

Lexington Fayette Urban County Government



2010 Form 228 Net Profits License Fee Return Instructions

2010 Highlights

- Ordinance Section 13-6(1) **Individuals** and **sole proprietorships** who file a return as prescribed by section 13-8 which reports **gross receipts** of four thousand four hundred dollars (\$4,400.00) or less for a tax year shall not be required to pay the annual minimum license fee for 2011 as provided in section 13-9 nor the net profit occupational license fees for 2010.
- Section 13-9 changes the due date of the \$100.00 annual minimum license fee to the due date of Net Profit License Fee Return filed during 2011. In addition, there is no longer an additional minimum due for multiple locations.
- The amount paid as Minimum License Fee for 2010 can be used as a credit on the return filed for 2010 but **may not be refunded or credited to future periods.**
- Please be advised that a copy of the applicable federal income tax return, along with all supporting schedules, is **required** to be attached to all Net Profits License Fee Returns filed.
- **NOTE:** An extension of time for filing the Net Profits License Fee Return will be granted provided the request is made in writing and is **received on or before the due date for payment.** The Division will accept federal Forms 4868 or 7004 as a written request provided that the Division of Revenue account number and tax year are plainly noted and provided further that you note and remit the estimated license fee that will be due when the Net Profits License Fee Return is filed. You may also use Form 228 EXT which can be found on our website.
- All licensees with a license fee liability that exceeds \$5,000.00 are required to submit quarterly estimated payments. Refer to Lexington Fayette Urban County Government Code of Ordinance Sec 13-8(c).

Due date of return:	FIFTEENTH DAY OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE FISCAL YEAR (APRIL 18, 2011 FOR CALENDAR YEAR FILERS, DUE TO EMANCIPATION DAY).		
Make checks payable to:	LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (abbreviated L.F.U.C.G.)		
Mail returns to:	DIVISION OF REVENUE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT P O BOX 14058 LEXINGTON KY 40512		
Any Questions please call:	(859) 258-3340	Website: www.lexingtonky.gov/revenue	Hours: 8:00am-5:00pm

General Instructions

The following instructions are provided to aid the licensee in the completion of Form 228, Net Profits License Fee Return. They are not intended to be all-inclusive and therefore should be used only as a supplement to the existing License Fee Ordinances and Regulations. If you have any questions that are not addressed in these instructions please refer to the License Fee Ordinances and Regulations.

Who Must File Form 228:

1. Corporations, partnerships, sole proprietorships, estates and trusts, or other businesses engaged in an occupation, trade, profession, enterprise or other activity with 1) business activity in Fayette County, Kentucky and 2) business nexus in Fayette County, Kentucky, sufficient to justify the imposition of the license fee.
2. Individuals and those fiduciaries acting on behalf of individuals or deceased individuals having rental income, if the gross receipts arising from the rental of real property located within Fayette County are greater than or equal to \$50,000 a year. Any other business entity is presumed to be in business regardless of the rental income amounts.

You Must File Form 228 Even If:

- Your business activity resulted in a loss for the tax year. Complete Form 228 according to the instructions provided, sign the form and return it to the Division of Revenue.
- You were not actively engaged in business within Fayette County during the year. Indicate "No Business Activity" on Form 228. Sign the form and return it to the Division of Revenue.
- Your business activity ceased prior to the completion of the fiscal period. Complete Form 228 according to the instructions provided and check "Final Return" box on the form. Complete question G, sign the form and return it to the Division of Revenue.
- You applied for a business license with the intention of starting a business but never transacted business within Lexington-Fayette County. Check the box designated "FINAL RETURN", complete question G, sign and date the form.
- As a sole proprietor, your gross receipts were equal to or less than \$4400.00. You must file a return to qualify for the exemption.

When to File:

Form 228 must be delivered or postmarked by the 15th day of the 4th month after the end of the fiscal year (April 18, 2011 for calendar year filers, due to EMANCIPATION DAY).

Where to File:

All returns should be mailed to the Lexington-Fayette Urban County Government, P.O. Box 14058, Lexington, KY 40512, or delivered to 200 E. Main St, along with your check made payable to Lexington-Fayette Urban County Government (abbreviated LFUCG).

Signature:

If the return is being filed by a corporation, it must be signed and dated by a corporate officer authorized to sign. If the return is being filed by a partnership, it must be signed by a general partner. If the return is being filed by a sole proprietor, it must be signed by that individual. Additionally, the licensee who signs the return must print his/her name and phone number in the area provided.

General Instructions

Automatic Extensions

An automatic extension of time for filing the Net Profit License Tax 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 licensee and **received on or before the due date for filing**. A copy of the federal Form 4868 or 7004 for the same year may be used for the written request, **provided the licensee's occupational license fee reporting number is plainly noted thereon**. Or you may use Form 228 EXT.

An automatic extension of time for filing the Net Profits License Fee Return does not extend the time for payment of the license fee. Full payment of the **properly estimated license fee liability** must accompany the request for extension. Interest at the rate of one percent (1%) percent per month or portion thereof shall apply to any unpaid license fee during the period of extension and shall be included with the amount remitted in payment of the license fee at the time of filing the Net Profits License Fee Return. In order to avoid late payment penalties, at least 80% of the tax shown due on the return must be received on or before the original due date.

Any automatic extension shall be granted with the understanding that all prior filing and payment requirements have been fulfilled. If 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. Refer to Lexington Fayette Urban County Government Code of Ordinance Sec 13-8.1(a).

State Exemptions

The following persons are exempt under Kentucky law from the net profits license fee 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. Persons whose **sole** business activity is the manufacture of and/or sale of alcoholic beverages. (However, persons having only a portion of their business activity being derived from the manufacturing and/or selling of alcoholic beverages are required to file a return, but may exclude that portion of their net profits derived from such manufacture and/or sale of alcoholic beverages on the appropriate Line of the Worksheet)
3. Life insurance companies incorporating under the laws of and doing business in the Commonwealth of Kentucky. (See KRS 136.320(5)).
4. Banks, trust companies, combined banks and trust companies, combined trust, banking and title businesses and savings and loan associations, whether state or federally chartered.
5. Persons whose sole wages, salaries, commissions or other compensations for work performed or services rendered in Fayette County, Kentucky, are derived from service as members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training.
6. Persons engaged in the business of conducting a race track at which races are run for stakes, purses or prizes, under the jurisdiction of the State Racing Commission, whose only activity in Fayette County is the conducting of such race track and/or the operating or maintenance of pari-mutuel machines.

Note: Those organizations that pay wages, salaries, commissions or other compensation for work performed or services rendered within Fayette County must apply for a license fee account and submit withholdings on those wages, salaries, commissions or other compensation.

Special Provisions of Local Laws

The following persons are exempt under Fayette County ordinances from the net profits license fee and are not required to file a Net Profits License Fee Return:

- a) With regards to income exempt from federal taxation, boards of trade, trade associations or unions, foundations, corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, educational or civic purposes, or for the prevention of cruelty to children or animals; clubs or fraternal organizations operated exclusively for social, literary, educational or fraternal purposes where no part of the earnings, income or receipts of any such units, groups or associations inures to the benefits of any private shareholder or individual. Proof of Internal Revenue Service approval of not-for-profit status must be furnished upon application for a license fee account and/or upon the request of the Division of Revenue.
- b) Nonresidents who sell farm products, other than trees, shrubs, or ornamental plants, in the Urban County, or nonresident owners who sell livestock in the Urban County or who board livestock in the Urban County for breeding purposes.
- c) Persons authorized by the Lexington-Fayette Urban County Special Events Commission to demonstrate, sell or offer for sale any goods, wares or merchandise at any festival or event sponsored by that commission, nor from any person authorized by the Commissioner of the Department of General Services to demonstrate, sell or offer for sale any goods, wares or merchandise at any festival or event sponsored by that department.
- d) Funds received from the state as a share of the various tobacco settlement funds to be paid to farmers are exempt from inclusion in net profits for the purpose of calculating the net profits which are subject to this occupational license fee.

Licensee Information

In order for your return to be processed properly you **must**:

- file using Division of Revenue's Form 228, Net Profits License Fee Return.
- complete the Worksheet on the reverse of Form 228, Net Profits License Fee Return.
- enter or verify the account number assigned to your business by the Division of Revenue.
- enter or verify the tax year for which the return is filed.
- enter or verify the federal identification number or social security number under which your federal tax return was filed.
- clearly indicate or verify the name and address of the business and note any changes.
- sign and date the return.
- attach copies of the **appropriate federal tax forms and all supporting documentation**.

All questions must be answered fully. If the question does not apply to your business indicate "NA".

Line A: Enter the nature of your business.

Line B: Enter date business started in Fayette County.

Line C: Indicate whether there were employees in Fayette County.

Line D: Indicate the method of accounting used in preparing the Net Profits License Fee Return. This must be the same method as used for federal income tax purposes.

Line E: Indicate the form of legal entity under which the business operates. The entity type should be the same as used for federal income tax purposes. If an entry is listed as "Other" you must specify the type.
**Note: LLC's must indicate the entity type used for federal income tax purposes.

Line F: Indicate whether the Business Entity is an Affiliate or Subsidiary of a Consolidated Corporate Federal Return. If yes, enter the FEIN of the parent company.

Line G: If the business was discontinued in the current year or a prior year enter the date the business ceased operations. In addition, indicate whether the business was dissolved or sold. If the business was sold enter the name and address of the purchaser.

Check the appropriate box(es) to indicate whether this is an initial, amended and/or final return.

Minimum License Fee Exemption

Check the box if gross income from all Federal Form 1040 Schedules C, E and F plus all Form 1099-MISC was equal to or less than \$4400.00. **Attach all federal forms**, sign and date the form and return by April 18, 2011.

Section 1 Calculation of License Fee Liability

Line 1: Enter the adjusted net business income from line 19 of Worksheet 1 on the reverse side of Form 228. This worksheet **must** be completed in order to determine your adjusted net business income.

Line 2: Enter the apportionment percentage from Section 2, Line 4, Column C.

Line 3: Multiply Line 1 by Line 2. Enter the result on Line 3.

Line 4: Sole Proprietors 65 years of age or older enter \$3,000.00. All others enter zero.

Line 5: Deduct Line 4 from Line 3. Enter result on Line 5.

Line 6: Multiply Line 5 by the license fee rate of 2.25%. If less than \$100.00, enter \$100.00.

Line 7: Enter the Minimum License Fee paid for 2010. If you did not pay the minimum for 2010, enter zero.

Line 8: Deduct Line 7 from Line 6. (cannot be less than zero). This is the amount of license fee due.

IF LINE 8 IS LESS THAN ZERO, ENTER ZERO. THE ANNUAL MINIMUM LICENSE FEE IS NOT REFUNDABLE.

Line 9: Enter on Line 9 any credits due. Indicate which of the following credits are being used.

- Estimated payments
- Prior Year overpayments
- Payments made with extensions

Line 10: Deduct Line 9 from Line 8. (If less than 0 skip to Line 13 otherwise enter on Line 11).

Line 11: This is the amount of license fee due for Tax Year 2010..

Line 12: If the license fee due is not paid by the due date of the return, penalty is assessed at the rate of five (5) percent per month or portion thereof, not to exceed 25%; minimum \$25. **This penalty is to be assessed on the first day after the due date and on the first day of each succeeding calendar month until the license fee is paid, but not more than 25%.** Multiply the license fee due on Line 10 by the appropriate percentage. Enter the result, but not less than \$25.00 on the penalty Line. Interest is assessed at the rate of one (1) percent per month or portion thereof. A fraction of a month is counted as an entire month. Enter the result, on the interest Line. Add the penalty and interest and enter on Line 12.

Line 13: Minimum License Fee for 2011 (\$100.00).

Line 14: Total Amount Due (add Lines 11, 12 and 13).

Line 15: If the absolute value of Line 10 is greater than Line 14, add Line 10 and Line 14 and indicate amount of **overpayment**. If the absolute value of Line 10 is less than Line 14, add Line 10 and Line 14 and indicate the **amount due**.

Line 16: Enter amount to be refunded.

Line 17: Enter amount to be credited to 2011.

Section 2 - Calculation of Business Allocation Percentage

Section 2 must be completed by all licensees with business receipts and/or payroll both within and without Fayette County. Completion of the schedule apportions to the Lexington-Fayette Urban County Government the proportionate part of the licensee's total business activity attributable to Fayette County. If your business is conducted entirely within Fayette County it is not necessary to complete Section 2. Instead, enter 100% on Section 1, Line 2 and complete Lines 3 through 17 of Section 1.

Sales factor

Line 1, Column A: Enter the total sales revenue from the sale, lease, or rental of goods, services, or property received from **all Fayette County sources** during the period covered by the Net Profits License Fee Return. Include receipts attributable to activities or work performed in Fayette County.

Line 1, Column B: Enter the total sales revenue from the sale, lease, or rental of goods, services, or property received from **all sources** during the period covered by the Net Profits License Fee Return.

Line 1, Column C: Divide Column A by Column B. Enter the result on Line 1, Column C. Carry out to at least six (6) decimal places.

Payroll factor

Line 2, Column A: Enter the total compensation paid or payable to employees for work done or services performed or rendered **within Fayette County** during the tax period.

Line 2, Column B: Enter the total compensation paid or payable to employees for work done or services performed or rendered in **all business locations** during the tax period. This amount should equal the total salaries and wages listed on the federal return.

*****Do not include the cost of contract labor in either Column*****

Line 2, Column C: Divide Column A by Column B. Enter the result on Line 2, Column C. Carry out to at least six (6) decimal places.

Average percentage

Line 3, Column C: Add Column C, Lines 1 and 2. Enter the result on Line 3, Column C.

Line 4, Column C: Divide Line 3, Column C by the number of percents used on Lines 1 and 2, Column C. Enter the result on Line 4, Column C and Line 2, Section 1.

Note: If one of the factors (sales factor or payroll factor) is missing the remaining factor is the average allocation percentage (Line 2 of Section 1). A factor (sales factor or payroll factor) is considered missing if:

1. With regard to the sales factor, a licensee's entire business operation did not recognize **any** receipts. (i.e. Schedule C, Line 1, Columns A and B both equal zero)
2. With regards to the payroll factor, a licensee's entire business operation did not incur **any** expenditure for payroll. (i.e. Schedule C, Line 2, Columns A and B both equal zero)

Worksheet 1 - Calculation of Adjusted Net Business Income
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Refer to the following list to determine which column should be used in completing Worksheet 1.

- **W-2:** Employees receiving salaries, wages, commissions, tips, etc. from which no license fee was withheld should complete Form 245, Annual Individual License Fee Return instead of Form 228, Net Profits License Fee Return.
- **1099-MISC:** Individuals receiving payments for contract services who are not claiming business expenses **and** do not foresee claiming business expenses in the future may complete Form 245, Annual Individual License Fee Return instead of Form 228, Net Profits License Fee Return.
- **Schedule C, C-EZ, E or F:** Individuals receiving income from the operation of a trade, business or profession should complete the column marked Individual.
- **Form 1065:** Partnerships should complete the column marked Partnership.
- **Form 1120, 1120A, 1120S:** Corporations should complete the column marked Corporation.
- **Form 1041 and other associations:** Fiduciaries and all others should complete the column marked Individual.
- **Limited liability companies:** LLC's have the same entity classification as that elected for federal income tax filings and shall be assessed occupational license fees accordingly. Complete the column that corresponds to your federal tax filings.

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

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

Line 3: Enter 100% of the short term capital gains and long term capital gains carried over from federal Form 4797 or Form 6252 (installment sales) to federal Schedule D 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 (attach federal Form 4797, Form 6252 and/or Schedule D).

Line 4: For sole proprietors using Schedule E from a jointly filed Federal Form 1040 the net income (loss) from rental real estate activities can be combined with the net income (loss) from other sole proprietorships of one or both spouses using any reasonable method. The election to file using a certain method is considered to be made on the initial return filed with the Urban County and must be consistently applied on all future returns.

NOTE: For individuals, rental income or (loss) from the rental of real property should be reported on Line 2 only if the rental property constitutes a **“business activity”**. Rental property is considered a **“business activity”** when the licensee’s Fayette County rental activities produce gross rents of \$50,000 or more per year.

NOTE: This test is to be applied on the same basis as the individual’s filing status for federal tax purposes. For example, if the licensee and his/her spouse file married filing joint for federal tax purposes the licensee and his/her spouse is limited to one \$50,000 test regardless of how the Schedule E amounts were combined on Form 228. In addition, single member LLC’s filing as sole proprietors for federal tax purposes are considered to be individuals for purposes of this test.

Corporations, partnerships and other associations who have business activity in the Urban County and receive income from the rental, ownership, management or operation of real property, wherever located, are considered to be in the business of renting said property, regardless of the amount of gross annual rental income. The net profits from such rental, ownership, management or operation shall be included in the corporation, partnership or other association’s Net Profits License Fee Return.

Licensees shall include in net profits any capital gain arising from the sale of any real property included in the licensee’s business of renting real property. An individual’s or fiduciary’s real property is presumed to be included in the licensee’s business of renting property if the licensee met the “business activity” test referenced above in the current or previous tax year.

Line 5: Enter the net profit or (loss) per federal Schedule F (attach a copy of Federal Form 1040 and all applicable schedule(s)). Farm income should be reported only if the farm is located within Fayette County.

Sole proprietors and single member LLC’s filing as sole proprietors for federal income tax purposes may combine on a single Net Profits License Fee Return the net profits or loss from two or more distinct businesses with activities within the Urban County provided that all sole proprietorships are owned and operated by the same individual

Line 6: Enter the ordinary gain or (loss) on the sale of property used in a trade or business per Federal Form 4797 (attach Federal schedules).

Line 7: Enter the ordinary income per Federal Form 1065 (attach Form 1065 and applicable schedules).

Line 8: Enter the taxable income or (loss) per Federal Form 1120 or 1120A or Ordinary income or loss per Federal Form 1120S (attach applicable Federal Form and schedules).

Line 9: If a deduction is taken for state or local taxes (based on income) or license fees (based on income), regardless of jurisdiction, by an individual on federal Schedule C, C-EZ, E or F or on federal Form 1120, 1120A, 1120S or 1065 then the amount of those taxes or license fees should be entered on Line 12.

Line10: The following income items which are allocated to the partners or shareholders are not included as income on federal Form 1065 or Form 1120S and thus must be added to income on Line 10.

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|--|--|
| <i>Net income from rental real estate activities</i> | <i>Net long term capital gain</i> |
| <i>Net income from other rental activities</i> | <i>Other portfolio income</i> |
| <i>Interest income</i> | <i>Guaranteed payments to partners</i> |
| <i>Dividend income</i> | <i>Net gain under Sec 1231 (other than due to casualty or theft)</i> |
| <i>Royalty income</i> | <i>Net short-term capital gain</i> |
| <i>Other income items per Schedule K (attach schedule)</i> | |

Enter the total of these items on Line 10 (attach a copy of Schedule K, and rental schedule(s), if applicable).

Line 11: If a deduction is taken on federal Form 1120 for a net operating loss then the amount of the net operating loss should be entered on Line 11.

Line 12: Total Income – Add Line 1 through Line 11.

Line 13: The following items which are allocated to the partners and shareholders are not included in losses or expenses on federal Form 1065 or Form 1120S and are allowed as deductions for license fee purposes on Line 13.

<i>Net loss from rental real estate activities</i>	<i>Net long-term capital loss</i>
<i>Net loss from other rental activities</i>	<i>Net loss under Sec 1231 (other than due to casualty loss or theft)</i>
<i>Portfolio loss</i>	<i>Net short-term capital loss</i>
<i>Deductions related to portfolio income</i>	<i>Charitable contributions</i>
<i>Other allowable deductions per Schedule K (attach schedule) Sec 179 expense</i>	

Enter the total of these items on Line 13 (attach a copy of Schedule K, and rental schedule(s), if applicable).

Note: Contributions to KEOGH plans, Simplified Employer Pension plans, and medical insurance premiums whether paid on behalf of partners, shareholders or individual owners are not deductible on the Net Profits License Fee Return.

Line 14: Enter the Alcoholic Beverage Sales Deduction. Follow the instructions below for computing the alcoholic beverage deduction (attach a copy of the computation sheet).

Kentucky alcoholic beverage sales divided by total sales equals the alcoholic beverage percentage.

Multiply the alcoholic beverage percentage by Line 12 minus Lines 13 and 15. **Note:** A deduction may be taken only if the business engaged in the selling of alcoholic beverages had a profit.

Line 15: Enter other adjustments not included elsewhere on this Worksheet (attach a full explanation, including amounts, of all items). Examples are Tobacco buyout income, interest on government securities, allowable expenses for which the licensee elected to take a credit against its federal income tax liability in lieu of a deduction for business expenses otherwise available to the licensee.

Line 16: Non-Taxable Income (attach schedule).

Line 17: Professional Expenses not reimbursed by the partnership (attach schedule).

Line 18: Total Deductions – Add Line 13 through 17.

Line 19: Adjusted Net Profit – Subtract Line 18 from Line 12. Enter here and on Line 1 of Section 1 on the front page.