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KY Local Jurisdictions *Erroneously* Administering Occupational License Fee and Uniform Return Coming Soon

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Kentucky counties, school districts and many cities are authorized to levy occupational license fees (or "taxes" as they are sometimes called) on businesses and employees. Currently, over 200 Kentucky cities and counties and eight school districts impose such fees. These local governments generally imposed the fees on business net profits or gross receipts and on employee wages. Two recent developments include improper administration of the fee on businesses with sales in more than one jurisdiction, and development of a uniform "tax" return.

In 2003, the Kentucky Occupational License Association, Inc. (KOLA) successfully lobbied the General Assembly to enact a set of uniform definitions and to provide for the uniform administration of local occupational license taxes. The new uniform provisions are codified at KRS §§ 67.750 to 67.790 (the "Uniformity Statute"). KOLA is an association of local government employees involved in the administration and collection of occupational license taxes. The Uniformity Statute also mandates a uniform method to apportion business net profits or gross receipts to each local jurisdiction. Local levying jurisdictions were authorized to adopt these uniform provisions at any time. However, effective July 15, 2008, these uniformity provisions became mandatory.

For businesses with sales and/or payroll in more than one jurisdiction, the Uniformity Statute adopts an apportionment regime consisting of a two-factor apportionment formula of payroll and sales revenue. *See* KRS § 67.753. The payroll factor consists of a fraction the numerator of which is the total compensation paid or payable in the local jurisdiction and the denominator of which is the total compensation paid everywhere. The sales factor is a fraction the numerator of which is the total sales revenue in the local jurisdiction and the denominator is sales revenue everywhere. Businesses with payroll and sales in more than one local jurisdiction apportion using the average of both factors. The statute provides that "business entities with sales revenue in more than one (1) tax district" apportion net profits or gross receipts using the sales factor only. KRS § 67.753(1)(b).

Despite the clear mandate of the apportionment statute, local governments are refusing to allow businesses having payroll only in the local jurisdiction but sales in multiple jurisdictions to use the single-sales factor to apportion. Those districts, with the support of KOLA, are claiming that the language in KRS § 67.753(1)(b) contains a drafting error. This erroneous interpretation effectively doubles the amount of net profits or gross receipts apportioned to the local government where the business's employees are located. The local districts have been rejecting returns using a single-sales factor to apportion.

The language of the statute is clear and binding upon all local governments in Kentucky. If your business has employees in only one local jurisdiction but sells to customers outside the jurisdiction, you are entitled to apportion using only the sales apportionment factor. Please contact us if you have any returns rejected on this basis.

Coming Soon: In a further effort toward uniformity and to reduce the burden on businesses, the 2012 General Assembly enacted a new statute which authorizes local governments levying occupational license fees to accept tax returns using a new standard form to be prescribed by the Kentucky Secretary of State. *See* 2012 Ky.Acts ch. 70. The standard form has not been issued as yet. Use of the standard form is mandatory on or after July 1, 2017. Local government acceptance of the form is optional prior to that date.