

ORDINANCE NO. 130044

Amending various tax provisions of Chapters 40, 50 and 68, Code of Ordinances, in connection with the implementation of the City's new tax administration software system.

WHEREAS, the Revenue Division is in the process of converting to a new automated tax database and tax administration software system;

WHEREAS, the new tax administration software will improve efficiency of tax collection by the Revenue Division;

WHEREAS, based on the recommendations of the Revenue Division, certain tax provisions in the Code of Ordinances need to be amended so that the City's procedures for tax administration, assessment and collection in its ordinances are consistent with the procedures and functions in the new automated system; NOW THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. Chapter 40, Article I, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 40-1A, entitled "Definitions," and enacting in its place a new Section 40-1A of like title and subject matter to read as follows:

Sec. 40-1A. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City means the City of Kansas City, Missouri as defined by the City Charter.

Commissioner means the Commissioner of Revenue of the City of Kansas City, Missouri.

Insurance company means a corporation or association whose business is to make contracts of insurance by which it agrees to indemnify the other parties thereto from a loss or damage which they may suffer from a specified peril. An insurance company includes mutual companies and stock companies. A mutual insurance company is one whose fund for the payment of losses consists not of capital subscribed or furnished by outside parties, but of premiums mutually contributed by the parties insured. A stock company is one organized according to the usual form of business corporations, having a capital stock divided into shares, which, with current income and accumulated surplus, constitutes the fund for the payment of losses, policy-holders paying fixed premiums and not being members of the association unless they also happen to be stockholders.

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Investment company means any person registered as an investment company with the United States Securities and Exchange Commission under the federal Investment Company Act of 1940, as amended from time to time.

Last known address means: (a) the address given in the licensee's last city tax return filed, unless after the filing of such return the licensee shall have notified the commissioner of revenue of a change of address; or, (b) a mailing address for the licensee provided by the United States Postal Service to the commissioner, including information from the United States Postal Service National Change of Address database; whichever address shall have been provided later to the commissioner of revenue.

Motor vehicle business means any person who would qualify as a motor vehicle dealer as defined in RSMo § 301.550, as amended from time to time, and includes a new motor vehicle franchise dealer, a used motor vehicle dealer and a wholesale motor vehicle dealer, all as defined in such statute.

Person means a person as defined in [Section 1-10](#) of the Code of Ordinances.

Securities broker or securities dealer means any person who meets the definition of a broker-dealer under the Missouri Securities Act of 2003, RSMo §§ 409.1-101 to 409.7-703, as amended from time to time.

Subcontractor, as used in [section 40-79](#) of this chapter, does not include a person who merely furnishes material or supplies without fabricating them in the performance of the building project.

Section 2. Chapter 40, Article I, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing subsection (e) of Section 40-12, entitled "Failure to file return or pay tax when due—Penalties," and enacting in its place a new subsection (e) of Section 40-12 of like title and subject matter to read as follows:

Sec. 40-12. Failure to file return or pay tax when due—Penalties.

(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. The Commissioner may also abate or waive penalties that would otherwise be assessable under this section by entering into voluntary disclosure agreements with taxpayers under criteria established by the Commissioner.

Section 3. Chapter 40, Article I, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 40-30, entitled "Claims for refund of the license fee," and enacting in its place a new Section 40-30 of like title and subject matter to read as follows:

Sec. 40-30. Claims for refund of the license fee.

(a) *Proof required.* Before any claim for credit or refund of alleged overpayment of the license tax shall be granted, the licensee shall present satisfactory proof in support

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thereof to the commissioner, such as copies of federal and state income tax returns, state sales tax returns, statements signed by certified public accountants, and original records or ledger sheets showing the amounts which were lawfully owing to the city by the licensee for the term of such license, or at the option of the commissioner of revenue, shall submit to an audit of the licensee's records at the place of business of the licensee, to be made by the commissioner of revenue or any deputy, accountant or employee if ordered to do so by the commissioner; but, if it appears from such audit that the licensee has failed to pay the true amount due for his license, or for a previous license, then such licensee shall be subject to the penalties and requirements of sections 40-22 and 40-25

(b) *Time limitations on credit or refund.* A claim for credit or refund of an overpayment of any tax imposed by this chapter shall be filed by the licensee within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires later.

(c) Notwithstanding any other provision of this chapter, in the case of any overpayment of any license tax under this chapter, the commissioner may, instead of granting a refund, credit and apply the amount of such overpayment against any uncontested delinquent tax liability of any type whatsoever owed by the taxpayer to the city, and within the period of limitations for collection.

Section 4. Chapter 40, Article I, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing subsection (b) of Section 40-35, entitled "Assessment," and enacting in its place a new subsection (b) of Section 40-35 of like title and subject matter, to read as follows:

Sec. 40-35. Assessment

(b) *Assessment procedure.* The notice of assessment shall state separately the amount of tax due together with penalty imposed thereon. The commissioner may issue assessments manually or through the use of an automated system or systems. The notice of assessment shall be served upon the licensee by deposit in the United States mail, postage prepaid thereon, addressed to the licensee at the licensee's last known address. For purposes of this section, a service by mail is complete at the time of deposit in the United States mail. A person who has been assessed shall have 30 days to respond to the assessment by:

- (1) Paying the assessment in full and filing the necessary return(s), which shall discharge the assessment; or
- (2) Paying the tax under protest, including with the payment a written statement setting forth the grounds on which the protest is based, pursuant to RSMo § 139.031; or
- (3) Requesting a conference with the commissioner pursuant to section 40-36 of this article.

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If the licensee does not respond to the assessment, in one of the ways specified herein, within 30 days of the date of mailing thereof, such assessment shall be deemed true and correct and may be recovered by the city under the provisions of section 40-39 of this article.

Section 5. Chapter 40, Article VI, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing subsection (e) of Section 40-344, entitled “Electric light or power businesses—Generally,” and enacting in its place a new subsection (e) of Section 40-344 of like subject matter, to read as follows:

Sec. 40-344. Electric light or power businesses—Generally.

(e) *Penalties for failure to file reports or pay tax when due.* The penalties for failure to file on time any report or return required under this section or to pay on time the license fee or tax due under this section are as specified in Section 40-12 of this Chapter.

Section 6. Chapter 40, Article VI, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing subsection (e) of Section 40-346, entitled “Gas businesses—Generally,” and enacting in its place a new subsection (e) of Section 40-346 of like subject matter, to read as follows:

Sec. 40-346. Gas businesses—Generally.

(e) *Penalties for failure to file reports or pay tax when due.* The penalties for failure to file on time any report or return required under this section or to pay on time the license fee or tax due under this section are as specified in Section 40-12 of this Chapter.

Section 7. Chapter 40, Article VI, Code of Ordinances of the City of Kansas City, Missouri, is as hereby amended by repealing subsection (f) of Section 40-348, entitled “Heating companies—Generally,” and enacting in its place a new subsection (f) of Section 40-348 of like subject matter, to read as follows:

Sec. 40-348. Heating companies—Generally.

(f) *Penalties for failure to file reports or pay tax when due.* The penalties for failure to file on time any report or return required under this section or to pay on time the license fee or tax due under this section are as specified in Section 40-12 of this Chapter.

Section 8. Chapter 40, Article VI, Code of Ordinances of the City of Kansas City, Missouri, is as hereby amended by repealing subsection (b) of Section 40-360, entitled “Telephone businesses—Generally,” and enacting in its place a new subsection (b) of Section 40-360 of like subject matter, to read as follows:

Sec. 40-360. Telephone businesses—Generally.

(b) *Penalties for failure to file reports or pay tax when due.* The penalties for failure to file on time any report or return required under this section or to pay on time the license fee or tax due under this section are as specified in Section 40-12 of this Chapter.

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Section 9. Chapter 40, Article VI, Code of Ordinances of the City of Kansas City, Missouri, is as hereby amended by repealing subsection (e) of Section 40-367, entitled “Water businesses,” and enacting in its place a new subsection (e) of Section 40-367 of like subject matter, to read as follows:

Sec. 40-367. Water businesses.

(e) *Penalties for failure to file reports or pay tax when due.* The penalties for failure to file on time any report or return required under this section or to pay on time the license fee or tax due under this section are as specified in Section 40-12 of this Chapter.

Section 10. Chapter 50, Article IV, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 50-115, entitled “Same—Penalty for tendering worthless check in payment of taxes, fees or other charges due city,” and enacting in its place a new Section 50-115 of like subject matter to read as follows:

Sec. 50-115. Same—Penalty for tendering insufficient funds check or electronic funds transfer in payment of taxes, fees or other charges due city.

(a) Any person who shall make, draw, utter or deliver any check, draft, money order or electronic funds transfer in payment of taxes, license fees, service charges, permit fees or other lawful obligations due the city, with or without intent to defraud, which check, draft, money order or electronic funds transfer for any reason, except as provided in subsection (b) of this section, shall be returned to the city unpaid by the bank or other depository upon which the check, draft, money order or electronic funds transfer shall have been drawn, shall pay to the city treasurer or other officer authorized to receive and collect payment of such taxes, license fees, service charges, permit fees or other lawful obligations due the city, in addition to the face amount of such check, draft, money order or electronic funds transfer, a penalty in the amount set forth in the schedule in subsection (d) of this section for each such check, draft, money order or electronic funds transfer. Such penalty shall be collectible in the same manner as such check, draft, money order, or electronic funds transfer, or in the same manner as the obligation for which such check, draft, money order or electronic funds transfer was given the city. Such penalty shall be in addition to and not in lieu of any penalty which may be assessed for any violation of the provisions of [section 50-114](#)

(b) No penalty authorized by subsection (a) of this section shall be paid or owed the city when such check, draft, money order or electronic funds transfer is returned to the city or payment denied because such bank or other depository upon which the check, draft or money order shall have been drawn has been legally closed by any governmental or other regulatory authority on or after the date upon which such check, draft, money order or electronic funds transfer is drawn.

(c) *Electronic funds transfer defined.* As used in this section and in Section 50-116, The term “electronic funds transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated

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through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(d) The schedule of penalties is as follows:

Face Amount of Check or Electronic Funds Transfer	Penalty
Less than \$100.00	\$15.00
Any amount over \$100.00	\$15.00 plus 2 percent of the face value of the check or electronic funds transfer

Section 11. Chapter 50, Article IV, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 50-116, entitled “Same—Effect of tendering worthless check in payment of taxes, fees or other charges due city,” and enacting in its place a new Section 50-116 of like subject matter to read as follows:

Sec. 50-116. Same—Effect of tendering insufficient funds check or electronic funds transfer in payment of taxes, fees or other charges due city.

The making, drawing, uttering or delivering of any check, draft, money order or electronic funds transfer in payment of taxes, license fees, service charges, permit fees or other lawful obligations due the city, with or without intent to defraud, which check, draft, money order or electronic funds transfer shall for any reason be returned to the city unpaid by the bank or other depository upon which drawn, shall not be deemed to constitute satisfaction of any such obligation or of any claim of the city for interest, penalties or other charges thereon, or to prevent or interrupt the accrual of any interest, penalties or other charges thereon which would have become payable to the city in the absence of such making, drawing, uttering or delivering of such check, draft, money order or electronic funds transfer.

Section 12. Chapter 68, Article VI, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 68-381, entitled “Definitions,” and enacting in its place a new Section 68-381 of like title and subject matter to read as follows:

Sec. 68-381. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business means any enterprise, activity, profession, trade or undertaking of any nature, that generates gross receipts.

City means the City of Kansas City, Missouri, as defined by City Charter.

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Commissioner of revenue means the delegate of the director of finance charged with the administration of the revenue division, a division of the finance department.

Corporation means a legal entity recognized as a corporation and organized under the laws of any state or territory of the United States or any foreign country.

Day worked in the city means any day or the portion thereof in which the taxpayer renders or performs services in the city.

Days worked. Days worked will be 260 days unless otherwise defined in the regulations adopted pursuant to this article.

Director means the director of finance of the city, or the director's delegate, the commissioner of revenue.

Earnings means compensation paid for personal services, whether denominated as wages, salary, commission, bonus or otherwise, whether paid or payable, in cash or in property.

Employee means any individual who works for earnings in the service of an employer. Any person for whom an employer is required to withhold for either federal income tax or social security tax or on whose account payments are made under the state Unemployment Compensation Act shall be deemed to be an employee.

Employer. Any person required to withhold for either federal income tax or social security tax or make payments under the state Unemployment Compensation Act shall be deemed to be an employer, whether or not such employer is engaged in business.

Employer within the city means any employer who maintains an office, branch or other place of business within the city.

Fiscal year means an accounting period of 12 months ending on any day other than December 31.

Last known address means: (a) the address given in the taxpayer's last city tax return filed, unless after the filing of such return the taxpayer shall have notified the commissioner of revenue of a change of address; or, (b) a mailing address for the taxpayer provided by the United States Postal Service to the commissioner, including information from the United States Postal Service National Change of Address database; whichever address shall have been provided later to the commissioner of revenue.

Net profits means the gross receipts from the operation of a business less deductions for ordinary and necessary business expenses as determined for the purpose of federal taxable income with adjustments as detailed in the regulations adopted pursuant to this article.

Partnership means any entity recognized as a partnership and organized under the laws of any state or territory of the United States or any foreign country.

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Pass-through entity means any entity for which the state allows taxable income to pass through to the owners including but not limited to partnerships, certain limited liability companies, or other entities recognized as pass-through entities by the state except that the term pass-through entity does not include any corporation.

Person means every natural person, business or other entity. Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to businesses or other entities shall mean the partners, members, owners or officers thereof.

Resident means any individual, business or other entity residing or domiciled within the city.

Taxable year means the calendar year or the fiscal year used as the basis on which net earned profit is to be computed. The taxpayer shall use the same fiscal year for the purposes of the taxes imposed by this article as the taxpayer uses for state and federal income tax purposes.

Taxpayer means any person subject to tax, or required to withhold tax, under this article.

Section 13. Chapter 68, Article VI, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 68-393, entitled "Refunds," and enacting in its place a new Section 68-393 of like title and subject matter, to read as follows:

Sec. 68-393. Refunds.

(a) When any taxpayer has paid during the taxable year more than the amount of the tax to which the city is entitled under the provisions of this article, a refund of the amount so overpaid shall be made provided a proper claim for refund of such overpayment of tax is filed by the taxpayer within five years from the date when the return for the taxable year was due; and provided, further, that no refunds of less than \$1.00 shall be allowed.

(b) Notwithstanding any provision in subsection (a), for taxes which are not paid until after the Director has made an assessment, no person shall be entitled to file a claim for refund.

(c) Notwithstanding any provision in subsection (a), in the case of any overpayment of any tax under this article, the commissioner may, instead of granting a refund, credit and apply the amount of such overpayment against any uncontested delinquent tax liability of any type whatsoever owed by the taxpayer to the city, and within the period of limitations for collection.

Section 14. Chapter 68, Article VI, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 68-394, entitled "Penalties and

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interest on unpaid tax,” and enacting in its place a new Section 68-394 of like title and subject matter, to read as follows:

Sec. 68-394. Penalties and interest on unpaid tax.

(a) All taxes imposed by this article and remaining unpaid after they have become due shall be subject to a penalty of five percent per month from the date payment was due up to a maximum of 25 percent, plus interest at the rate of 12 percent per annum from the due date to date of payment.

(b) If the estimated balance of tax due submitted with a timely request of extension of time to file is at least 90 percent of the amount due for that tax period, then no penalties will apply.

(c) Payments received under this article for any tax period shall first be applied to the tax due, then to interest, then to any penalty imposed.

Section 15. Chapter 68, Article VI, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing subsections (7) and (8) of Section 68-395, entitled “Duties and authority of director,” and enacting in their place new subsections (7) and (8) of Section 68-395 of like title and subject matter, to read as follows:

Sec. 68-395. Duties and authority of director.

- (7) *Assessment against delinquent taxpayers.* If the director determines that any taxpayer subject to the provisions of this article has a tax liability for which that taxpayer has filed no return or has filed an incorrect return and has failed to pay the full amount of tax due, the director shall issue an assessment showing the amount of tax due together with penalty and interest that may have accrued thereon. The director may issue assessments manually or through the use of an automated system or systems. Such assessment shall be served upon the taxpayer by mailing to the taxpayer's last known address. If the taxpayer does not respond to the assessment, by contacting the director, within 30 days of the date of the mailing thereof, such assessment shall be deemed true and correct and may be recovered under the provisions of section 68-391. If the taxpayer does respond to the assessment within 30 days of the date of the mailing thereof, the taxpayer is granted an additional 60 days to pay the assessment and file the necessary returns or to protest all or any part of any taxes assessed against him pursuant to section 139.031, RSMo. The director is authorized to grant extensions of this 60 day period upon good cause. After the expiration of this 60-day period or any applicable extension, such assessment shall be deemed true and correct and may be recovered pursuant to section 68-391
- (8) *Waive penalties.* The director may waive all or any portion of penalties imposed under this article as a result of nonpayment of tax where the

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taxpayer shows the nonpayment was due to reasonable cause. This authority may be exercised at the discretion of the director under special circumstances. The director may also waive penalties under this article by entering into voluntary disclosure agreements with taxpayers under criteria established by the director. This authority shall in no way be construed so as to authorize the waiver of interest by the director.

Section 16. Chapter 68, Article IX, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 68-555, entitled "Definitions," and enacting in its place a new Section 68-555 of like title and subject matter, to read as follows:

Sec. 68-555. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City means a constitutional charter city located in four or more counties.

Commissioner of revenue means the delegate of the director of finance charged with the administration of the revenue division, a division of the finance department.

Director means the director of finance of the city.

Food means all articles commonly used for food or drink, including alcoholic beverages, the provisions of RSMo ch. 311 notwithstanding.

Food establishment means any cafe, cafeteria, lunchroom or restaurant which sells food at retail.

Governing body means the city council charged with governing the city.

Gross receipts means the gross receipts from retail sales of food prepared on the premises and delivered to the purchaser (excluding sales tax).

Hotel, motel and tourist court mean any structure or building, under one management, which contains rooms furnished for the accommodation or lodging of guests, with or without meals being so provided, and kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation to transient guests or permanent guests and having more than eight bedrooms furnished for the accommodations of such guests. Sleeping accommodations consisting of one bedroom or more, that rent for less than \$20.00 per day or less than \$85.00 per week, and shelters for the homeless operated by not-for-profit organizations, are not a hotel, motel or tourist court for purposes of the convention and tourism tax.

Last known address means: (a) the address given in the taxpayer's last city tax return filed, unless after the filing of such return the taxpayer shall have notified the

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commissioner of revenue of a change of address; or, (b) a mailing address for the taxpayer provided by the United States Postal Service to the commissioner, including information from the United States Postal Service National Change of Address database; whichever address shall have been provided later to the commissioner of revenue.

Permanent guest. A person who contracts in advance for a room in a hotel, motel or tourist court for a period of more than 31 consecutive days and who actually remains a guest of the hotel or tourist court by the physical occupation of such room by an individual for more than 31 days is considered a permanent guest, and the rental or lease receipts from the letting of the rooms are not subject to the convention and tourism tax. A permanent guest is not considered synonymous with a permanent room; i.e., the rent or lease of accommodations on a permanent basis to a person for use by its employees is subject to the tax.

Person means any individual, corporation, partnership or other entity.

Taxpayer means a person, whether an individual, corporation, partnership or other entity, required under this article to pay convention and tourism tax.

Transient guest means a person who occupies a room in a hotel, motel or tourist court for 31 days or less during any calendar quarter.

Section 17. Chapter 68, Article IX, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 68-560, entitled "Interest on delinquent taxes," and enacting in its place a new Section 68-560 of like title and subject matter, to read as follows:

Sec. 68-560. Interest on delinquent taxes.

All taxes imposed by this article not remitted to the commissioner and paid to the city treasurer by the person required to remit the tax on the date when the tax becomes due and payable to the city treasurer shall bear interest at the rate determined by RSMo 32.065, from and after such date until paid. Payments received under this article for any tax period shall first be applied to the tax due, then to interest, then to any penalty imposed.

Section 18. Chapter 68, Article IX, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing subsection (7) of Section 68-568, entitled "Powers and duties of commissioner," and enacting in its place a new subsection (7) of Section 68-568, of like subject matter to read as follows:

Sec. 68-568. Powers and duties of commissioner.

- (7) *Waive penalties and enter into voluntary disclosure agreements.* The director may waive all or any portion of penalties imposed under this article as a result of nonpayment of tax where the taxpayer shows the nonpayment was due to reasonable cause. This authority may be exercised at the discretion of the director under special circumstances. The director

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may also waive penalties under this article by entering into voluntary disclosure agreements with taxpayers under criteria established by the director. This authority shall in no way be construed so as to authorize the waiver of interest by the director.

Section 19. Chapter 68, Article IX, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing subsection (a) of Section 68-570, entitled "Assessment of unpaid tax," and enacting in its place a new subsection (a) of Section 68-570, of like title and subject matter, to read as follows:

Sec. 68-570. Assessment of unpaid tax.

(a) If the commissioner determines that any person subject to the convention and tourism tax has a liability for which he has filed no return or has filed an incorrect return and has failed to pay the full amount due, the commissioner shall issue an assessment showing the amount of tax due, together with penalty and interest that may have accrued thereon. The commissioner may issue assessments manually or through the use of an automated system or systems. Such assessment shall be served upon the taxpayer by mailing to the taxpayer's last known address.

Approved as to form and legality:

Stephen Walsh
Assistant City Attorney