucky;

(e) 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;

(f) Insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky except as provided in KRS 91A.080;

(g) Any profits, earnings, 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) A minimum occupational license fee of TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) shall be paid by all individuals and/or businesses required to file an occupational license tax return on their net profits. The minimum occupational license fee of twenty-five and/no dollars (\$25.00) shall be a credit on the occupational license fee otherwise required by this ordinance.

Section No. 4 - Apportionment

(1) Except as provided in subsection (4) of this section, net profit shall be apportioned as follows:

(a) 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 subsection (2) of this section, plus the sales factor, described in subsection (3) of this section, and the denominator of which is two (2); and

(b) 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 subsection (3) of this section.

(c) For the purposes of subsections (1) thru (4) of this section, the business entity shall file an apportionment form provided by the Occupational Tax Office.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in Caldwell County, Kentucky 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 Caldwell County, Kentucky based upon the time the individual's service is performed within said Caldwell County, Kentucky.

(3) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in Caldwell County, Kentucky 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 sales, lease, or rental of tangible personal property is in Caldwell County, Kentucky 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 Caldwell County, Kentucky 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 Caldwell County, Kentucky and the purchaser is the United States government.

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

(c) Sales revenue from the sale, lease, or rental of real property is allocated to the tax district where the property is located.

(4) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in Caldwell County, Kentucky the business entity may petition Caldwell County, Kentucky or Caldwell County, Kentucky 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 Caldwell County, Kentucky; or

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

(5) When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without Caldwell County, Kentucky, 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 Caldwell County, Kentucky. The license tax shall be computed by obtaining the percentage which the compensation for work performed or services rendered within Caldwell County, Kentucky bears to the total wages and compensation paid or payable. In order for Caldwell County, Kentucky to verify the accuracy of a taxpayer's reported percentages under this subsection, the taxpayer shall maintain adequate records.

Section No. 5 - Employers to Withhold

- (1) 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 Caldwell County, Kentucky. Amounts withheld shall be paid to Caldwell County, Kentucky in accordance with Section (3) of this ordinance.
- (2) Every employer required to deduct and withhold tax under this section 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 Caldwell County, Kentucky and pay to Caldwell County, Kentucky the tax required to be withheld under this section, unless the employer is permitted or required to report within a reasonable time after some other period as determined by Caldwell County, Kentucky.
- (3) Every employer who fails to withhold or pay to Caldwell County, Kentucky any sums required by this ordinance to be withheld and paid shall be personally and individually liable to Caldwell County, Kentucky for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.
- (4) Caldwell County, Kentucky shall have a lien upon all the property of any employer who fails to withhold or pay over to Caldwell County, Kentucky the sums required to be withheld under this section. If the employer withholds, but fails to pay the amounts withheld to Caldwell County, Kentucky, the lien shall commence as of the date the amounts withheld were required to be paid to Caldwell County, Kentucky. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by Caldwell County, Kentucky.
- (5) 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 Caldwell County, Kentucky a reconciliation of the occupational license tax withheld where compensation is paid or payable to employees. 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 Caldwell County, Kentucky, shall be submitted.
- (6) 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 Caldwell County, Kentucky during the preceding calendar year.
- (7) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.

(8) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this ordinance shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid to one or more employees of any business entity, and neither the corporate dissolution or withdrawal of the business entity from Caldwell County, Kentucky, 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 this ordinance at the time that the taxes imposed by this ordinance become or became due.

(9) Every employee receiving compensation in the {county or city} subject to the tax imposed under Section (3) of this ordinance shall be personally liable for the tax notwithstanding the provisions of subsections (7) and (8) of this section. In all cases where the employer does not withhold the tax levied under this ordinance from the employee, such employee or employees shall be responsible for filing with Caldwell County, Kentucky each quarter in the same manner as if they were the employer. If an employer fails to or is not required to withhold, report, or pay the License Fee it shall become the duty of the employee to file with Caldwell County, Kentucky. The only employer that is not required to withhold, report, and pay the occupational license tax is the Federal Government including the United States Postal Service. The payment required to be made by an employee, can be made quarterly, for the periods ending March 31st, June 30th, September 30th, and December 31st of each year, or at any time the employee wishes to make an estimated payment for the year in which wages are earned. All license fees must be received by February 28th for the preceding calendar year, together with a copy of the employee's W-2 form. Employers not required to withhold, report, or pay the license fee must annually during the month of January of each year, make a return to the Occupational Tax Administrator, in which is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation earned during such preceding year by each such employee. This list shall include all current full time employees, part time employees, temporary employees, and terminated employees whether it be voluntary or involuntary.

Section No. 6 - Returns Required

- (1) 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 supplied by Caldwell County, Kentucky.
- (2) 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 Caldwell County, Kentucky. Whenever, in the opinion of Caldwell County, Kentucky, it is necessary to examine the federal income tax return of any business entity in order to audit the return, Caldwell County, Kentucky, 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. Caldwell County, Kentucky may also require copies of reports of adjustments made by the federal government.
- (3) Every business entity subject to a occupational license tax governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply with rules as Caldwell County, Kentucky from time to time may prescribe. Whenever Caldwell County, Kentucky deems it necessary, Caldwell County, Kentucky may require a business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as Caldwell County, Kentucky deems sufficient to determine the tax liability the business entity.
- (4) Caldwell County, Kentucky 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.
- (5) The full amount of the unpaid tax payable by any business entity, as appears from the face of the return, shall be paid to Caldwell County, Kentucky at the time prescribed for filing the occupational license tax return, determined without regard to any extension of time for filing the return.
- (6) 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 Caldwell County, Kentucky, to maintain records of such payments and to report such payments to Caldwell County, Kentucky. Said payments must be reported on 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 \$600,

they are not liable to remit the equivalent information to Caldwell County, Kentucky.

Section No. 7 - Extensions

(1) Caldwell County, Kentucky 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 Caldwell County, Kentucky 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.

(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 been previously paid, from the time the tax was due until the return is actually filed and the tax paid to the {county or city}. A fraction of a month is counted as an entire month.

Section No. 8 - Refunds

(1) Where there has been an overpayment of tax under Section (5) of this ordinance, a 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 (5) by the employer;

(2) Unless written application for refund or credit is received by Caldwell County, Kentucky 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 Caldwell County, Kentucky, based on time spent outside Caldwell County, Kentucky, whose employer has withheld and remitted to Caldwell County, Kentucky, the occupational license tax on the compensation attributable to activities performed outside Caldwell County, Kentucky, 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 Caldwell County, Kentucky, may confirm with the employer the percentage of time spent outside Caldwell County, Kentucky and the amount of compensation attributable to activities performed outside Caldwell County, Kentucky prior to approval of the refund.

Section No. 9 - Federal Audit Provisions

(1) As soon as practicable after each return is received, Caldwell County, Kentucky may examine and audit the return. If the amount of tax computed by Caldwell County, Kentucky 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 Caldwell County, Kentucky 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 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.

(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 Caldwell County, Kentucky 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 Caldwell County, Kentucky. 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.

(2) 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.

(3) Caldwell County, Kentucky may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (1) of this section.

Section No. 10 - Administrative Provisions

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

(2) Any tax collected pursuant to the provisions of this ordinance 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 Caldwell County, Kentucky, whichever is the later, except that:

(a) In any case where the assessment period contained in Section (9) of this ordinance has been extended by an agreement between the business entity and Caldwell County, Kentucky, 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) The authority to refund or credit overpayments of taxes collected pursuant to this ordinance is vested exclusively in Caldwell County, Kentucky.

Section No. 11 - Information to Remain Confidential

(1) No present or former employee of Caldwell County, Kentucky, 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 Caldwell County, Kentucky, 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 Caldwell County, Kentucky, from testifying in any court, or from introducing as evidence returns or reports filed with Caldwell County, Kentucky, in an action for violation of a Caldwell County, Kentucky tax laws or in any action challenging the Caldwell County, Kentucky laws.

(2) Caldwell County, Kentucky 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 Caldwell County, Kentucky if the Commissioner of Revenue of the Commonwealth of

Kentucky grants to Caldwell County, Kentucky 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 Caldwell County, Kentucky may publish statistics based on such information in such a manner as not to reveal data respecting net profits or compensation of any person or business entity.

(3) In addition, Caldwell County, Kentucky is empowered to execute similar reciprocity agreements as described in subsection (2) 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.

(4) Nothing contained within this Ordinance prevents the Caldwell Tax Administrator from discussing any issues regarding the administration of this ordinance with the Caldwell County Judge Executive and/or Caldwell County Attorney necessary for the performance of her duties. However, all discussion shall be subject to the confidentiality requirements within this ordinance.

Section No. 12 - Penalties

(1) A business entity subject to tax on net profits may be subject to a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof if the business entity:

(a) Fails to file any return or report on or before the due date prescribed for filing or as extended by Caldwell County, Kentucky; 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 (5) of this ordinance may be subject to a penalty in an amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

(3) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to Caldwell County, Kentucky. A fraction of a month is counted as an entire month.

(4) Every tax imposed by this ordinance, 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 Caldwell County, Kentucky.

(5) Caldwell County, Kentucky may enforce the collection of the occupational tax due under Section (3) 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, Caldwell County, Kentucky shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this ordinance. Civil legal actions for the collection of the tax, penalties, interest, costs, attorney fees and other damages, if any, shall be commenced only with the express authority of the Caldwell Fiscal Court. Information may be divulged unto the Caldwell Fiscal Court, its members, agents or other appropriate representatives, necessary for the commencement of legal action, if any, as so allowable by this Ordinance.

(6) In addition to the penalties prescribed in this section, any person, business entity or employer who willfully fails to make a return, 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.

(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 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.

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

(9) Any person violating the provisions of Section (11) of this ordinance 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 fine and imprisonment.

(10) Any person violating the provisions of Section (11) of this ordinance by divulging confidential taxpayer information shall be fined not more than one

thousand (\$1000) or imprisoned for not more than one (1) year, or both fine and imprisonment.

(11) Any person who violates any provisions of this ordinance and for which a specific penalty is not otherwise prescribed herein shall be guilty of a Class A Misdemeanor.

Section No. 13- Use of Occupational License Tax Proceeds

All monies derived from the occupational license fee tax pursuant to the provisions of this ordinance shall be paid to the Caldwell County Treasurer and placed to the credit of the general revenue fund of Caldwell County, Kentucky and shall be used and expended in defraying current, general and incidental expenses of the county and for capital acquisitions and improvements. It is the purpose of this Ordinance to provide revenue for the general fund of Caldwell County, Kentucky and it is not the intention of Caldwell County, Kentucky or this ordinance to impose and require an occupation license fee prohibited by law.

Section No. 14 - Officials to Collect and Keep Records

It shall be the duty of the Caldwell County Tax Administrator to collect and the Caldwell County Treasurer to receive the occupational taxes imposed by this ordinance. The Tax Administrator and Treasurer shall keep records showing the amount received by him/her from each licensee and employer and the date of such receipt.

Section No. 15 - Enforcement and Inquisitorial Powers

(1) The Caldwell County Tax Administrator is charged with the enforcement of the provisions of this ordinance and is empowered to prescribe, adopt and promulgate and enforce rules and regulations relating to any matter and pertaining to the administration and enforcement of the provisions of this ordinance, including but not limited to provisions for the re-examination and correction of returns and to which and underpayment or overpayment is claimed or found to have been made and the rules and regulations as promulgated by him/her all to be binding upon the licensee and employers. However, all such rules, regulations and decisions shall be subject to the approval of the Caldwell Judge-Executive. The initiation of civil legal action for the enforcement of provisions of this ordinance shall be subject to the express approval of the Caldwell Fiscal Court.

(2) The Caldwell Tax Administrator personally, or her/his agents or employees, is authorized and empowered to examine the books, papers and records of any employer, or supposed employer, or of any license payer, or supposed license

payer, in order to verify the accuracy of any return made; or, if no return was made, to ascertain the occupation taxes imposed by this ordinance when she/he deems this reasonable necessary for purposes incident to the performance of her/his duties hereunder.

(3) Every employer or supposed employer, and every payer or supposed license payer, is required to furnish to the tax administrator or his duly authorized agents and employees, the means, facilities and opportunity for such examinations, investigations and audits as are authorized in and by this ordinance.

(4) The Caldwell Tax Administrator is further authorized to examine under oath any person concerning any income which was or should have been returned for assessment of occupational tax and to this end the Caldwell Tax Administrator has the right and power to compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such income.

(5) Refusal of such examination of any employer or person subject to the occupational tax, or presumed to be such employer or person so subject, shall be subject to the penalties as set forth with Section No. 12, Penalties, Clause 11.

Section No. 16 - Severability

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

Section No. 17: Effective Date

(1) This Ordinance shall take effect and be in full force immediately upon adoption with imposition of the occupational tax rate to become effective upon the First (1st) day of July, 2014. All ordinances or parts of other ordinances conflicting with this ordinance are hereby amended and/or repealed, as applicable, as so allowable by applicable law. Any ordinance or parts thereof not in conflict with the foregoing remain valid and in full force and effect.

(2) The purpose of this amended ordinance is to comply with applicable Kentucky Revised Statute Chapter 67 and amends Caldwell Fiscal Court Ordinance Nos. 04-27-99 and 06-24-08 as applicable.

(3) All provisions of Kentucky Revised Statute Chapter 67 are incorporated herein by reference not inconsistent with the foregoing Ordinance.

UPON MOTION DULY MADE, SECONDED, FIRST READ AND APPROVED on this the 10th day of June, 2014.

PROPOSED SECOND READING, APPROVAL AND TENTATIVE ADOPTION scheduled for the 24th day of June, 2014.

**BROCK THOMAS, Caldwell County
Judge – Executive**

**TONI C. WATSON, Caldwell County
Clerk, Attest**