

CHAPTER 118: COMPENSATION TAX

Section

- 118.01 Definitions
- 118.02 Compensation tax payment required
- 118.03 Regulatory license fees for temporaries
- 118.04 Payment of tax quarterly
- 118.05 Apportionment
- 118.06 Employers to withhold
- 118.07 Production of documents
- 118.08 Extensions
- 118.09 Refunds
- 118.10 Audit provisions
- 118.11 Administrative provisions
- 118.12 Information to remain confidential
- 118.13 Use of compensation tax

- 118.99 Penalty

§ 118.01 DEFINITIONS.

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

"BUSINESS." Any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. **"BUSINESS"** shall not include the usual activities of board of trade, chambers of commerce, trade associations, or unions, or other associations performing services usually performed by trade associations or unions. **"BUSINESS"** shall not include funds, foundations, corporations or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic or fraternal purposes, where no part of the earnings, incomes or receipts of such unit, group, or association, inures to the benefit of any private shareholder or other person.

"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.

"CITY." The City of La Grange, Kentucky.

"COMPENSATION." Wages or salaries 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.

"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.

"EMPLOYEE." 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.

"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 trade or business within the United States, the term "EMPLOYER" means such person.

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

"FISCAL YEAR." An accounting period of twelve (12) months ending on the last day of any month other than December;

"INTERNAL REVENUE CODE." The Internal Revenue Code in effect on December 1, 2003, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2003, that would otherwise terminate.

"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 any form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to limited liability companies or corporations, shall mean the officers, members, and/or directors thereof.

"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.

"SALES REVENUE." Receipts from the sale, lease, or rental of goods, services, or property.

"TAX DISTRICT." Any city of the first to fifth class with the authority to levy compensation taxes.

"TAXABLE YEAR." The calendar year or fiscal year ending during the calendar year, upon the basis of which wages or salaries are earned.

(Ord. 8-2013, passed 8-5-2013)

§ 118.02 COMPENSATION TAX PAYMENT REQUIRED.

(A) Except as provided in division (B) of this section, any person who earns wages or salaries and 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 a compensation tax for the privilege of engaging in such activities within the city. The compensation tax shall be measured by one percent (1%) of all compensation paid or payable in the city for work done or services performed or rendered in the city by every resident and nonresident who is an employee;

(B) The compensation tax imposed in this section shall not apply to the following persons:

(1) Any members of the Kentucky national guard for active duty training, unit training assemblies and annual field training;

(2) Any precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections;

(3) Persons who have been issued a license under KRS Chapter 243 to engage in manufacturing or trafficking in alcoholic beverages, but only for compensation earned directly as a result of engaging in that activity. 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 compensation derived from the manufacturing or trafficking in alcoholic beverages.

(Ord. 8-2013, passed 8-5-2013)

§ 118.03 REGULATORY LICENSE FEES FOR TEMPORARIES.

(A) The city 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 fraction thereof in the case of a new business) the license fee or fees herein set forth which payment shall be a credit on the license fee as otherwise provided herein; provided, however, that where minimum fees are set forth in the following table for a period of less than one (1) year the same shall be considered as the minimum fee due for the period set forth in the table and shall be paid in advance of engaging in the activity.

(B) If a licensee is engaged in more than one (1) type of activity in one business entity, the highest minimum license fee shall apply. In the following table the words "before showing" shall mean that the license fee per showing is due prior to the date of each showing. Where the word "yearly" appears, the same shall mean that the minimum fee shall be due on or before the first day of July, and shall be for the ensuing year ending June 30 and for a like period of time for each succeeding year thereafter.

(C) In no event shall any minimum fee set forth under this section be reduced for the reason that the business or activity covering same shall have been commenced subsequent to the first day of July (the first day of the city's fiscal year the first day of the tax year).

<i>Fee Schedule</i>	
Occupations Fee:	
Carnivals regardless of local sponsorship, per week	\$500.00 (before showing)
Circuses, regardless of local sponsorship, per week	\$500.00 (before showing)
City directory sales	twelve (12) free copies of city directory and \$50.00
Door-to-door salesmen, whether itinerant or not	\$100.00 each salesman, yearly
Nurserymen or farm workers, itinerant, yearly	\$25.00 each nurseryman or farm worker
Peddlers:	
Produce grown or produced in the county	Exempt
General peddlers, yearly	\$50.00
Peddlers participating in festivals sponsored by exempt organizations defined as exempt under " <u>BUSINESS</u> " in § 118.01	Exempt
Pinball, jukebox, pool, video or Other public	

<p>games. Every person conducting or engaging in the business of operating, renting, leasing, selling, distributing or installing any machine board, table or device where same is operated by the insertion of a coin, or any counter device where same is operated or otherwise, used for amusement or skill, same and except those used solely for the purpose of vending chewing gum, peanuts, candy, cigarettes, or other merchandise and about which there is no element of amusement or skill, shall pay a license fee per machine. License shall be publicly displayed on each machine each year, this amount each machine, yearly.</p>	<p>\$10.00</p>
<p>Taxicabs and limousines, certified by the Department of Vehicle Regulation to operate in the city.</p>	<p>\$30.00 per taxicab or limousine per year</p>

(Ord. 8-2013, passed 8-5-2013)

§ 118.04 PAYMENT OF TAX QUARTERLY.

(A) Every business who employs individuals subject to taxation under this chapter, shall collect and make quarterly tax payments on behalf of the employees subject to this tax on or before: the last day of October (for liability accrued from July 1 through the end of September), and the last day of January (for liability accrued from October 1 through the end of December of the prior calendar year) the last day of April (for liability accrued from January 1 through the end of March), the last day of the July (for liability accrued from April 1 through the end of June).

(B) Any business entity that fails to submit the quarterly payment required under division (A) of this section by the due date for the quarterly payment shall pay an amount equal to twelve percent (12%) per annum simple interest on the amount of the quarterly payment required under division (A) of this section.

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

(Ord. 8-2013, passed 8-5-2013)

§ 118.05 APPORTIONMENT.

(A) When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without the city, the compensation tax shall be measured by that part of the compensation paid or payable as a result of the work done or service performed or rendered within the city. The compensation 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 taxpayer's reported payments under this chapter, the taxpayer's employer shall maintain adequate records.

(B) All income earned by partnerships, S corporations, and all other entities where income is "passed through" to the owners are not subject to this chapter.

(C) 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 compensation tax due from the employees of the business for the period of that taxable year during which the business entity had business activity in the city.

(Ord. 8-2013, passed 8-5-2013)

§ 118.06 EMPLOYERS TO WITHHOLD.

(A) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation a compensation tax calculated under § 118.02.

(B) Every employer required to deduct and withhold tax under this section shall, for the quarter ending December 31st and for each quarter ending thereafter, on or before the end of the month following the close of each quarter, make a return and report to the city, and pay to the city, 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 the city.

(C) Every employer who fails to withhold or pay to the city any sums required by this chapter 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.

(D) 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.

(E) Every employer required to deduct and withhold tax under this section shall complete and file on a form furnished or approved by the city a reconciliation of the compensation tax withheld where compensation is paid or payable to the employees. The city may request, at any time, 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.

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

(G) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.

(H) 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 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 chapter at the time that the taxes imposed by this chapter became or become due.

(I) Notwithstanding divisions (G) and (H) of this section, every employee receiving compensation in the city subject to the tax imposed under § 118.02 shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this chapter from the employee, such employee or employees shall be responsible for filing with the city each quarter in the same manner as if they were the employer.

(Ord. 8-2013, passed 8-5-2013)

§ 118.07 PRODUCTION OF DOCUMENTS.

(A) All business entity returns for the preceding taxable quarter shall be made each quarter, on the dates provided herein in § 118.04. Blank forms for returns shall be supplied by the city.

(B) Whenever, in the opinion of the city, it is necessary to examine the records 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 records, 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. The

city may compel this inspection by providing written notice to the business entity. If a request for examination is made, the requested documents must be produced for examination to the city attorney within 30 days of the mailing of the notice to compel inspection.

(C) Every business entity who employs persons who are subject to a compensation tax governed by the provisions of this chapter shall keep records, render under oath statements, make returns and comply with rules as the city from time to time may prescribe. Whenever the city deems it necessary, the city may require a business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as the city deems sufficient to determine the tax liability of the employees of the business entity.

(D) The city may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable compensation of any employee of any business entity, the attendance of a representative of the business entity or any other person having knowledge of the compensation paid.

(E) The full amount of the tax payable by any business entity on behalf of its employees, as appears from the face of the return, shall be paid to the city at or before the time prescribed for filing the compensation tax return, determined without regard to any extension of time for filing the return.

(Ord. 8-2013, passed 8-5-2013)

§ 118.08 EXTENSIONS.

(A) The city may grant any business entity an extension of not more than six (6) months for filing its return, if the business entity, on or before the date prescribed for payment of the compensation 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 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 city. A fraction of a month is counted as an entire month.

(Ord. 8-2013, passed 8-5-2013)

§ 118.09 REFUNDS.

(A) Where there has been an overpayment of tax under § 118.06, 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.

(B) An employee who has compensation attributable to activities performed outside the city, based on the time spent outside the city, whose employer has withheld and remitted to this city, the compensation tax on the compensation attributable to activities performed outside the city, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide by affidavit, and with supporting documentation, a schedule and computation sufficient to verify the refund claim and the city may require that the employer provide, by affidavit, a statement corroborating the schedule and computation of the employee, the percentage of time spent outside the city and the amount of compensation attributable to activities performed outside the city prior to approval of the refund.

(C) In the case where the tax computed under the provisions of this chapter 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.

(D) (1) 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;

(2) No refund shall be made of any estimated tax paid unless a complete return is filed as required by this chapter.

(Ord. 8-2013, passed 8-5-2013)

§ 118.10 AUDIT PROVISIONS.

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

(b) The times provided in this division 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.

(B) The city may initiate a civil action for the collection of any unpaid tax within six years after the tax becomes payable to the city.

(Ord. 8-2013, passed 8-5-2013)

§ 118.11 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 chapter.

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

(1) In any case where the assessment period contained in § 118.10 has been extended by an agreement between the business entity and the city, the limitation contained in this subsection shall be extended accordingly.

(2) For the purposes of this division (B) and division (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.

(C) The authority to refund or credit overpayments of taxes collected pursuant to this chapter is vested exclusively in the city.

(Ord. 8-2013, passed 8-5-2013)

§ 118.12 INFORMATION TO REMAIN CONFIDENTIAL.

(A) No present or former employee of any tax district shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the tax district 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 property authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the tax district from testifying in court, or from introducing as evidence returns or reports filed with the tax district, in an action for violation of tax district law or in any action challenging a tax district 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 Department of Revenue and maintains the privileged character of the information so furnished. Provided, further, that the city may, but is not required to, publish statistics based on such information in such a manner as not to reveal data respecting compensation of any person or business entity.

(C) In addition, the city is empowered to execute similar reciprocity agreements as described in division (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 chapter.

(Ord. 8-2013, passed 8-5-2013)

§ 118.13 USE OF COMPENSATION TAX.

All money derived from the compensation taxes under the provisions of this chapter shall be paid to the city and placed to the credit of the city's general revenue fund; however, all funds collected as a compensation tax shall be used only to retire debt related to the Oldham Reserve Property (see Exhibit A-1, attached to the ordinance codified herein).

(Ord. 8-2013, passed 8-5-2013)

§ 118.99 PENALTY.

(A) (1) A business entity subject to tax on compensation 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, annual or quarterly, on or before the due date prescribed for filing or as extended by the city; or

(b) Fails to pay the tax computed on the return or report on or before the due date prescribed for payment.

(2) 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).

(B) Every employer who fails to file a return or pay the tax on or before the time prescribed under § 118.06 may be subject to a penalty in 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 (\$25.00). This subsection also applies to any quarterly tax estimate where the payment submitted with the estimate is less than that required by § 118.04.

(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 percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the city. A fraction of a month is counted as an entire month. This subsection also applies to any quarterly tax estimate where the payment submitted with the estimate is less than that required by § 118.04.

(D) Every tax imposed by this chapter, and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to the city.

(E) The city may enforce the collection of the compensation tax due under §§ 118.03 and 118.04 and any fees, penalties, and interest as provided in divisions (A), (B), (C), and (D) of this section by civil action in a court of appropriate jurisdiction. The city shall be entitled to recover all court costs, postage expenses, and reasonable attorney(s) and or paralegal(s) fees incurred by it in enforcing any provision of this chapter.

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

(G) 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 chapter 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.

(H) 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 chapter, or by the rules of the city or by written request for information to the business entity by the city.

(I) Any person violating the provisions of § 118.12 by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not longer than six (6) months, or both.

(J) Any person violating the provisions of § 118.12 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.

(Ord. 8-2013, passed 8-5-2013)