

ORDINANCE NO. 120672

Amending Chapter 40, Article I, Code of Ordinances, by repealing Sections 40-10, 40-12, 40-34, 40-38, 40-39 and 40-40 and enacting new sections of like number in their place addressing interest, penalties, waiver of penalties, application of payments, collections and limitations on assessment of the business license tax; also amending Chapter 40, Article VI, Code of Ordinances by repealing Section 40-364.

WHEREAS, the Missouri General Assembly in the 2012 session enacted Senate Committee Substitute for House Bill 1504, which amended Section 71.625 of the Missouri Revised Statutes to require that the provisions on interest, penalty and the limitation for bringing suit for the collection of delinquent tax under Missouri sales tax law shall apply to delinquent municipal license taxes;

WHEREAS, in order to comply with Missouri law on municipal license taxes as amended by Senate Committee Substitute for House Bill 1504, it is necessary for the City to amend the provisions of its business license tax ordinances pertaining to interest, penalty and limitation for collection of delinquent tax; NOW THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. Chapter 40, Article I, of the Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Sections 40-10, 40-12, 40-34, 40-38, 40-39 and 40-40, and enacting in its place new sections of like number, and subject matter, to read as follows:

Sec. 40-10. Underestimated anticipated annual gross receipts, gross business or gross commissions.

When any preliminary license tax shall be based on the best estimate of the applicant and such estimate shall prove to be less than 80 percent of the actual annual gross receipts, annual gross business or annual gross commissions, or any combination thereof, computed pursuant to section 40-63, interest at the rate per annum determined by Section 32.065 of the Missouri Revised Statutes upon any resulting deficiency of the preliminary license tax shall be added to the annual license tax, computed from the due date of the preliminary license tax to the date of payment of the annual license tax; provided, however, that no interest shall be applied to a resulting deficiency wherein the preliminary license tax was paid on the basis of the licensee's true preceding year's annual gross receipts, annual gross business or annual gross commissions.

Sec. 40-12. Failure to file return or pay tax when due – penalties.

(a) *Failure to file on time.* In case of failure to file any return required under this chapter on or before the date prescribed, a penalty shall be added to the amount required to be shown as tax on the return in the same amount as the penalty prescribed in subsection 1 of Section 144.250 of the Missouri Revised Statutes, to-wit: five percent of

ORDINANCE NO. 120672

the amount of such tax if the failure is not for more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

- (1) No penalty shall be assessed when it is shown that the failure to file on time is due to reasonable cause and not the result of willful neglect, evasion or fraudulent intent.

(b) *Failure to pay on time.* In the case of failure to pay the full amount of tax required under this chapter on or before the date prescribed, a penalty shall be added to the tax in the same amount as the penalty prescribed in subsection 2 of Section 144.250 of the Missouri Revised Statutes, to-wit: an amount equal to five percent of the deficiency.

- (1) No penalty shall be assessed when it is shown that the failure to pay on time is due to reasonable cause and not the result of willful neglect, evasion or fraudulent intent.

(c) *Failure to pay on time, negligence or intentional disregard of rules and regulations.* In the case of failure to pay the full amount of tax required under this chapter on or before the date prescribed due to negligence or intentional disregard of rules and regulations, but without intent to defraud, a penalty shall be added to the tax in the same amount as the penalty prescribed in subsection 3 of Section 144.250 of the Missouri Revised Statutes, to-wit: an amount equal to five percent of the deficiency.

(d) A licensee may be assessed a penalty for failure to pay on time in addition to a penalty assessed for failure to file on time. The licensee shall be subject to either the five percent penalty in subsection (b) or (c) of this section, but not both.

(e) *Abatement of penalties.* The Commissioner has authority to abate a penalty assessed under this section where the license shows the failure to file on time or to pay on time was due to reasonable cause.

Sec. 40-34. Interest on delinquent taxes.

The interest provisions of Section 144.170 of the Missouri Revised Statutes shall apply to all license taxes under this chapter not paid on the date when the license tax becomes due and payable. Pursuant to Section 144.170 of the Missouri Revised Statutes, delinquent taxes shall bear interest at the rate determined by Section 32.065 of the Missouri Revised Statutes.

Sec. 40-38. Payments applied.

Business license payments received shall first be applied to the tax due, then to interest, and then to any penalty imposed.

Sec. 40-39. Collection of unpaid taxes.

All taxes imposed by this chapter, together with interest and penalties, shall be recoverable by the city as any other debt is recoverable. The city shall be entitled to recover a reasonable attorney's fee not exceeding ten percent of the tax and penalty due as costs in every suit for the collection of delinquent taxes under this chapter, as authorized by article VIII, section 817 of the City Charter.

Sec. 40-40. Limitations on assessment.

All assessments under this chapter shall be made within three years after the later of the date the return was filed or required to be filed, except that in the case of a fraudulent return or of neglect or refusal to make a return with respect to any tax under this chapter, there is no limitation on the period of time the commissioner has to assess.

Section 2. Chapter 40, Article VI, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 40-364, Same – Penalty for violation of sections 40-362 and 40-363.

Approved as to form and legality

Stephen Walsh
Assistant City Attorney