

ORDINANCE NO. 120514

Amending Chapter 68, Article VI, Code of Ordinances, by repealing Section 68-386, Collection at source; withholdings, and enacting in its place a new section of like number and subject matter to require employers paying earnings subject to the earnings tax to 250 or more of employees to submit earnings tax withholding returns and supporting data by electronic filing, and amending penalty provisions for employers who fail to comply with filing requirements.

WHEREAS, electronic filing of various tax withholding returns is now customary in many jurisdictions and is required by the Internal Revenue Service and the State of Missouri for larger employers; and

WHEREAS, electronic filing would reduce administrative costs for the City and enhance collections of the earnings tax; and

WHEREAS, Kansas City employers with 250 or more employees are accustomed to filing electronic tax withholding returns with the Internal Revenue Service and the State of Missouri and would not be unduly burdened by a similar requirement to electronically file earnings tax withholding returns with the City; and

WHEREAS, the existing penalties for failure to file withholding returns or failure to file timely or complete returns are inadequate to assure compliance by employers; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. Chapter 68, Article VI, entitled Earnings and Profits Tax, is hereby amended by repealing Section 68-386, Collection at source; withholdings, and enacting in its place a new section of like number and subject matter, to read as follows:

**Sec. 68-386. - Collection at source; withholdings.**

Each employer maintaining an office or transacting any business within this city and making payment of any earnings taxable under this article to a resident or nonresident individual shall deduct and withhold from such earnings for each payroll period of such individual one percent of such earnings as earnings tax. The employer shall remit the amount of earnings tax withheld to the director in the manner prescribed in this article.

- (1) Exempted employees. No employer shall be required to withhold the tax due on any earnings paid to employees for whom the employer is not required to withhold social security tax under the Federal Insurance Contributions Act.
- (2) Nonresident employers. Any nonresident employer making payment of any earnings taxable under this article to a resident or nonresident who

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performs services partly or wholly within the city, shall be subject to the provisions of this article. Further any nonresident employer will subject itself to the provisions of this article if it willingly withholds or opens a withholding account with the city for tax due under this article from residents of the city.

- (3) Employer as trustee. Each employer, in collecting the tax, shall be deemed to hold the withheld tax until payment is remitted to the city as trustee for the city.
- (4) Accounting to director; returns.
  - a. Quarterly returns. On or before the last day of the month following the end of each calendar quarter, each employer shall make a return to the director setting forth the compensation received and earnings tax withheld from employees. All returns shall be in a form prescribed by the director and shall be subject to the rules and regulations prescribed therefor by the director. For calendar quarters beginning on or after January 1, 2013 each employer subject to this section paying earnings taxable under this article to 250 or more employees in that calendar quarter shall file such quarterly return electronically through the Internet in the manner prescribed by the Commissioner of Revenue.
  - b. Annual returns. Each employer shall make to the director a return for the preceding calendar year. All returns shall be in a form prescribed by the director and shall be subject to the rules and regulations prescribed therefor by the director and shall be accompanied by employee records containing the employer ID number ("EIN"), the employee's name, Social Security Number, city and state of residence, total wages earned, wages subject to the city earnings tax and earnings tax withheld. To satisfy this requirement, the employer may file the W-2 information provided to the federal and state authorities for such year that includes this information. No part of this provision shall be construed to require any taxpayer to furnish the director with a copy of his federal or state income tax return. For annual returns for calendar years 2013 and later, each employer subject to this section paying earnings taxable under this article to 250 or more employees in one or more calendar quarters during the year shall file such annual returns and accompanying employee records electronically through the Internet in the manner prescribed by the Commissioner of Revenue.
    1. Due dates for annual returns. Employers shall make this return on or before the last day of February, or the next

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succeeding day which is not a Saturday, Sunday, or city holiday.

- c. Fees for noncompliance (Years 2012 and earlier).
  - 1. Late fees. To encourage the prompt and complete filing of returns, whenever any return, as required by this section, has remained unfiled or incompletely filed after the due date fixed for filing, a fee of one percent of the annual amount withheld by the employer, up to a maximum of \$1,000.00, shall be imposed.
  - 2. Improper format. An employer who fails to file this return in the format prescribed by the director will be in violation of this section and will be assessed a fee per employee record not filed in accordance with this section. This fee will defray the city's costs of converting this information into the proper format and will be determined annually by the director.
  - 3. The fees under this subsection shall apply to returns for tax periods ending on or before December 31, 2012.
- d. Penalties for noncompliance with filing requirements (Years 2013 and later).

To encourage the prompt and complete filing of withholding returns, whenever any return, as required by this section, has after the due date, not been filed, not been filed with all required information or employee records, not been filed with correct information, or not been filed in the required format or by the required method or medium, including electronic filing, the following penalties shall be assessed:

- 1. If a correct return is filed within 30 days after the due date, the penalty assessed is \$30 for each employee for whom the employer was required to withhold under this section, but the total penalties imposed for all such failures during any calendar year shall not exceed \$75,000.
- 2. If a correct return is filed more than 30 days after the due date but within 150 days after the due date, the penalty assessed is \$60 for each employee for whom the employer was required to withhold, but the total penalties imposed for all such failures during any calendar year shall not exceed \$200,000.

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3. If a correct return is not filed within 150 days after the due date, the penalty assessed is \$100 for each employee for whom the employer was required to withhold, but the total penalties for all such failures during any calendar year shall not exceed \$500,000.
4. The penalties under this subsection shall apply to returns for tax periods commencing after December 31, 2012.
- e. Exceptions to penalty. The following are exceptions to the penalties for noncompliance with filing requirements in subsections c and d.
  1. The penalty will not apply to any failure that was due to reasonable cause. This requires a showing that the failure was due to an event beyond the taxpayer's control or due to significant mitigating factors.
  2. An inconsequential error or omission is not considered a failure to include correct information.
- (5) Accounting to employees. Every such employer shall furnish each employee on or before the last day of February, or the next succeeding day which is not a Saturday, Sunday, or city holiday, of each year with the pertinent information as described in subsection (4) of this section for the preceding calendar year.
- (6) Remittance of earnings tax withheld. From and after January 1, 1994, any employer who deducts and withholds the city earnings taxes from employees' earnings shall remit to the director or the director's agent all earnings taxes withheld from each payroll by the same due date prescribed by the state for the remittance of income tax withheld on the payroll, with the exception of employers who remit income tax withheld to the state on an annual basis. Those employers must remit earnings tax withheld for each calendar quarter to the director or his agent by the last day of the month following the end of the quarter.
- (7) Change in remittance schedule. An employer may petition the director, by the method prescribed in the rules and regulations, to change the frequency with which the employer remits earnings tax withheld under the following circumstances:
  - a. The employer is not domiciled in the city and withholds tax on a voluntary basis. The director is authorized to enter into agreements with such employers to allow them to remit earnings tax withheld

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according to the schedule for income tax withheld of the state in which the employer is domiciled.

- b. The employer has a city payroll schedule significantly different from the payroll schedule of its other operations, and the city payroll is significantly smaller than the payroll of its other operations.
- (8) Final return required. Any entity that ceases business and owes tax under this article must make a final return to the director. This return shall be subject to the provisions of this article.
- (9) Effect of failure to withhold or remit.
- a. The failure of any employer to withhold the earnings tax when required to do so by this section or to remit the amount of tax withheld to the director or his agent in a timely manner shall subject the employer to liability for the amount of the tax that should have been withheld or should have been remitted and any penalties and interest with respect thereto. In addition the employer is subject to the penalties set forth in sections 1-17 and 68-401 of the Code of Ordinances.
  - b. Additionally, the failure of any employer to deduct or withhold at the source the amount of tax due from the employee shall not relieve the employee from the duty of making a return.

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Approved as to form and legality:

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Stephen Walsh  
Assistant City Attorney