

**MARSHALL COUNTY OCCUPATIONAL LICENSE TAX FOR SCHOOLS
NET PROFIT INSTRUCTIONS**

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The following instructions are provided to aid the taxpayer in the completion of the Marshall County Occupational License Tax for Schools Net Profit Return. They are not intended to be all-inclusive and therefore should be used only as a supplement to the existing ordinances and regulations. If you have any questions that are not addressed in these instructions please refer to the tax ordinance and regulations.

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WHO IS SUBJECT TO NET PROFIT TAX AND THEREFORE MUST FILE:

Definition of “Resident” Business Entity:

“Resident” is defined as an individual, partnership, association, corporation, limited liability company, sole proprietorship or other entity domiciled or having **business situs** in the Marshall County School District.

“Business Situs” is acquired for by one who has carried on a business in the school district which is “more or less permanent in nature.” Thus, businesses which are occasional, temporary, or transient may not be subject to the Marshall County Schools Occupational Tax.

The occupational license tax shall be measured by ½ of 1% of - 1.) the Net Profit from business conducted in the school district by a resident business entity; and 2.) Net Profits generated by rental units.

Definition of “Business” as an “Undertaking Engaged in for Pecuniary Profit or Gain”:

“Business” is defined as an undertaking engaged in for pecuniary profit or gain. A legal entity that is not engaged in activity for pecuniary profit or gain is excluded by the Ordinance.

It has been determined by the Marshall County Board of Education that, for efficient and uniform administration of the Marshall County Occupational License Tax for Schools, a five year period of time would be used to determine whether a business entity is engaged in activity for pecuniary profit or gain. Therefore, if a resident legal entity has filed a Federal Tax Return reporting either business income or business deductions within the past five years then it would be determined that the legal entity is “engaged in business for profit or pecuniary gain” and therefore would be subject to the Marshall County Occupational License Tax for Schools Net Profit Tax.

If a resident entity is ultimately determined to be a business entity “engaged in for profit or pecuniary gain,” then all activity within that entity is taxable and/or deductible by this ordinance - *subject to some exceptions as further discussed within this Net Profit Instruction Guide.*

For example: If a resident legal entity is formed for the sole purpose of holding real estate with the expectation that the value of the real estate will appreciate and the entity would realize a gain upon sale of the land, then the entity is considered to be “engaged in business for profit or pecuniary gain” and all capital gains on the sale of the land within the business entity would be taxable by this Ordinance. Conversely, if a legal entity was formed to hold real estate solely for hobby purposes (for example: purchase of land for hunting) and no business income or deductions were taken on the Federal Tax Return, then it would be determined that the legal entity was not formed for “profit or pecuniary gain” and the capital gain realized upon the sale of the land would not be taxable under this Ordinance. However, regardless of the intended purpose of the entity upon formation, if business income or deductions have been taken for Federal Tax purposes, then it is determined to be a business entity and subject to the Marshall County Occupational License Tax for Schools Net Profit Tax.

Complete the MARSHALL COUNTY OCCUPATIONAL LICENSE TAX FOR SCHOOLS NET PROFIT TAX RETURN if you are a CORPORATION FILING FORM 1120,1120S OR 1120 REIT, PARTNERSHIP FILING FEDERAL FORM 1065 AND FORM 8825, if applicable a SOLE PROPRIETOR filing FEDERAL SCHEDULE C, SCHEDULE E, SCHEDULE F, and/or 1099 MISC and the business or job situs is located in the Marshall County School District.

(NOTE: A BUSINESS ENTITY THAT IS TAXABLE AS A CORPORATION UNDER THE INTERNAL REVENUE INCLUDES: BUSINESS ENTITIES ORGANIZED UNDER FEDERAL OR STATE STATUTES AS BEING INCORPORATED OR A CORPORATION, BUSINESS ENTITIES ORGANIZED UNDER STATE STATUTES AS BEING A JOINT-STOCK COMPANY OR JOINT-STOCK ASSOCIATION, AND BUSINESS ENTITIES THAT ELECT TO BE CLASSIFIED AS CORPORATIONS. AN ENTITY THAT IS NOT AUTOMATICALLY CONSIDERED A CORPORATION AND HAS TWO OR MORE MEMBERS OR A SINGLE MEMBER CAN ELECT TO BE CLASSIFIED AS A CORPORATION. AN ENTITY WITH TWO OR MORE MEMBERS ALSO HAS THE OPTION TO BE CLASSIFIED AS A PARTNERSHIP FOR FEDERAL PURPOSES. SPECIAL TYPES OF CORPORATIONS INCLUDE: S CORPORATIONS, REGULATED INVESTMENT COMPANIES, AND REAL ESTATE INVESTMENT TRUSTS.)

All partnerships, S corporations, and all other entities where income is “passed through” to the owners are subject to this ordinance. **The occupational license tax imposed in this ordinance is assessed against income before it is “passed through” these entities to the owners.**

****No occupational license tax shall be collected from any individual who is not a resident of the school district imposing the school tax****

YOU MUST FILE THE NET PROFIT RETURN EVEN IF:

Your business activity resulted in a loss for the tax year. Complete the Net Profit Return according to the instructions provided, sign the form and return to the Marshall County Finance Office.

You were not actively engaged in business during the year but intend to resume operations at a future date. Write “No activity in jurisdiction” on the Net Profit Return form, sign the form and return to the Marshall County Finance Office.

Your business activity ceased operations prior to the beginning of the tax year but you have not provided written notification that operations ceased. Indicate the date business activity was discontinued within the county in Section A, question 7, sign the form and return it to the Marshall County Finance Office.

Your business was operational for a portion of the tax year but ceased operations prior to the completion of the fiscal year. Complete the Net Profit Return according to the instructions provided and indicate the date business activity was discontinued within the county in Section A, question 7, sign the form and return to Marshall County Schools Occupational Tax Office.

You applied for an account with the intention of starting a business but never transacted business within Marshall County and do not intend to do so in the future. Indicate "No activity in jurisdiction" and "Final" on the form, sign the form and return to the Marshall County Finance Office.

DUE DATE:

Year Ending December 31: The Marshall County Occupational License Tax for Schools Net Profit Return must be filed and all taxes paid on or before April 15 of current tax year.

Year Ending other than December 31: The Marshall County Occupational License Tax for Schools Net Profit Return must be filed and all taxes paid on or before the fifteenth day of the fourth month after the close of the fiscal year.

AUTOMATIC EXTENSIONS:

An automatic extension of time for filing the Net Profit Return will be granted for a period not to exceed any extension granted by the Internal Revenue Service for the filing of the federal income tax return for the same year. The extension request must be a written request properly signed by the authorized agent and received on or before the due date for filing. **A copy of the Federal Form 4868, 8736, or 7004 for the same year may be used for the written request, provided that the Federal Identification Number used for tax reporting purposed is noted.** The extension request submitted must include the account number, extension of time for filing, the reason for filing the extension, along with payment estimated.

Interest at the rate of twelve (12) percent per annum shall apply to any unpaid license tax during the period of extension and shall be included with the amount remitted in payment of the license tax at the time of filing the Net Profit License Tax Return. No penalty shall be assessed in those cases in which all filing and payment requirements have in good faith been fulfilled and the final license tax and interest is paid with the filing of the Net Profit License Tax Return within the period as extended. The required estimated license tax payment is presumed to have been made in good faith provided that the taxpayer remits with the timely filed extension request 50% or more of the license tax liability as indicated on the extended Net Profit License Tax Return.

Any automatic extension shall be granted with the understanding that all prior filing and payment requirements have been fulfilled. However, if upon further examination it becomes evident that prior filing and payment requirements have not been fulfilled; interest and penalty shall be assessed in full and in the same manner as though no extension had been granted.

STATE EXEMPTIONS:

The following persons are exempt under Kentucky law from the net profit license tax and are not required to file a return.

1. Public Service Corporations which pay an ad valorem tax on property valued and assessed by the Kentucky Department of Revenue pursuant to the provisions of KRS 136.120.

2. Insurance companies, banks, trust companies, combined bank and trust companies, combined trusts, banking and title business in this state, any savings and loan associations whether state or federally chartered, or upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, or upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special election.

3. Funds received from the state as a share of the tobacco settlement funds to be paid to farmers are exempt from inclusion in net profit for the purpose of calculating the net profit which is subject to this occupational license tax as follows:

- (1) Any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;
- (2) Any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement; and
- (3) Any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction of the tobacco quota allotted from the 1998 to the 1999 calendar year as provided under Public Law 106-78, Title 8, Section 803.

COMPLETING THE NET PROFIT RETURN (READ INSTRUCTIONS BEFORE COMPLETING):

IN ORDER FOR YOUR RETURN TO BE PROCESSED PROPERLY YOU MUST:

1. **USE THE MARSHALL COUNTY OCCUPATIONAL LICENSE TAX FOR SCHOOLS NET PROFIT TAX RETURN FOR FILING**
2. COMPLETE AND ATTACH THE WORKSHEET USED TO DETERMINE THE ADJUSTED NET BUSINESS INCOME PER LINE 1 OF THE NET PROFIT RETURN.

3. ATTACH COPIES OF THE APPROPRIATE FEDERAL TAX FORMS AND ALL SUPPORTING DOCUMENTATION. THE MOST COMMON FEDERAL TAX RETURNS REQUIRED FOR EACH FORM OF BUSINESS ENTERPRISE ARE AS FOLLOWS:
 - Sole Proprietorship U.S. Treasury Form 1040, Separate Schedules C,D,E,F, 1099 MISC etc.
 - Fiduciary U.S. Treasury Form 1041
 - Partnership U.S. Treasury Form 1065 including Schedule K
 - Corporation U.S. Treasury Form 1120
 - Sub Chapter S Corporation U.S. Treasury Form 1120 S including Schedule K
4. VERIFY THE FEDERAL IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER UNDER WHICH YOUR FEDERAL TAX RETURN WAS FILED.
5. VERIFY NAME AND ADDRESS AND NOTE ANY CHANGES
6. SIGN AND DATE THE RETURN
7. ALL QUESTIONS MUST BE ANSWERED COMPLETELY. IF THE QUESTION DOES NOT APPLY TO YOUR BUSINESS INDICATE "NA".

IMPORTANT NOTE:

EACH SEPARATE AND DISTINCT BUSINESS ACTIVITY CONDUCTING BUSINESS IN THE JURISDICTION IMPOSING THE TAX AS A SEPARATE SOLE PROPRIETORSHIP REQUIRES A SEPARATE NET PROFIT TAX RETURN. (ONE SCHEDULE PER NET PROFIT TAX RETURN) FOR EACH SCHEDULE C AND F INCLUDED ON YOUR FEDERAL RETURN, YOU SHOULD FILE A SEPARATE NET PROFIT TAX RETURN. YOU MAY COMBINE ALL SCHEDULE E RENTAL PROPERTIES ON ONE NET PROFIT TAX RETURN.

***** ANSWER ALL QUESTIONS SPECIFIC TO THE NET PROFIT RETURN *****

SECTION A BUSINESS INFORMATION

LINE 1 BUSINESS PHONE

LIST THE PHONE NUMBER WHERE YOU MAY BE REACHED DURING BUSINESS HOURS.

LINE 2 PRINCIPAL BUSINESS ACTIVITY

ENTER DESCRIPTION OF BUSINESS ACTIVITY.

LINE 3 PRINCIPAL OWNER/ADMINISTRATIVE OFFICER

ENTER OWNER OF BUSINESS OR ADMINISTRATIVE OFFICER RESPONSIBLE FOR RETURN

LINE 4 SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFICATION NUMBER

ENTER THE FEDERAL EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER THAT APPEARS ON THE FEDERAL SCHEDULE OF THE BUSINESS ACTIVITY BEING TAXED UNDER THIS ORDINANCE.

LINE 5 NAME AND ADDRESS

IF A LABEL IS AFFIXED TO THE RETURN, MAKE CHANGES TO ANY INCORRECT INFORMATION. IF NO LABEL IS AFFIXED, ENTER THE NAME AND ADDRESS OF THE INDIVIDUAL OR BUSINESS BEING TAXED UNDER THIS ORDINANCE.

LINE 6 ENTER THE DATE YOUR BUSINESS BEGAN OPERATIONS IN MARSHALL COUNTY, IF DURING THE YEAR THIS RETURN IS BEING FILED FOR.

LINE 7 ENTER THE DATE YOUR BUSINESS CEASED OPERATIONS IN MARSHALL COUNTY.

LINE 8 CHECK YES OR NO TO THE QUESTION REGARDING WHETHER YOU HAD EMPLOYEES IN MARSHALL COUNTY DURING THE YEAR THIS RETURN IS BEING FILED FOR.

LINE 9 ORGANIZATION TYPE

CHECK CORPORATION if you are filing Federal Form 1120. COMPLETE THE QUESTIONS IN **SECTION A** THEN GO TO INSTRUCTIONS FOR WORKSHEET 1

CHECK INDIVIDUAL if you are filing a SCHEDULE C, SCHEDULE E, SCHEDULE F or 1099 MISC COMPLETE THE QUESTIONS IN **SECTION A** THEN GO TO INSTRUCTIONS FOR WORKSHEET 1

CHECK PARTNERSHIP if you are filing Federal Form 1065 and Form 8825, if applicable. COMPLETE THE QUESTIONS IN **SECTION A** THEN GO TO INSTRUCTIONS FOR WORKSHEET 1

CHECK SCORPORATION if you are filing Federal Form 1120 S and Form 8825, if applicable.

CHECK LLC if you have formed an LLC and have elected to be taxed as a sole proprietor.

CHECK OTHER if you file any other Federal Form not listed above.

COMPLETING WORKSHEET 1 – Worksheet 1 must be completed before continuing with Section B Calculations.

Line 1: Enter the amount of non-employee compensation reported on federal form 1099 MISC.

NOTE: Line 1 should only be completed by individuals who received payments for contract services who are not claiming business expenses and did not own or operate a business during the year (attach a copy of federal form 1040 and Form 1099 MISC). This amount would have been reported on line 21 of form 1040 with any other income not reportable on any other line of the tax return.

Line 2: Enter the net profit or (loss) per Line 31 of Federal Schedule C, or Line 3 per Federal Schedule C-EZ (attach copy of Federal Form 1040 and applicable schedule(s)).

Line 3: Enter the net rental profit or (loss) per Lines 26 and 40 of the Federal Schedule E (attach a copy of Federal Form 1040 and applicable schedules(s), including Form 4835, if there is an amount on line 40 of Schedule E).

Line 4: Enter the net farm profit or (loss) per Line 36 of the Federal Schedule F (attach a copy of Federal Form 1040 and applicable schedule(s)).

Line 5: Enter 100% of the short term capital gains and long term capital gains entered directly on Schedule D or carried over from federal Form 4797 or Form 6252 (installment sales) to federal Schedule D (lines 4 and 11) representing gain from the sale of property used in the trade or business. In addition, enter the net gain or (loss) from the sale of property used in the trade or business per federal Form 4797 that is carried directly to Form 1040, line 14, instead of to Schedule D (attach a copy of federal Form 4797, Form 6252 and/or Schedule D).

Line 6: Enter the amount from Form 1065, Schedule K, page 5, Analysis of Net Income (Loss), line 1.

Line 7: Enter the amount from Form 1120S, Schedule K, line 18.

Line 8: Enter the taxable income from Form 1120, line 28.

Line 9: Enter any other taxable income not already listed on another line. Examples of income to report on this line would include minister's housing allowance and wages from an employer for work performed in Marshall County while a resident of Marshall County, but for which no local tax was withheld. Certain federal employers do not withhold local taxes, such as TVA and the U.S. Postal Service; however, you are still required to report the wages on this form and pay the proper amount of tax. Also, if your employer mistakenly did not withhold local taxes from your wages, include those wages on this line.

Line 10: Enter the total of lines 1 through 9.

Line 11: If a deduction is taken for state or local taxes (based on income) or license fees (based on income), regardless of jurisdiction, on any of the schedules listed on lines 1 through 9, then the amount of those taxes or license fees should be entered on line 11.

Line 12: Enter the amount from Form 1065, Schedule K, line 16L or from Form 1120S, Schedule K, line 14L.

Line 13: If there is a pass through loss from another entity on Form 1065, line 4, Form 1120S, line 5, or Form 1120, line 10, enter here as a positive number

Line 14: Enter any expenses deducted on the forms listed on lines 1 through 9 that are related to income that is not subject to the license tax (attach schedule).

Line 15: If a deduction was taken for any other amount that is deemed not to be deductible then enter the amount on Line 15 (attach a full explanation, including amounts of all items).

Line 16: Enter the total of lines 11 through 15.

Line 17: If there is a pass through income from another entity on Form 1065, line 4, Form 1120S, line 5, or Form 1120, line 10, enter here as a positive number.

Line 18: If there are any items of income deemed not subject to the license tax that are included in the amounts on lines 1 through 9, or if there are expenses that were not deducted on the tax return because of an election that was made, enter that amount here and attach a full explanation. An example of income not subject to the license tax would be a state tax refund from a net operating loss carryback that was included in income on the federal return of a corporation. An example of expenses not deducted on the return would be expenses reduced by the amount of the tip credit.

Line 19: Enter the total of lines 17 and 18.

Line 20: Enter the sum of line 10 plus line 16, minus line 19. This amount is carried to Section B, line 1.

If 100% of the business is conducted within the local jurisdiction, enter 100% on Section B, line 2 of the FEE COMPUTATION section of the Net Profit Tax Return. Do not complete lines 21 through 24 of Worksheet 1.

If a percentage of your business is outside the taxing jurisdiction, continue to line 21.

Sales Factor

Line 21, column A: Enter the total gross receipts from sales, rents, and services in the ordinary course or usual trade of business earned within Marshall County during the period covered by the tax return. The business entity must be a resident or have business situs in the school district.

Line 21, column B: Enter the total gross receipts from sales, rents, and services in the ordinary course or usual trade of business earned everywhere during the period covered by the tax return. (NOTE: THIS AMOUNT EQUALS THE "GROSS RECEIPTS LESS RETURNS AND ALLOWANCES" AS REPORTED ON THE FEDERAL INCOME TAX RETURN. IF THE TAXPAYERS PRINCIPAL BUSINESS WITHIN THE LOCALITY IS RENTAL INCOME, THEN THE AMOUNT WOULD INCLUDE THE TOTAL GROSS RENTS AS REPORTED ON THE FEDERAL INCOME TAX RETURN. THIS AMOUNT DOES NOT INCLUDE INTEREST, DIVIDENDS, OR SALES OF BUSINESS PROPERTY. IF THE TAXPAYERS PRINCIPAL BUSINESS IS THE SALE OF PROPERTY, THEN THE SALES ARE REPORTED IN THE "GROSS RECEIPTS" AMOUNT FOR FEDERAL INCOME TAX PURPOSES. INCOME AS REPORTED ON THE FEDERAL FORM 4797 IS FROM CASUAL SALES, NOT FROM THE ORDINARY TRADE OR BUSINESS AND SHOULD NOT BE CONSIDERED IN DETERMINING THE SALES FACTOR.)

Line 21, column C: Divide column A by column B. Enter the result on Line 21, column C.

Payroll Factor

Line 22, column A: Enter the total compensation paid to employees who are residents of the school district for services rendered within the local jurisdiction during the period covered by the tax return. (NOTE: FOR THOSE LOCAL JURISDICTIONS THAT HAVE A PAYROLL TAX, THIS AMOUNT SHOULD EQUAL THE AMOUNT OF PAYROLL REPORTED AS BEING SUBJECT TO THE LOCAL JURISDICTION WITHHOLDING TAX. SOMETIMES A DIFFERENCE IS NOTED DUE TO THE ACCRUAL ACCOUNTING PROCESS. IN THIS SITUATION, THE AUDITOR WOULD REQUEST THE TAXPAYER TO SUBMIT A RECONCILIATION OF THE DIFFERENCE. TYPICALLY, THE ACCRUAL WOULD HAVE AN IMMATERIAL AFFECT ON THE FEE DUE.)

Line 22, column B: Enter the total compensation paid to employees for services rendered everywhere during the period covered by the tax return. (NOTE: THIS AMOUNT SHOULD EQUAL THE DEDUCTIONS REPORTED ON THE FEDERAL INCOME TAX RETURNS AS COMPENSATION OF OFFICERS, WAGES AND SALARIES, AND COST OF LABOR. IT WOULD NOT INCLUDE THE COST OF LABOR AMOUNT IF THE SUBCONTRACTORS EXPENSE IS REPORTED UNDER COST OF LABOR. ALSO, IT WOULD NOT INCLUDE GUARANTEED PAYMENTS TO PARTNERS DEDUCTED ON A FEDERAL FORM 1065 BECAUSE PARTNERS ARE NOT CONSIDERED EMPLOYEES.)

Line 22, column C: Divide column A by column B. Enter the result on Line 22, Column C.

Business Apportionment

Line 23, column C: Add column C, lines 21 and 22. Enter the result on line 23, column C.

Line 24, column C: Divide line 23, column C by the number of percents used on lines 21 and 22, column C. Enter the result on line 24, column C and page 1, Section B, line 2, of FEE COMPUTATION section. Then follow instructions for FEE COMPUTATION. (NOTE: IF THE TAXPAYER HAS PAYROLL REPORTED ON THE FEDERAL INCOME TAX RETURN AND NO PAYROLL WITHIN THE LOCAL JURISDICTION, THEN DIVIDE LINE 23 BY TWO. IF THE TAXPAYER HAS NO PAYROLL REPORTED ON THE FEDERAL INCOME TAX RETURN, THEN DIVIDE LINE 23 BY ONE.)

SECTION B NET PROFIT FEE COMPUTATION

Line 1 of FEE COMPUTATION section "Adjusted Net Business Income" (Line 20 of Worksheet 1)

Line 2 of FEE COMPUTATION section "Average allocation percentage" (Line 24 of Worksheet 1)

Line 3 of FEE COMPUTATION section, "Net Profits subject to license tax." Multiply line 1 by line 2.

Line 4 of FEE COMPUTATION section, "License Tax due." Multiply line 3 by the local tax jurisdiction rate .005.

Line 5 of FEE COMPUTATION section, "Interest." If the return is not filed timely, enter interest on the tax due at the rate of 1% per month or portion thereof.

Line 6 of FEE COMPUTATION section. "Penalty." If the return is not filed timely, enter the penalty on the tax due at the rate of 5% per month or portion thereof, up to 25%, with a minimum of \$25.

Line 7 of FEE COMPUTATION section, "Total Tax, Interest, and Penalty." Add lines 4 through 6.

Line 8 of FEE COMPUTATION section, "Credit". Enter any amount paid with an extension or an overpayment from a prior year that is credited to the current year.

Line 9 of FEE COMPUTATION section, "Balance Due." If line 7 is greater than line 8, enter the difference here.

Line 10 of FEE COMPUTATION section, "Overpayment." If line 8 exceeds line 7, then indicate whether a refund is requested or to credit to next year's estimated payment.

SIGNATURE

- 1) If the return is being filed by a corporation, it must be signed and dated by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other corporate officer authorized to sign.
- 2) If the return is being filed by a partnership, it must be signed by a general partner.
- 3) The licensee who signs the return must print his/her name in the area provided.