

## ARTICLE II: OCCUPATIONAL LICENSE FEES

### Sec. 16-21. Definitions

The following terms when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

(a) *Association*: A partnership, limited partnership or any other form of unincorporated enterprise, owned by two (2) or more persons.

(b) *Business*: Any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. "Business" shall also include specifically, but not exclusively, the rental or offering of rent of any property, real or personal, having a situs in the city; but shall not include the usual activities of board 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.

(c) *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;

(d) *Business Receipts*: Sales revenue that includes all cash payments, the fair market value of all property and services received and all receivables from transactions and activities of the licensee's trade or business operations.

(e) *City*: The city of Owensboro, Kentucky.

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

- (1) 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

- (2) 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.

(g) *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.

(h) *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

(i) *Corporation:* An entity created or denominated as a corporation under the laws of any state, territory or dependency of the United States or of any foreign nation, or otherwise existing under color of law as a corporation, including a non-profit corporation, a limited liability company, and a joint stock company and recognized as such for federal income tax purposes.

(j) *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, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(k) *Employer:* The person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:

- (1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" means the person having control of the payment of such wages, and
- (2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in a trade or business within the United States, the term "employer" means such person.

(l) *Fiscal year* means an accounting period of 12 months ending on the last day of any month other than December.

(m) *Internal Revenue Code:* With respect to occupational license fees the Internal Revenue Code shall mean the Internal Revenue Code as amended and in effect on December 31 of the licensee's taxable year, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on

December 31 of that taxable year that would otherwise terminate; and with respect to occupational license fees for taxable years ending prior to December 31 of that taxable year.

(n) *Net Profit*: In case of 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; and
- (5) Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution, or the Constitution and statutory laws of the United States;

(o) *Nonprofit Organizations*: Trade associations, union, chamber of commerce, board of trade or corporation or association organized and operated exclusively for religious, charitable, scientific, literary, educational or civic purposes, or for the prevention of cruelty to children or animals; or clubs or fraternal organizations operated exclusively for social, literary, educational or fraternal purposes, where no part of the earnings or income or receipts of such units, groups or associations inures to the benefit of any private shareholder or individual, and the organization does not earn "unrelated business income" as defined at IRC 511.

(p) *Nonresident*: An individual, corporation, partnership, fiduciary, association or other entity domiciled outside the corporate limits of the city.

(q) *Occupational license fee*: This term shall have the same meaning as occupational license tax and those terms shall be interchangeable.

(r) *Permittee*: Shall, for the purposes of this Article only, mean both the person, firm, Business entity, Nonprofit organization or corporation engaging in the business of promoting, operating, or otherwise conducting a temporary event such as a flea market, trade show, expo, consumer show, or sporting activity which primarily engages in leasing, renting, or otherwise providing the use of temporary booths or other like spaces on a day to day basis for a period not to exceed seven (7) days and, except in the case of sporting activities, not more than six (6) times per year, and, the individuals, persons, firms, Business entities, Nonprofit organizations, corporations or combination thereof who are leasing, renting or using the temporary booth or other like spaces; however, it shall not include any person, firm, Business entity, Nonprofit organization or corporation which owns, operates, or manages a facility or other venue within the corporate limits of the City of Owensboro engaged in the business of hosting such a temporary event.

(s) *Person*: Every natural person, whether a resident or non-resident of the city. Whenever the word “person” is used in a clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to corporations, shall mean the officers and directors thereof.

(t) *Real Property; Rental Property/Unit*:

(1) Rental property: A structure or mobile home located within the corporate limits of the city which is regularly offered for occupancy either wholly or in part in return for the payment of rent.

(2) Rental unit: Any room or group of rooms forming a single habitable unit intended to be used for living and sleeping.

(u) *Resident*: An individual, copartnership, association, corporation or other entity domiciled or having a business situs within the corporate limits of the city.

(v) *Return or Report*: Any properly completed and, if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with the city;

(w) *Sales Revenue*: Receipts from the sale, lease, or rental of goods, services, or property;

(x) *Sales Revenue within the City*: Includes sales of merchandise delivered to a customer within the city or services performed within the city for a customer. Delivery to a customer occurs at the point where the seller makes delivery of merchandise from their own facilities. The seller’s facilities includes, but is not limited to, any location, structure, dock, vehicle or other tangible property owned or leased by the seller, for use exclusively by the seller in conducting business. Any tangible property that is leased, rented, borrowed, contracted or otherwise used or obtained for use by a means other than purchase for ownership, by the seller, shall not be considered the seller’s facilities

unless the seller or the seller's employees physically make delivery from those facilities. A sale resulting in the delivery of goods outside the city by the U.S. Postal Service or by common carrier, originating from the seller's facilities inside the city, is not a sale made within the city. Deliveries made by a private carrier, hauler or other delivery agent or consignee, not otherwise identified as the U.S. Postal Service or as a common carrier, are sales within the city.

(y) *Taxable net profit:* In the case of a business entity having payroll or sales revenue, only within the city means net profit as defined in this section of this section.

(z) *Taxable net profit:* In the case of a business entity having payroll or sales revenue, both within and without the city means net profit as defined in this section, and as apportioned under Section 16-24 of this Code.

(aa) *Taxable year:* The calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed.

## **Sec. 16-22. Levy of license fee - General**

(a) Except as provided in subsection (b) of this section, every person or business entity engaged in any business for profit and any person or business entity that is required to make a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to the city an occupational license tax for the privilege of engaging in such activities within the city. The occupational license tax shall be measured by one and thirty-three hundredths (1.33) percent of:

- (1) 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;
- (2) The net profits from business conducted in the city by a resident or nonresident business entity.

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

- (1) Any bank, trust company, combined bank and trust company, or combined trust, banking and title insurance company organized and doing business in this state, any savings and loan association whether state or federally chartered;
- (2) Any compensation received by members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training;

- (3) Any compensation received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections;
- (4) Public Service Corporations that pay an ad valorem tax on property valued and assessed by the Kentucky Department of Revenue pursuant to the provisions of KRS 136.120. Licensees whose businesses are predominantly non-public service who are also engaged in public service activity are required to pay a license fee on their net profits derived from the non-public service activities apportioned to the city;
- (5) Persons whose sole business activity is the manufacture of and/or sale of alcoholic beverages. Persons engaged in the business of manufacturing and/or selling alcoholic beverages are required to file a return, but may exclude the portion of their gross receipts derived from such manufacturing and/or sale of alcoholic beverages. Any gains derived from business activities other than the manufacturing and/or sale of alcoholic beverages, such as the sale of equipment shall be included in the taxable amount, but not included in total sales with calculating the percentage;
- (6) Life insurance companies incorporating under the laws of and doing business in the Commonwealth of Kentucky.
- (7) Any Compensation received by an employee of a Permittee under Section 16-32 of this Article, which is earned while performing services for the Permittee at the physical location of the permitted booth or like space during the effective term of the permit.

### **Sec. 16-23. Same - Employees**

(a) *Employees in General:* The license fee is imposed on both residents and nonresidents of the city at the rate of one and thirty-three hundredths (1.33) percent of all salaries, wages, commissions and other compensation earned for work done or services performed or rendered in the city. The following are subject to the license fee:

- (1) Salaries, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered:
  - a. As an officer, agent or employee, or both, of a corporation (including a corporation of the first or nonprofit class), joint stock association or joint stock company;
  - b. As an officer, agent or employee (as distinguished from a partner or member) of a partnership, limited partnership or any other form of unincorporated enterprise owned by one (1) or more persons;

- c. As an agent employee (as distinguished from the proprietor) of a business, trade or profession, conducted by an individual owner;
  - d. As an officer, agent or employee (whether elected or appointed, enlisted or commissioned) of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit thereof.
  - e. As an officer, agent or employee of any other entity.
- (2) Wages, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered:
- a. Whether based upon hourly, daily, weekly, semimonthly monthly, annual, unit of production or piece-work rates; and
  - b. Whether paid by an individual, copartnership, association, corporation (including a corporation of the first or nonprofit class), governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit, or any other entity.
- (3) Commissions received by an employee, whether directly or through an agent, and whether in cash or in property, for services rendered, regardless of how computed or by whom paid. (If amounts received as a drawing account exceed the commissions earned, the tax is payable on the amounts received.) If such commissions are included in the net earnings of a trade, business or profession regularly carried on by such individual and, therefore, subject to license fee under section 16-24, they shall not again be separately taxed.
- (4) Fees, unless such fees are properly included as part of the net profits of a trade, business, profession or enterprise regularly carried on by the individual and such net profits are subject to tax under section 16-24. Corporations are permitted but not required to withhold and remit the license fee on compensation paid to directors, provided that such corporations submit the 1099 information indicating that such payments are directors' fees, and state the amount of the license fee withheld.
- (5) Other compensation will be treated as follows:
- a. *Subject to the license fee:*

1. *Tips received by waiters and others:* Tips received are subject to the license fee and will be reported in the same manner as regular earnings.
2. *Vacation and/or holiday benefits:* Payments made to employees by an employer as vacation wages are subject.
3. *Separation payments:* Payments made to employees by an employer at the time of a voluntary or involuntary separation (dismissal) of the employee from the service of the employer, are to be regarded as subject to the license fee.
4. *Disability, sickness, accident benefits:* Payments made by an employer under a disability, sickness and accident plan are subject to the license fee.

b. *Not subject to the license fee:*

1. *Old-age or retirement payments:* Periodical payments, commonly recognized as old-age or retirement pensions, made to persons retired from service after reaching a specified age or after a stated period of employment, are not subject to the license fee.
2. *Unemployment compensation:* Unemployment compensation payments by the state or any other agency are not subject.
3. *Death benefits:* Death benefits payable by an employer to the beneficiary of an employee or to his estate, whether payable in a single sum or otherwise, are not subject to the license fee.
4. *Benefits arising under the workers' compensation act:* Amounts received by employees under the workers' compensation act as compensation for a disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability, are not subject to the license fee.
5. *Employee under age sixteen:* Compensation paid to employees who have not attained age sixteen (16) on or before the date such income is earned. Earnings of employees shall be subject on the day that age sixteen (16) is attained.

6. *Domestic servants:* Because of the undue burden of administration, no license fee shall be required of domestic servants employed in private homes.
7. *Sickness, disability or accident benefits:* Payments made by a third party payer to an employer, for disbursement to an employee, are not required to have occupational license fee withheld.

c. *Applicability of the foregoing to employees whose compensation is not wholly subject.* In the case of individuals whose compensation is earned for services performed both within and without the city and who receive subject payments as set forth in the foregoing rules and regulations, they are subject to the license fee in the same proportion that services performed within the city bear to their total employment time.

(b) *Specific Groups of Employees:*

(1) *Musicians and entertainers:*

- a. *Contractor:* The term “contractor” means that individual musician through whom the purchaser and the musician negotiate the contract of services and the performance thereof. The contractor may or may not perform actual musical service under a contract which he or she has negotiated.
- b. *Purchaser of Music:* The person, partnership, organization or association for whom or for which the musical services are to be performed or furnished and who exercises an employer’s control over the conduct of the musicians; for example, hotels, cafes, adult entertainment establishments, taprooms, restaurants, theaters, clubs, radio stations and radio sponsors.
- c. *Responsibility for Withholding fee:* When a contract for the purchase of music has been executed between a purchaser and a contractor, the musician shall be deemed to be the employee of the purchaser. The purchaser shall be the person responsible for withholding the license fee from the wages paid to the musicians, and the remittal thereof to the director of finance.
- d. *Entertainers Other Than Musicians:* An entertainer other than a musician is usually engaged by a purchaser through a booking agent. The booking agent, once the contract of employment has been executed, does not exercise an employer’s control over the entertainer. The owner of a hotel, cafe, adult entertainment

establishment, taproom, restaurant, theater, or club or any place which furnishes entertainment to the public or to its patrons, shall be deemed the person liable as an employer of entertainers. Such employer must deduct the license fee from the compensation paid to the entertainer and remit the same to the director of finance.

(2) *Insurance Agents, General:*

Individuals engaged in the sale of insurance may be either employees or independent contractors.

- a. Where the individual is subject to the direct control of another as to the manner of his or her conduct and is paid a fixed fee, he or she is considered an employee and the amount of the license shall be withheld at the source.
- b. Where the individual is not under the direct control of another and may conduct the sale as he or she sees fit, receiving his or her payment in the form of commission from the sale, he or she is considered an independent contractor and shall file his or her own return and make payment as in independent contractor subject to the provisions of Section 16-24.

(c) *Withholding of License Fee:*

- (1) It is the duty of each employer who employs one (1) or more employees on a salary, wage, commission or other compensation basis, to deduct monthly or more often, at the time of the payment of such compensation, the license fee on such salary, wage, bonus, incentive payment, commission or other compensation due by the employer to the employee. The license fee shall be deducted by the employer from all compensation paid to employees for activities in the city. However, the mere fact that the license fee is not withheld will not relieve the employee of the responsibility of filing a return and paying the fee on the compensation received. A nonresident employer, either maintaining in the city an office, business address, or doing business therein, or who is otherwise subject to service of legal process, is subject to the withholding provisions of this section.
- (2) Where an employee receives compensation for personal services rendered or performed partly within and partly outside the city, the withholding agent shall deduct and withhold that portion of the compensation which is earned within the city in accordance with the following rules of apportionment:
  - a. If the licensee is a traveling salesperson, agent or other employee, whose compensation on the basis of commissions depends directly

on the volume of business transacted by him or her, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the city bears to the volume of business transacted both within and outside of the city.

- b. The deducting and withholding of personal service compensation of all other employees, including officers of corporations, shall attach to the portion of the personal service compensation of such employee which the total number of working days employed within the city bears to the total number of working days employed both within and outside the city.
- c. If it is impossible to apportion the earnings as provided above because of the peculiar nature of the services of the employee, or of the usual basis of compensation, apportionment shall be made in accordance with the facts, and the fee deducted and withheld accordingly. With respect to each such employee or group of employees similarly or identically circumstanced, the employer shall furnish the director of finance a detailed statement of facts.
- d. The occasional entry into the city of an employee, who performs the duties for which he or she is employed entirely outside the city, but enters the city for the purposes of reporting, receiving instructions, accounting, etc., incidental to his or her duties outside the city shall not be deemed to take such employee out of the class of those rendering their services entirely outside the city.

(d) *Returns of License Fee Withheld and Payment:*

- (1) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation an occupational license tax calculated under Section 16-22 of this article. The return and payment to be made on account of deductions by employees from salaries, wages and other compensation of employees shall be made on a monthly or quarterly basis. Employers withholding three hundred dollars (\$300.00) or more license fee per quarter must file on a monthly basis upon notification from the director of finance or his or her designee. Withholding less than three hundred dollars (\$300.00) license fee per quarter shall require the employer to file on a quarterly basis. Employers filing status may not be changed unless permission is granted by the director of finance.
- (2) The employer shall make a required return and pay to the city the full amount of the license fee so deducted or withheld with respect to compensation paid to all employees in accordance with the following due dates:

- a. Returns required to be filed monthly shall be due on or before the fifteenth day of the month next following each monthly period, except the return for the last month of the calendar year, which shall be due on January 31.
  - b. Returns required to be filed quarterly shall be due on or before the last day of the month following each quarterly period.
- (3) Every employer who fails to withhold or pay to the city any sums required by this article to be withheld and paid shall be personally and individually liable to the city for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.
- (4) If the due date of a return falls on a Saturday, Sunday, or legal holiday, the return due date shall be the next succeeding day which is not a Saturday, Sunday, or legal holiday. If the envelope bearing a return is postmarked within forty-eight (48) hours of midnight of the due date, interest and penalties shall not be assessed. Returns submitted other than by mail must be received on or before the return due date.
- (5) The city shall have a lien upon all the property of any employer who fails to withhold or pay over to the city sums required to be withheld under this section. If the employer withholds, but fails to pay the amounts withheld to the city, the lien shall commence as of the date the amounts withheld were required to be paid to the city. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the city.
- (6) Every employer required to deduct and withhold tax under this section shall annually on or before February 28 of each year complete and file on a form furnished or approved by the city a reconciliation of the occupational license tax withheld where compensation is paid or payable to employees. Either 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.
- (7) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and occupational license tax deducted by the employer from the compensation paid to the employee for payment to the city during the preceding calendar year.
- (8) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.

- (9) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this section shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid or payable to one (1) or more employees of the business entity, and neither the corporate dissolution or withdrawal of the business entity from the city, nor the cessation of holding any corporate office, shall discharge that liability; provided that the personal and individual liability shall apply to each and every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally and individually liable under this subsection unless such person had authority to collect, truthfully account for, or pay over the tax imposed by this article at the time that the taxes imposed by this article become or became due.
- (10) Notwithstanding paragraphs (8) and (9) of this subsection, every employee receiving compensation in the city subject to the tax imposed under Section 16-22 of this article shall be personally liable for any amount due.
- (11) Every employer is deemed to be a trustee of the city in collecting and holding the license fee required under this article to be withheld, and the funds so collected by such withholding are deemed to be trust funds and are held in trust by the employer as a legal fiduciary for payment to, and benefit of, the city. Every such employer required to deduct and withhold the license fee at the source is liable directly to the city for the payment of such fee whether actually collected by such employer or not.

#### **Sec. 16-24. Same - Net business profit**

(a) *General:* In the case of an individual, partnership, association, fiduciary or other entity engaged in the conduct, operation or prosecution of any business, profession or other enterprise, there is imposed an annual license fee being the greater of forty-seven dollars (\$47.00) or one and thirty-three hundredths (1.33) percent of the net profits of such business, profession or other enterprise, if and to the extent conducted in or derived from activity in the city. Net profit shall be apportioned to the city by multiplying the net profit by a fraction, the numerator of which is the payroll factor plus the sales factor, and the denominator of which is two (2). If either factor is absent, then the business apportionment percentage shall be equal to the remaining percentage. A factor is not deemed to be absent merely because none of the licensees receipts arose inside the city or because none of the wages paid by the licensee were for services performed or rendered inside the city.

- (1) *Determination of Fee:* After determining such business apportionment percentage, the license fee shall be determined by applying that percentage to the entire net profits of the license payer wherever derived,

thus arriving at the subject net profit, and computing the annual license fee of the resultant subject net profit.

- (2) 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
- (3) All partnerships, S corporations, and all other entities where income is "passed through" to the owners, are subject to this article. The occupational license tax imposed in this article is assessed against income before it is "passed through" these entities to the owners.
- (4) Wages earned either within or outside the city may not be used as a credit against the net profits of a business.
- (5) If any business entity dissolves, ceases to operate, or withdraws from the city during any taxable year, or if any business entity in any manner surrenders or loses its charter during any taxable year, the dissolution, cessation of business, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of any occupational license tax for the period of that taxable year during which the business entity had business activity in the city.
- (6) 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 article 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.

(b) *Apportionment: Sales Factor*

- (1) 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.

- (2) The sale, lease or rental of tangible personal property is in the city if:
  - a. The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within the city regardless of the f.o.b. point or other conditions of the sale; or
  - b. The property is shipped from an office, store, warehouse, factory, or other place of storage in the city and the purchaser is the United States government.
- (3) 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 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.
- (4) Sales revenue from the lease or rental of real property is allocated to the tax district where the property is located.
- (5) For purposes of this subsection "sales" shall mean all gross sales less returns and allowances for the sale of merchandise, services, or both, computed by the method of accounting properly utilized by the licensee for federal income tax purposes.
  - a. Sales revenue may include not only payment in cash or property but also the gross credits to or charges by the licensee, under its normal and usual accounting practices, for the performance of work or services. For example, a plant, factory or other establishment in the city which processes material or manufactures parts for other plants or factories owned by the licensee, and which may receive credit for the performance of such services only by bookkeeping entries, may be chargeable under this section with the gross amount of such entries in applying the formula discussed hereunder. Furthermore, such bookkeeping entries may be considered in lieu of cash or property payment in determining the net profits of any license payer under this article, even though the apportionment formula may not be used by or be applicable to the licensee. However, whenever such gross receipts or charges are included in computing the net profits of any licensee who pays a license fee thereon under this article, the same licensee shall not be twice subject in the same fee period by the separate imposition of a fee upon such gross credits or charges.

- b. Sales revenue from work done or services performed within the city are allocable to the city and subject under this article. All amounts so received, credited or charged by a licensee in payment for such work or services are so allocable, irrespective of whether done or performed by employees or agents of the licensee, by subcontractors or by any other persons. It is immaterial where such amounts were payable or where they were received. Commissions or fees received by the licensee are allocated to the city if the services for which the commissions were paid were performed in the city. If the license payer's services for which commissions or fees were paid were performed for the license payer by salespersons or other agents or employees attached to or working out of the city place of business of the licensee, the licensee's services will be deemed to have been performed in the city. Where a lump sum is received by the licensee in payment for services within and without the city, the amount attributable to services within the city is to be determined on the basis of the relative values of, or amounts of time spent in the performance of, such services within and without the city, or by some other reasonable method approved by the director of finance. Full details must be submitted with the licensee's report.
- c. All business receipts earned by the city licensee within the city are allocable to the city. Business receipts are not considered to have been earned by the licensee in the city solely by reason of the fact that they were payable in or actually received in the city. Receipts from the sale of real property held by the licensee as a dealer for sale to customers in the regular course of business are business receipts and are allocable to the city if the real property was situated in the city. Receipts from sales of intangibles included in business capital are business receipts and are allocable to the city if the sales were made in the city or through a regular place of business of the licensee in the city.

(c) *Apportionment: Payroll Factor*

- (1) 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. Wages, salaries and other compensation are computed on the cash or accrual basis in accordance with the

method of accounting used in the computation of the entire net income of the licensee.

- (2) 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 the compensation for work performed or services rendered within the city bears to the total wages and compensation paid or payable. In order for the city to verify the accuracy of a taxpayers reported percentages under this subsection, the taxpayer shall maintain adequate records. In any such case, where an employee performed services both within and without the city, the amount treated as compensation for services performed within the city shall be deemed to be:
  - a. In the case of an employee whose compensation depends directly on the volume of business secured by him or her, such as a salesperson on a commission basis, the amount received for the business attributable to his or her efforts within the city;
  - b. In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation which the value of his or her services within the city bears to the value of all services; and
  - c. In the case of an employee compensated on a time basis, the proportion of the total amount received by him or her which the working time employed in the city bears to the total working time.

(d) *New Business License Fee:*

- (1) Every person conducting a business as defined in this article shall obtain an occupational business license from the license fee division before commencement of such business, the non-refundable fee for which shall be forty-seven dollars (\$47.00), except that no fee shall be required of minors of the ages of sixteen (16) and seventeen (17).
- (2) This fee will be credited in full to the account of the license payer and applied against the annual net business profit fee the first time it regularly becomes due. If there is no activity, the first time filer may carry a credit of the fee over to the next year, but shall receive no refund.

**Sec. 16-25. Same - Other subject activities.**

(a) *Sales Revenue Received From Real Estate:* Any individual or sole proprietor who earns on an annual, calendar or fiscal year basis, five thousand dollars (\$5,000.00) or less in sales revenue from the rental or lease of any and all types of real estate shall not be subject to the net profits tax of one and thirty-three hundredths (1.33) percent imposed by this article. Any individual or business entity that receives on an annual, calendar or fiscal year basis, more than five thousand dollars (\$5,000.00) in sales revenue from the rental or lease of any and all types of real estate shall be subject to the net profits tax imposed by this article on all sales revenue derived therefrom.

(b) All corporations, partnerships, joint ventures or other business entities engaged in the rental or lease of real estate shall be considered to be engaged in a business activity and shall be subject to the city's net profits tax imposed by this article.

(c) The manner of acquisition of real estate, i.e., purchase, gift, inheritance, fiduciary or as a fiduciary mortgagee in possession, etc., does not exempt any person or business entity from the net profits tax imposed by this article.

(d) Any and all non-exempt lease or rental income received from any property located within the corporate limits of the City of Owensboro, Kentucky, shall be subject to the net profits tax imposed by this article, regardless of the personal residence of the property owner.

(e) *Trusts:* Whenever a trust estate is engaged in an enterprise, activity or business which is productive of sales revenue, that sales revenue shall be subject to the license fee.

(f) *Trading in Securities:* Where a person engages in the buying and selling of stocks, bonds and other types of securities, and such transactions are not isolated and few, but are extended so as to constitute an activity, the net profits therefrom are subject to the license fee.

(g) *Fiduciaries:*

(1) A fiduciary is a person who holds in trust, property, moneys or properties, to which another has a beneficial title or interest, or who receives and controls sales revenue for another person or persons.

(2) Money received by a fiduciary is sales revenue, where a fiduciary is regularly engaged in a business or profession as a fiduciary, or is engaged in a business or profession commonly regarded as being incidental or collateral thereto, for example, an attorney-at-law, real estate agent, etc.

(h) *Independent Contractor:* An independent contractor is a person who, while performing services for another, is not under the direction and control of such other

person as to the results to be accomplished by the work and as to the details and means by which that result is accomplished, such as authors and professional people. The sales revenue received by such persons is subject to this license fee.

(i) On or before February 28, unless written request for extension is made to and granted by the license fee division, following any calendar year, every entity making non-employee payments within the city shall file with the license fee division, in the form prescribed by the director of finance, an information return disclosing non-employee payments of six hundred dollars (\$600.00) or more made for services performed within the city. For convenience of the payer, the information return may be made in one (1) of two (2) ways at the election of the reporting entity, as follows:

- (1) May submit a copy of applicable Federal Form 1099(s), if the amount of non-employee payments made for services performed within the city are separately stated.
- (2) Furnish a list of non-employee payments made, which list shall set out the name, mailing address, social security number or Federal I.D. number of the non-employee, the total payments made to the non-employee and the amount of non-employee payment made that were for services that were performed within the city.

#### **Sec. 16-26. Exemption to Net Profit License Fee**

- (a) Minister of Religion; and
- (b) Persons under age sixteen (16); and
- (c) Permittee under Section 16-32 of this Article unless the Permittee is otherwise subject to a net profit licensee fee on net profits for activity outside of the permitted period and location.

#### **Sec. 16-27. Returns and payment of tax - General**

(a) Every entity whose earnings or net profits are subject to the license fee imposed by this article shall make and file a return with the license fee division. In the return filed, there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation received or net profits earned by and during the preceding year within the city and subject to the license fee, together with such other pertinent information as the director of finance may require.

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

(c) Where the entire earnings for the year are paid by one and the same employer and the license fee has in each instance been withheld or deducted by the employer from the gross amount of compensation without adjustment for expenses, it shall not be necessary for such employee to file a return for the year unless required or requested to do so by the director of finance.

(d) The net profit license fee return must be filed on or before the fifteenth day of the fourth month after the end of the licensee's federal tax year end. If due date falls on Saturday, Sunday or legal holiday, the return may be filed on the next succeeding day which is not a Saturday, Sunday or legal holiday. If the envelope bearing a return is postmarked within forty-eight (48) hours of midnight of the due date, interest and penalties shall not be assessed. Returns submitted other than by mail must be received on or before the return due date.

(e) The person making the return shall, at the time of filing thereof, pay to the city the amount of the fee shown to be due by the return.

(f) Where any portion of the license fee otherwise due shall have been deducted at the source and shall have been paid to the city by the person making the deduction, a credit equal to the amount so paid shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of the filing of the return.

(g) Persons temporarily engaged in business within the city, or temporarily performing services within the city, shall file a return and pay the license fee upon the completion of the business or employment.

(h) The full amount of the unpaid tax payable by any business entity, as appears from the face of the return, shall be paid to the city at the time prescribed for filing the occupational license tax return, determined without regard to any extension of time for filing the return.

**Sec. 16-28. Same - Extension of time for filing net profit returns**

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

(b) If the time for filing a return is extended, the business shall pay, as part of the tax, an amount equal to twelve (12) percent 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.

(c) *Procedure:* No standard form for requesting an extension of time for filing is prescribed. Any written communication from the applicant, or his attorney or accountant, which clearly states the request, when accompanied with proper payment, will be acceptable if filed with the director of finance on or before the due date involved. Federal forms 4868 or 7004 will be accepted as a valid written request for extension.

#### **Sec. 16-29. Enforcing officers; powers and duties**

(a) The director of finance is hereby charged with the enforcement of the provisions of this article; and he is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this article, including but not limited to provisions for the reexamination and correction of returns as to which an overpayment or underpayment is claimed or found to have been made; and the rules and regulations promulgated by him shall be binding upon the licensee and the employers.

(b) The director of finance or any agent or employee designated in writing by him is hereby authorized to examine the books, papers and records of any employer or supposed employer or of any licensee or supposed licensee in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of license fee imposed by the terms of this article. Each such employer or supposed employer or licensee or supposed licensee is hereby directed and required to give to director of finance or his duly authorized agent or employee the means, facilities and opportunity for such examination and investigation as are hereby authorized. The director of finance is hereby authorized to examine any person under oath concerning any wages, salaries, commissions or other compensation or net profits which were or should have been returned; and to this end he may compel the production of books, papers, records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such wages, salaries, commissions or other compensation or net profits, to the extent that any officer empowered to administer oaths in this state is permitted to so order.

#### **Sec. 16-30. Exclusion of levies prohibited by law**

It is not the intention of the city or of this article to impose and require an occupational license fee prohibited by law. Each section and each provision of each section of this article 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 article, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of the rest.

#### **Sec. 16-31. Information Confidential**

(a) Any information gained by the city or any other official or agent or employee of the city as a result of any returns, investigation, hearings, or verifications required or authorized by this article shall be confidential except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law. 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 this article or in any action challenging this city's tax laws.

(b) The city reserves the right to disclose to the Commissioner of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent all such information and rights to inspect any of the books and records of the city if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the city the reciprocal right to obtain information from the files and records of the Kentucky Revenue Cabinet and maintains the privileged character of the information so furnished. Provided, further, that the city may publish statistics based on such information in such a manner as not to reveal data respecting net profits or compensation of any person.

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

(d) Any person who violates the provisions of paragraph (a), (b), or (c) of this section by intentionally inspecting confidential taxpayer information without authorization as provided in section 16-29, shall be fined not more than five hundred dollars (\$500) or imprisoned for not longer than six (6) months, or both.

(e) Any person who violates the provisions of subsections (a), (b) or (c) of this section by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both.

### **Sec. 16-32. Special occupations**

(a) The board of commissioners hereby finds that the following occupations are of such a nature as to require special regulation and supervision, and therefore the following minimum license fees are imposed on every person engaged in the business, occupation, calling or profession, or using, holding or exhibiting articles named in this section who shall pay in advance to the city for each calendar year or fiscal year, or fraction thereof, in accordance with the yearly basis the licensee uses in making a return under the terms of this article, the license fee or fees herein set forth, which payment shall be a credit on the license fee as otherwise provided in this article; however, where minimum fees are set forth in the following table for periods less than

one (1) year, the same shall be considered the minimum fee due for the period as set forth in such table and shall be paid in advance of engaging in such activity:

1. Pawnbrokers, \$100.00 Yearly
2. Dealers in Second-hand and Antique Jewelry and Precious Metals, \$100.00 Yearly
3. Secondary Metal Recyclers, \$100 Yearly

(b) (1) Any person, firm, Business entity, Nonprofit organization or corporation engaging in the business of promoting, operating, or otherwise conducting a temporary event such as a flea market, trade show, expo, consumer show, or sporting activity which primarily engages in leasing, renting, or providing the use of temporary booths or other like spaces to two (2) or more individuals, persons, firms, Business entities, Nonprofit organizations, corporations or combination thereof on a day-to-day basis shall be required to pay a permit event fee of five dollars (\$5.00) per booth leased, rented or otherwise provided, and such permit shall be valid for a period not to exceed seven (7) days and shall be valid only for operations at the permitted location.

(2) Any person, firm, Business entity, Nonprofit organization or corporation required under subsection (1) above to pay a permit event fee to the city shall, prior to engaging in such activity, be required to place a deposit with the city in an amount equal to the number of booths or spaces available to be rented, leased or otherwise provided, multiplied by the permit event fee of five dollars (\$5.00) per booth or space.

(3) The event fee deposit shall be forfeited in full, unless within twenty (20) days following the scheduled date of the event, the permittee requests and applies for a reconciliation of the actual permit fee due the city, in which case the amount of additional fees or the amount of refund due shall be determined and paid.

(4) This required permit event fee is separate and in addition to any minimum license fee that any person, firm, Business entity, Nonprofit organization, corporation, or participant may already possess or otherwise be required to possess due to its operation outside of the permitted period and location.

### **Sec. 16-33. Penalties, interest**

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

- (1) Fails to file any return or report on or before the due date prescribed for filing or extended by the city, or
- (2) 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 (25) percent of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25.00).

(b) Every employer who fails to file a return or pay the tax on or before the date prescribed under section 16-23 of this article may be subject to a penalty in amount equal to five (5) percent of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five (25) percent of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25.00).

(c) 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 (12) percent 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 a month is counted as an entire month.

(d) Every tax subject to the provisions of this article, and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt to the city owed by the business entity or person liable therefore.

#### **Sec. 16-34. Offenses, criminal penalties**

(a) Offenses: No person shall fail, neglect or refuse to obtain the business license required in subsection 16-24(d) (1) or make any return or payment required by this article. No employer shall fail to withhold the employee license tax and to pay over to the city the taxes so withheld. No person shall refuse to permit the director of finance or any agent or employee designated in writing by the director to examine his or her books, papers and records. No person shall knowingly make any incomplete, false or fraudulent return or application. No person shall fail, neglect or refuse to apply for an occupational license tax reporting number. No person shall attempt to do anything whatever to avoid the full disclosure of the amount of earnings or profits in order to avoid payment of the whole or any part of the occupational license tax.

- (1) The director of finance and occupational tax administrator identified in subsection 2-102(f) of the Owensboro Municipal Code are hereby authorized to enforce the provisions of section 16-34 with regard to any person, business entity, corporation or employer who willfully neglects, fails or refuses to obtain the business license required, or whose license has been revoked under section 16-

36 herein, or 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, which enforcement may include, but is not limited to, the issuance of a citation issued on a standard citation form approved by the city manager or a "stop work" order against any person, business entity, corporation, employer or other business, its employees and contractors, in violation thereof. The "stop work" order shall be served on any person or employee working on-site and shall remain in full force and effect until all unlawful business activities cease and/or the business license(s) required under article II has/have been lawfully obtained. This "stop work" order may be enforced in the manner provided in section 16-34 of this article.

(2) The city may enforce the collection of the occupational tax due under section 16-22 and any fees, penalties, and interest as provided in subsections (a), (b), (c), and (d) of section 16-33 by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the city shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this article.

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

(b) *Criminal Penalties:*

(1) Any person or business entity that intentionally or knowingly conducts any business within the city without the license required in subsection 16-24(d) (1) of this article, shall be guilty of a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00), or imprisonment not to exceed thirty (30) days, or both, at the discretion of the court or jury. Each day a violation occurs shall constitute a separate offense.

(2) Any business entity or employer who intentionally or knowingly fails to make a return or intentionally or knowingly makes a false return, or who intentionally or knowingly fails to pay taxes owing or collected, to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.

(3) Any person who intentionally or knowingly aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under this article 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.

(4) Any person violating the provisions of section 16-31 of this article, shall, upon conviction, be deemed guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500.00) or to imprisonment not exceeding thirty (30) days, or to both such fine and imprisonment, at the discretion of the court or jury.

(c) *Injunctive Relief:* In the event any person, firm, corporation, partnership or other entity fails or refuses for any reason to pay when due any tax or fee imposed or required by this section, the city may, upon application to a court of competent jurisdiction, seek injunctive or other extraordinary relief to require said person, firm, corporation, partnership or other entity to cease and desist from operating or conducting in any respect within the corporate limits of the city the business enterprise for which a license is required under subsection 16-24(d)(1) until such time as said business license has been obtained and any taxes, penalties and interest then due and owing, have been paid in full.

(d) The penalty referred to in subsection (b) (2) is imposed on natural persons. In the case of an association or like entity, it shall be imposed on the partners or members thereof. In the case of a corporation or limited liability company, the officers, directors, members and managers shall be liable.

#### **Sec. 16-35. Revenue to be deposited in separate fund**

(a) All revenue derived from one (1) percent of the one and thirty-three hundredths (1.33) percent annual license fee shall be deposited in the general fund of the city for general municipal expenses and purposes, and all revenue derived from thirty-three hundredths (.33) percent of the one and thirty-three hundredths (1.33) percent annual license fee shall be deposited in a separate fund designated as the "Capital Projects and Stormwater Drainage System Fund", as set forth herein below.

(b) "CAPITAL PROJECTS AND STORMWATER DRAINAGE SYSTEM FUND": There is hereby established a "Capital Projects and Stormwater Drainage System Fund" into which all revenues designated in subsection (a) hereinabove and received, shall be deposited by the finance department on a monthly basis. All expenditures from the fund shall be used exclusively for capital projects and stormwater drainage maintenance and improvements approved by the board of commissioners through the annual and amended budget process. For purposes of this subsection, "capital projects" include the acquisition, construction, reconstruction, replacement or improvement to land, buildings, equipment, facilities or other fixed assets.

#### **Sec. 16-36. Revocation or Suspension of License; Right to Appeal**

(a) As used in this section, "director of finance" shall mean the person holding the office of director of finance or his designee.

(b) Any business license issued by the city may be revoked by the director of finance, or suspended for any period of time determined by the director of finance to be reasonable and appropriate under the circumstances, for any of the following reasons:

- (1) Failure of a business licensee to file the return required by section 16-24 of the Owensboro Municipal Code;
- (2) Failure of a business licensee to pay the occupational license fees collected and held pursuant to section 16-23 of the Owensboro Municipal Code; or
- (3) Failure of any business licensee to pay city real estate and/or personal property taxes when due.

(c) Upon a determination that any one or more of the above causes has occurred, the director of finance shall notify the licensee in writing of the city's intention to revoke or suspend said licensee's business license for cause, as the case may be, and shall direct the licensee to appear at the director of finance's office, or respond in writing, within ten (10) days of receipt of notice, to show cause why said licensee's business license should not be revoked or suspended. This notification shall be sent to both the owner and operator of the business licensed therein, if the two (2) are not the same. During the ten-day response period, the licensee shall have the opportunity to present any evidence that a return has been filed, or that the aforementioned fees and/or taxes have been paid, or other evidence of good cause for failure to file and/or pay same.

(d) Within thirty (30) days after the expiration of the ten-day response period, the director of finance shall review all evidence submitted by the licensee, require such audits as are necessary for the determination of whether or not the contested amounts are disputed in good faith, and upon a preliminary determination that cause for revocation or suspension of the licensee's business license is found to exist, the director of finance shall promptly conduct a due process hearing at which time the licensee shall be allowed to appear and present witnesses and/or evidence on its behalf. Notice of the hearing shall be sent by the director of finance to the licensee, by certified mail, return receipt requested, at least seven (7) days prior to the scheduled hearing. A record of the hearing shall be kept. If the licensee fails to appear at the hearing, or fails to produce clear and convincing evidence of payment or good cause for non-payment, the director of finance shall revoke or suspend the license of the business, as deemed reasonable and appropriate under the circumstances, and the licensee shall immediately cease operation of its business for the duration of the revocation or suspension. Notice of revocation or suspension of any business license shall be sent to the licensee or operator of the business license therein.

(e) *Right of Appeal.* Any business licensee whose occupational license has been revoked or suspended by the director of finance pursuant to the foregoing provisions, may appeal said revocation or suspension to the board of commissioners, by filing with the city clerk within ten (10) days of the date of revocation or suspension, a written

notice of appeal, along with a copy of the notice of revocation or suspension, and a statement of the reasons why the revocation or suspension should be overruled. Within thirty (30) days of the filing of the notice of appeal hereunder, the Owensboro Board of Commissioners shall review all evidence of record on appeal, and may consider additional testimony or evidence from the licensee or city personnel, in its sole discretion. The board of commissioners shall uphold the revocation or suspension imposed by the director of finance if it is supported by substantial evidence. The board of commissioners shall notify the director of finance and the licensee of its decision within seven (7) days after the completion of its appellate review. The decision of the board of commissioners upon the appeal shall be final.

(f) Revocation or suspension of a business license hereunder shall be in addition to the imposition of any other penalty prescribed by this chapter or any other ordinance, statute or law. The City may take any and all necessary and appropriate measures to enforce this section, including legal, equitable and/or mandatory injunctive relief.

### **Sec. 16-37. Refund; Audit and Assessment Appeal Process**

(a) The department is authorized to make refunds on claims filed with the department of finance. The licensee may initiate a refund by filing a claim with the department. The claim must be prepared so as to set out: (1) the licensee's name, address and the form of organization; (2) the calendar or fiscal year involved; (3) amount of license fee paid, with dates of payment; (4) amount of license fee refund requested; (5) a certificate that the licensee is not indebted to the city for other fees or taxes; (6) a statement of licensee's reason for believing that a refund should be granted. Separate claims shall be filed for each period. If the basis of the claim rests upon an interpretation of law or of the treatment of any item or items in the return, an amended return is ordinarily not required and the claim alone will be sufficient. If the original return contained errors of fact necessitating correction, an amended return must be filed. Where there has been an overpayment of tax under section 16-23 of this article, a refund or credit shall be made to the employer to the extent of overpayment only if a written application for refund or credit is received by the city from the employer within two (2) years from the date the overpayment was made.

(1) An employee who has compensation attributable to activities outside the city, based on time spent outside the city, but whose employer has withheld and remitted the occupational license tax on the compensation to this 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 and the amount of compensation for activities outside the city prior to approval of the refund.

(b) Where there has been an overpayment of tax under section 16-24 of this article, a refund or credit shall be made to any person or business entity to the extent of overpayment only if a written application for refund or credit is received by the city within

two (2) years from the filing of a return or the date the money was paid, whichever is longer. No refund shall be made of any tax paid unless a complete return is filed as required in section 16-27 of this article.

(1) In the case where the tax computed under the provisions of this article is less than the amount which has been declared and paid as estimated tax for the same taxable year, a refund or credit, if a credit is requested, shall be made upon the filing of a return.

(2) *Overpayment/Refunds*

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 this article.

(c) A licensee subject to the license fee is required to keep such records as will enable the filing of true and accurate returns, and the records must be preserved to enable the department of finance to verify the correctness of returns filed. The department or its representative may audit any return and examine any records bearing upon matter required to be included in the return. Proof may be required in support of any item. As soon as practicable after each return is received, the city may examine and audit the return. If the amount of tax computed by the city is greater than the amount returned by the business entity, the additional tax shall be assessed and a notice of assessment mailed to the business entity by the city within five (5) years from the date the return was filed, except as otherwise provided in this subsection.

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

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

(3) In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this subsection, or six (6) months from the date the city receives the final determination of the federal audit from the business entity, whichever

is later. 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.

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.

(d) A licensee shall have the right to appeal audit findings or an additional assessment within thirty (30) days from notification to the licensee of the audit results by (1) sending a written notice, including sufficient documentation to support the appeal, to the director of finance or (2) scheduling a meeting with the director of finance, to explain the appeal and present evidence. After receiving documentation and/or hearing the licensee, the director of finance shall, within seven (7) days after the conclusion of the review, in writing affirm, modify, or withdraw the assessment.

(e) A licensee shall have the right to appeal a reaffirmed or adjusted audit assessment of the director of finance within thirty (30) days from the date of adjusted audit assessment by sending a written notice of appeal, including sufficient documentation to support the appeal, to the city manager. Within thirty (30) days of the filing of the notice of appeal hereunder, the city manager shall review all evidence of record on appeal. The city manager shall, within seven (7) days after the completion of the review, in writing affirm, modify, or reverse the director of finance's assessment.

(f) A licensee shall have the right to appeal a reaffirmed or adjusted audit assessment of the city manager within thirty (30) days from the date of adjusted audit assessment by sending a written notice of appeal, including sufficient documentation to support the appeal to the city clerk. Within thirty (30) days of the filing of the notice of appeal hereunder, the Owensboro Board of Commissioners shall review all evidence of record on appeal. The board of commissioners shall, within seven (7) days after the completion of its appellate review, in writing affirm, modify, or reverse the city manager assessment. The decision of the board of commissioners upon the appeal shall be final.

(g) The city may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (b) of this section.

### **Sec. 16-38. Administrative Provisions**

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

(b) Any tax collected pursuant to the provisions of this article may be refunded or credited within two (2) years of the date prescribed by law for the filing of a return or the date the money was paid to the city, whichever is the later, except that:

- (1) In any case where the assessment period contained in subsection 16-37 (b) of this article has been extended by an agreement between the business entity and the city, the limitation contained in this subsection shall be extended accordingly.
- (2) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later. For the purposes of this subsection and subsection (a) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.
- (3) The authority to refund or credit overpayments of taxes collected pursuant to this article is vested exclusively in the city.

**Sec. 16-71. – Definitions:** The following words and phrases, when used in this article, shall have the following meaning:

- (a) *Person* means any natural person, firm, corporation, association, group, club, society, or other organization.
- (b) *Charitable Solicitation* means any course of conduct whereby any person (as defined above), or employee, member, or representative thereof, shall solicit property, services, or financial assistance of any kind, or sell or offer to sell any property, tag, service, emblem, publication, ticket, advertisement, subscription or anything of value based on representations that such sale or solicitation or the proceeds therefrom, are for a charitable, educational, patriotic, religious, cultural, fraternal, philanthropic, medical, or benevolent purpose.

**Sec. 16-72. - Charitable solicitations prohibited**

- (a) *Prohibitions:* No person shall conduct any charitable solicitation within the City of Owensboro, Kentucky, until the director of finance or his designee, has certified that said person is exempt from taxation, under Section 501(c) of the Internal Revenue Code.
- (b) *Application Process:* Any person seeking certification under subsection (a) above shall submit an application to the director of finance, or his designee, on forms prescribed for that purpose. Written verification from the United States of America, Internal Revenue Service, of the applicant's tax-exempt status under Section 501(c) of the Internal Revenue Code, shall be submitted with the application.
- (c) *Certification; Notice thereof:* The director of finance, or his designee, shall issue a notice of certification within two (2) working days after receipt of a completed application with proper verification of tax-exempt status. Incomplete applications shall be returned to applicant within two (2) working days with a notice of additional information required for certification.
- (d) *Change in Tax-Exempt Status; Notification; Prohibition:* The certification issued under subsections (b) and (c) above shall remain in effect until such time as the tax-exempt status of the person obtaining certification has been officially revoked, suspended, modified, or superseded by the United States of America, Internal Revenue Service. Persons certified under this article shall notify the director of finance, or his designee, of any change in tax-exempt status, within ten (10) days of notice thereof. Persons thus affected shall be subjected to the prohibition set forth in subsection (a) above.

### **Sec. 16-73. - Credentials for Participants in Charitable Solicitations**

All persons who have been certified under this article shall furnish proper credentials to their employees, agents, or members engaged in charitable solicitations. Such credentials shall include, at a minimum, the name of the solicitor or charitable organization sponsoring same and the name of each solicitor to whom such credentials are issued. The solicitor or sponsoring organization shall make available for public inspection, upon request, all such credentials and the notice of certification issued by the Finance Department of the City of Owensboro.

### **Sec. 16-74. - Penalties**

Any person violating any section of this article shall, upon conviction thereof, be punished by a fine not to exceed two hundred fifty dollars (\$250.00) or by imprisonment for a term not to exceed 90 days, or both. Each day (24-hour period) on which a violation occurs or continues shall constitute a separate offense under this article. As an alternative to, or in conjunction with the penalties set forth herein, any person found to be in violation of this article may also be assessed a civil penalty not to exceed five hundred dollars (\$500.00), payable to the City of Owensboro, within twenty (20) days of the issuance of the citation. Civil penalties not paid within the time prescribed herein may be recovered by the city in a civil action, in the same manner provided for the collection of a civil debt.