

Ordinance on Franchise Fees on Bank Deposits (Model County Ordinance)
Kentucky Association of Counties

BANK SHARES TAX REPLACEMENT

AUTHORIZED BY H.B. 416 EFFECTIVE JULY 15,1996

BANK TAX REPLACEMENT FACT SHEET

- * This franchise fee replaces the bank shares tax which has been repealed by the passage of H.B. 416 by the General Assembly. It is not mandatory that the county adopt this fee; however, not adopting the fee will lead to a loss of current revenue.
- * The maximum rate which counties or cities may impose for this fee is twenty-five thousandths of one percent (.025%)--this rate was selected to replace lost revenue from repeal of the bank shares tax as closely as possible--but can be set at a rate lower than .025%.
- * This legislation was introduced and passed at the request of the Kentucky Bankers Association.
- * If you adopt this measure, you will need to determine who will be responsible for collecting this tax and maintaining the appropriate records. This can be the sheriff, the county treasurer or someone especially designated for the job.
- * Since this is a substitute and not a new tax, it will be less confusing for all concerned to keep its administration as similar to the bank shares tax (previous name) as possible.
- * To make sure there is no break in the collection of the revenue, the franchise fee must be in place by December 31, 1996. If it is enacted later, the county will lose the 1996 revenue and the revenue for any year in which the measure is not in effect.
- * Penalties and interest rates should correspond with any which have been imposed on other types of taxes, such as ad valorem.
- * Notify the Revenue Cabinet as soon as the measure is adopted. Notification should be addressed to Ms. Nancy Moore, Revenue Cabinet, Station 32, 200 Fair Oaks Lane, Frankfort, KY 40602.

MODEL ORDINANCE

Ordinance No. _____

AN ORDINANCE relating to franchise fees on bank deposits which are held by all financial institutions within the county of _____, for the health, education, safety, welfare and convenience of the inhabitants of _____ County.

This revenue measure will serve as the method of replacing the revenue formerly generated by KRS 136.270, the tax on bank and trust company shares, which has been repealed, effective July 15, 1996.

Be it ordered by the Fiscal Court of the County of _____, Commonwealth of Kentucky:

Section 1.

General Provisions. Pursuant to KRS Chapter 136, there is hereby imposed on each "financial institution", as defined in Section 2, located within the jurisdiction of _____ County, a franchise tax measured by the deposits in such institutions. All moneys collected pursuant to these sections shall be paid into the General Fund of the County to be used for the payment of proper expenditures as determined by the Fiscal Court.

Section 2.

Definitions.

A. "Deposits" means all demand and time deposits, excluding deposits of the United States government, state and political subdivisions, other financial institutions, public libraries, educational institutions, religious institutions, charitable institutions, and certified and officers' checks.

B. "Financial institution" means:

(1) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C., sec. 21 et seq., in effect on December 31, 1995, exclusive of any amendments made subsequent to that date, or a national bank organized after December 31, 1995, that meets the requirements of the National Bank Act in effect on December 31, 1995;

(2) Any bank or trust company incorporated or organized under the laws of any state, except a banker's bank organized under KRS 287.135;

(3) Any corporation organized under the provisions of 12 U.S.C. secs. 611 to 631, in effect on December 31, 1995, exclusive of any amendments made subsequent to that date, or any corporation organized after December 31, 1995, that meets the requirements of 12 U.S.C. secs. 611 to 631, in effect on December 31, 1995; or

(4) Any agency or branch of a foreign depository as defined in 12 U.S.C. sec. 3101, in effect on December 31, 1995, exclusive of any amendments made subsequent to that date, or any agency or branch of a foreign depository established after December 31, 1995, that meets the requirements of 12 U.S.C. sec. 3101 in effect on December 31, 1995.

Section 3.

Rate of Franchise Tax.

A. The rate of the franchise tax imposed on financial institutions shall be twenty-five thousandths of one percent (0.025%) of the deposits located in the jurisdiction of _____ County.

B. The amount and location of deposits in the financial institutions shall be determined by the method used for filing the summary of deposits report with the Federal Deposit Insurance Corporation.

C. The accounting method used to allocate deposits for completion of the summary of deposits shall be the same as has been utilized in prior periods.

Section 4.

Administration.

A. The Kentucky Revenue Cabinet shall certify to the local jurisdiction the amount of deposits within the jurisdiction and amount of the tax due.

B. The county shall issue bills to the financial institution by December 1 of each year.

C. In the transition year of 1996, the tax bills shall be issued to financial institutions no later than May 1, 1997.

Due Date.

A. The tax bill shall be due January 31 of the next year after it has been issued; thereafter, the bill shall be delinquent and subject to a penalty of percent and interest of percent per annum.

B. The financial institution shall be allowed a two percent (2.0 %) discount if the tax bill is paid by December 31 of the same year as the tax bill is issued.

C. The two percent (2%) discount shall be allowed on bills paid by May 31, 1997 for the transitional year. All other bills during this year shall be due June 1, 1997; thereafter, the bill shall be delinquent and subject to a penalty of _____ percent and shall bear interest at the rate of _____ percent per annum.

D. _____ County shall have a lien for taxes upon any and all property subject to the tax imposed by these sections, which lien shall be superior to all encumbrances prior or subsequent.

Records.

A. It shall be the duty of the _____ to collect and account for the franchise taxes imposed by this ordinance. The _____ shall keep records of the amount received from each financial institution and the date of receipt.

B. The Revenue Cabinet shall be notified of the tax rate imposed upon adoption of this ordinance and of any subsequent rate changes.

Section 5.

Effective Date. The provisions of this ordinance shall become effective upon passage.

INTRODUCED, SECONDED, AND GIVEN FIRST READING APPROVAL at a duly convened meeting of the Fiscal Court of _____ County, Kentucky, held on the _____ day of _____, 1996.

GIVEN SECOND READING AND ADOPTED at a duly convened meeting of the Fiscal Court of _____ County, Kentucky, held on the _____ day of _____, 1996.

County Judge/Executive

ATTEST:

Fiscal Court Clerk

GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

REGULAR SESSION 1996
HOUSE BILL NO. 416
TUESDAY, FEBRUARY 20, 1996

The following bill was reported to the Senate from the House and ordered to be printed.
*** ONLY PERTINENT SECTIONS OF THIS BILL HAVE BEEN ENCLOSED ***

AN ACT relating to revenue and taxation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. This Act may be cited as the Bank Franchise and Local Deposit Tax Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

As used in Sections 2 to 17 of this Act, unless the context requires otherwise:

(1) "Billing address" means the location indicated in the books and records of the financial institution, on the first day of the taxable year or the date in the taxable year when the customer relationship began, as the address where any notice, statement, or bill relating to a customer's account is mailed;

(2) "Borrower located in this state" means a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state or a borrower that is not engaged in a trade or business;

(3) "Credit card holder located in this state" means a credit card holder whose billing address is in this state;

(4) "Cabinet" means the Revenue Cabinet;

(5) "Commercial domicile" means:

(a) The location from which the trade or businesses principally managed and directed;
or

(b) The state of the United States or the District of Columbia from which the financial institution's trade or business in the United States is principally managed and directed, if a financial institution is organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or any territory or possession of the United States. It shall be presumed, subject to rebuttal, that the location from which the financial institution's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure;

(19) "Regular place of business" means an office at which the financial institution carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the financial institution;

(20) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country;

(21) "Syndication" means an extension of credit in which two (2) or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount;

(22) "Taxable year" means calendar year 1996 and every calendar year thereafter;

(23) "Transportation Property" means vehicles had vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles as well as any equipment or containers attached to the property, such as rolling stock, barges, or trailers;

(24) "United States obligations" means all obligations of the United States exempt from taxation under 31 U.S.C. sec. 3124(a) or exempt under the United States constitution or any federal statute, including the obligations of any instrumentality or agency of the United States that are exempt from state or local taxation under the United States Constitution or any statute of the United States.

SECTION 3. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

(1) Every financial institution regularly engaged in business in this Commonwealth at any time during the taxable year as determined under Section 6 of this Act shall pay an annual state franchise tax for each taxable year or portion of a taxable year to be measured by its net capital as determined in Section 5 of this Act and, for financial institutions with business activity that is taxable both within and without this Commonwealth, apportioned under Section 7 of this Act.

(2) The tax shall be in lieu of all city, county, and local taxes, except the real estate transfer tax levied in KRS Chapter 142, real property and tangible personal property taxes levied in KRS Chapter 132, taxes upon users of utility services, and the local franchise tax levied in Section 17 of this Act.

(3) Every financial institution regularly engaged in business in this Commonwealth shall be subject to all state taxes in effect on the effective date of this Act, except for the corporation income tax levied in KRS Chapter 141 and the corporation license tax levied in KRS Chapter 136.

SECTION 4. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

(1) The franchise tax imposed by Section 3 of this Act shall be at the rate of one and one-tenth percent (1.1%) of net capital as determined by Section 5 of this Act after apportionment, if applicable, under Section 7 of this Act.

(2) Each financial institution regularly engaged in business in this Commonwealth shall pay a minimum tax of three hundred dollars (\$300) per year.

SECTION 5. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

(1) Net capital shall be determined by adding the value determined under subsection (2) of this section for the current taxable and preceding four (4) calendar years and dividing the resulting sum by five (5). If a financial institution has not been in existence for a period of five (5) calendar years, net capital shall be determined by adding together the values determined under subsection (2) of this section for the number of calendar years the financial institution has been in existence and

become or became due. No person will be personally and individually liable pursuant to this section if that person did not have authority in the management of the business or financial affairs of the financial institution at the time the taxes imposed by Sections 2 to 17 of this Act become or became due. "Taxes" as used in this section includes interest accrued at the rate provided by KRS 131.010(6) and all applicable penalties and fees imposed under the provisions of Sections 2 to 17 of this Act and KRS 131.180, 131.440, and 131.990.

SECTION 16. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

(1) Penalties shall be assessed in accordance with KRS 131.180.

(2) Any financial institution subject to the annual franchise tax imposed by Section 3 of this Act that fails to file a return as required by Section 11 of this Act or that fails to pay the tax as listed on the return shall not maintain an action, suit, or proceeding in any court or before any agency in this Commonwealth or enforce in any way any obligation of any debts until the return is filed and the tax listed on the return is paid.

SECTION 17. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "deposits" means all demand and time deposits, excluding deposits of the United States government, state and political subdivisions, other

financial institutions, public libraries, educational institutions, religious institutions, charitable institutions, and certified and officers' checks.

(2) Counties, cities, and urban-county governments may impose a franchise tax on financial institutions measured by the deposits in the institutions located within the jurisdiction of the county, city, or urban-county government at a rate not to exceed twenty-five thousandths of one percent (0.025%) of the deposits if imposed by counties and cities and at a rate not to exceed fifty thousandths of one percent (0.050%) of the deposits if imposed by urban-county governments. The amount and location of deposits in the financial institutions shall be determined by the method used for filing the summary of deposits report with the Federal Deposit Insurance Corporation. The accounting method used to allocate deposits for completion of the summary of deposits shall be the same as has been utilized in prior periods. Any deviation from prior accounting methods may only be adopted with the permission of the cabinet.

(3) By August 15, 1997, and annually thereafter, each financial institution shall file with the cabinet, on a form prescribed by the cabinet, a report of all deposits located within this Commonwealth as of the preceding June 30, along with a copy of the most recent summary of deposits filed with the Federal Deposit Insurance Corporation. The cabinet shall review the report and certify to the local jurisdictions that have enacted the franchise tax by October 1 of each year the amount of deposits within the jurisdiction and amount of the tax due. The local taxing authority shall issue bills to the financial institution by December 1 and require payment, with a two percent (2%) discount by December 31, or without discount by January 31 of the next year.

(4) For calendar year 1996 only, each financial institution shall file with the cabinet on or before September 15, 1996, a report of all deposits located within this Commonwealth as of June 30, 1996, along with a copy of the most recent summary of deposits filed with the Federal Deposit Insurance Corporation. The cabinet shall review the report after being given notice by the local jurisdiction that the tax under this section was enacted during 1996, and shall certify to the local jurisdiction the amount of deposits within the jurisdiction and the amount of tax due by March 1, 1997. The local taxing authority shall issue bills to the financial institution by May 1, 1997, and require payment with a two percent (2%) discount by May 31, 1997, or without discount by June 30, 1997.

(5) The local jurisdiction shall notify the cabinet of the tax rate imposed upon the enactment of the tax. The local jurisdiction shall also notify the cabinet of any subsequent rate changes.

Section 18. KRS 65.910 is amended to read as follows:

(1) The uniform financial information report shall include, but not be limited to, information relating to demographics, bonded indebtedness, debt service requirements, lease-purchase agreements, tax rates and revenues, licenses, permits, fees, utilities,

intergovernmental revenues, miscellaneous revenues, charges for services, and all expenditures as set forth in this section.

(2) Demographic information shall include:

- (a) The name of the unit of local government;
- (b) The county in which the city or special district is located;
- (c) The classification of the city;
- (d) The population of the unit of local government;
- (e) The form of government of the city; and
- (f) The area development district in which the unit of local government is located.

(3) Bonded indebtedness and debt service information shall include:

- (a) The name of each project listed individually;
- (b) The type of bond issue used for each project;
- (c) The bonded indebtedness of each project;
- (d) The debt service requirements of each project; and
- (e) The specific source of debt service funds, whether local government appropriations or use of non-government funds.

(4) Lease-purchase agreement information shall include:

- (a) Purpose of the agreement;
- (b) Identity of the lessor;
- (c) Principal amount of the agreement;
- (d) Interest rate or rates for the agreement;
- (e) Date the local government entered into agreement;
- (f) Length of term of agreement;
- (g) Current annual debt service requirements for agreement; and
- (h) A list of and the purpose of any short-term renewal bank notes.

(5) Tax rate and revenue information shall include:

- (a) The compensating tax rate and the maximum tax rate for the current fiscal year and the preceding fiscal year;
- (b) The current fiscal year ad valorem tax rate levied by the local government, the preceding fiscal year revenues collected by the local government, and the assessed property valuation for real property, personal property, and motor vehicles and watercraft; and
- (c) The current fiscal year tax rate levied by the local government and the preceding fiscal year revenues collected by the local government for the following types of taxes:
 - 1. Occupational license tax on persons;
 - 2. Occupational license tax on business net profits, gross receipts, or a flat rate;
 - 3. Insurance premium tax on fire and allied perils, casualty liability only, vehicle, inland marine, health, life, all other risks taxed, minimum tax and company taxable reserves;
 - 4. Transient room tax;
 - 5. Restaurant tax;
 - 6. Bank franchise tax;
 - 7. Delinquent collections; and

8. Special purpose and other taxes.

voters of the city, the office may not be abolished before the end of the term of such assessor. Any city which elects to use the county assessment shall have access to the assessment records as soon as completed and may obtain a copy of that portion of the records which represents the assessment of property within such city by additional payment of the cost thereof. Once any city elects to use the county assessment, such action cannot be revoked without notice to the Revenue Cabinet and the property valuation administrator six (6) months prior to the next date as of which property is assessed for state and county taxes.

(2) In the event any omitted property is assessed by the property valuation administrator as provided by KRS 132.310 such assessment shall be considered as part of the assessment adopted by the city according to subsection (1) of this section.

(3) For purposes of the levy and collection of ad valorem taxes on motor vehicles, cities shall use the assessment required to be made pursuant to KRS 132.487(5).

(4) Notwithstanding the provisions of subsection (1) of this section, each city which elects to use the county assessment for ad valorem taxes levied for 1996 or subsequent years, and which used the county assessment for ad valorem taxes levied for 1995, shall appropriate and pay to the office of the property valuation administrator for the purposes set out in subsection (1) of this section an amount equal to the amount paid to the office of the property valuation administrator in 1995, or the amount required by the provisions of subsection (1) of this section, whichever is greater.

Section 20 KRS 134.290 is amended to read as follows:

(1) In counties where the state taxes charged to the sheriff for the year are less than seventy-five thousand dollars (\$75,000), he shall be allowed by the Revenue Cabinet, for collecting such taxes, a commission of ten percent (10%) upon the first ten thousand dollars (\$10,000) and four and one-quarter percent (4.25%) upon the residue. In all other counties, he shall be allowed ten percent (10%) upon the first five thousand dollars (\$5,000) and four and one-quarter percent (4.25%) upon the residue.

(2) In counties where county taxes and special district taxes, excluding school taxes, charged to the sheriff for the year are less than one hundred fifty thousand dollars (\$150,000), he shall be allowed by the county treasurer for collecting such taxes ten percent (10%) upon the first ten thousand dollars (\$10,000) and four and one-quarter percent (4.25%) upon the residue. In all other counties, he shall be allowed ten percent (10%) upon the first five thousand dollars (\$5,000) and four and one-quarter percent (4.25%) upon the residue.

(3) Notwithstanding the provisions of subsection (1) of this section, the Revenue Cabinet shall allow the sheriff a commission for 1996 and subsequent years equal to the

amount allowed the sheriff in 1995, or the amount required by the provisions of subsection (1) of this section, whichever is greater.

(4) Notwithstanding the provisions of subsection (2) of this section, the county treasurer shall allow the sheriff a commission for 1996 and subsequent years equal to the amount allowed the sheriff in 1995, or the amount required by the provisions of subsection (2) of this section, whichever is greater.

Section 21. KRS 132.590 is amended to read as follows:

(1) The compensation of the property valuation administrator shall be based on (1) the area, (2) the population, and (3) the assessed value of property in the county in accordance with the provisions of the following scale, with one (1) point per each ten (10) square miles or fraction thereof of the area of the county; one (1) point per one thousand (1,000) population of the county; one (1) point per million dollars (\$1,000,000) of assessment on the first one hundred million (\$100,000,000) and one-half (1/2) point per million dollars (\$ 1,000,000) of assessment over one hundred million (\$100,000,000):

Number of Points

Grade