

ORDINANCE NO. 170402

Amending Chapter 68, Article VI, Code of Ordinances, entitled Earnings and Profits Tax, by repealing Sections 68-381, 68-385, 68-386, and 68-395, and enacting in lieu thereof new sections of like number and subject matter; and further amending Chapter 68, Article VI, by repealing Section 68-401.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 68, Article VI, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Sections 68-381, Definitions, 68-385, Exemptions, 68-386, Collection at source; withholdings, and 68-395, Duties and authority of director, and enacting in lieu thereof new sections of like number 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.

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.

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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. *Net profits shall be determined by deducting the necessary expenses of operation from the gross profits or earnings.*

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.

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.

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

Sec. 68-385. Exemptions.

(a) The income referred to in section RSMo § 92.130, as exempt from the earnings and profits tax of the city, shall not be taxable under this article.

(b) *Active duty pay exemption.* The term "earnings" shall not include any compensation earned in the performance of active duty in the military service of the United States outside the city provided that during the time the taxpayer earned the compensation from active duty military service outside the city the taxpayer:

- (1) Did not maintain a dwelling in the city; and
- (2) Did maintain a dwelling outside the city due to military orders.

(c) *Exemption for combat zone pay and hostile fire/imminent danger pay.* Notwithstanding the requirements under subsection (b) of this section, "earnings" shall not include any compensation received as a member of the Armed Forces of the United States and excluded from federal gross income under the Internal Revenue Code:

- (1) For active service in a combat zone, or
- (2) For hospitalization as a result of wounds, disease or injury incurred while serving in a combat zone, or
- (3) As hostile fire/imminent danger pay for serving in an area in direct support of military operations in a combat zone.

(d) *Military pay exemption for taxable years beginning after January 1, 2017.* For taxable years beginning on or after January 1, 2017, the military service pay or allowance received by an active duty member of the Armed Forces of the United States or by a member of the National Guard or Reserves, including pay for drills and reserve training, shall be exempt from the earnings tax imposed by this Article, whether such member is a resident or nonresident of the city.

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.

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- (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 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,

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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.* For annual returns for calendar years before 2017, employers shall make this return on or before the last day of February, or the next succeeding day which is not a Saturday, Sunday, or city holiday. For annual returns for calendar years 2017 and all succeeding years, employers shall make this return on or before the last day of January, or the next 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:

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1. If a correct return is filed within 30 days after the due date, the penalty assessed is \$30.00 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 \$75,000.00.
 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 \$60.00 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 \$200,000.00.
 3. If a correct return is not filed within 150 days after the due date, the penalty assessed is \$100.00 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 \$500,000.00.
 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 January, 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

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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 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.
 - 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.

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

The director is hereby charged with the administration and enforcement of the provisions of this article and is hereby authorized and empowered to do the following:

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- (1) *Collect and deposit taxes.* The director is authorized and empowered to collect and receive the tax, interest and penalties imposed by this article and pay over the proceeds thereof to the city treasurer.
- (2) *Keep accounts.* The director is authorized and empowered to keep an accurate account of all such payments received and refunds made by the director.
- (3) *Adopt rules and regulations.* The director is authorized and empowered to adopt, promulgate, amend and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this article, including the authority to provide for an extension of time for filing returns. All such rules and regulations must be approved by the city council before they shall become effective.
- (4) *Adopt and prepare returns and forms.* The director is authorized and empowered to adopt, prepare and make available all forms necessary to comply with this article.
- (5) *Examine records.* Agents or employees authorized in writing by the director may examine the books, papers and records of any employer or alleged employer, or of any taxpayer or alleged taxpayer, in order to verify the accuracy of any return made, or, if no return was made, to ascertain the tax imposed by this article. Every such employer or alleged employer, or taxpayer or alleged taxpayer, is hereby directed and required to give to the director, or to the director's duly authorized agent or employee, the means, facilities and opportunity for such examinations and investigations as are authorized by this article.
- (6) *Examine under oath.* The director may examine any person, under oath or affirmation, concerning any earnings or profits which were or should have been returned for taxation, and to this end may compel the production of books, papers and records and the attendance of all persons before the director, whether as parties or witnesses, whom the director believes to have knowledge of such earnings or profits.
- (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

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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. If the taxpayer has failed to file a return, the director's determination of the tax liability for the assessment shall be based on an estimate of earnings or net profits from any available information.

- (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 taxpayer shows the nonpayment was due to reasonable cause. This authority may be exercised solely 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.
- (9) *Enter into agreements.* The director shall have the authority to enter into agreements with other taxing authorities on the federal, state, county or local levels for the exchange of tax information. However, all such agreements shall protect confidentiality and limit access only to other taxing authorities.

Section 5. That Chapter 68, Article VI of the Code of Ordinances of the City of Kansas City, Missouri is hereby amended by repealing Section 68-401, Penalty for violation of article.

Approved as to form and legality:

Stephen Walsh
Assistant City Attorney