

Earnings and Profits Tax Regulations
Of the City of Kansas City, Missouri
Sections §1.381 to §1.402 Inclusive

As made and adopted by the Commissioner of Revenue of the City of Kansas City, Missouri on _____, ~~2022~~2023, to become effective upon approval by the City Council. These regulations are numbered in accordance with the numbering of Sections 68-381 to 68-44002 of the Code of Ordinances, to which they refer and correspond.

These regulations replace all previous versions of Earning and Profits Tax Regulations, including Earnings and Profits Tax Regulations ~~Numbers Sections 1.381E-140~~ through ~~1.402E-164~~ adopted ~~July 10, 1979~~December 19, 2022.

Mari Ruck,
Commissioner of Revenue

Table of Contents

| | |
|-------------------------------------------------------------------------------|--------------------------|
| §1.381 Definitions..... | page 4 |
| §1.382 Imposition of tax..... | page 8 |
| §1.383 Allocation of earnings of nonresident individuals..... | page 29 |
| §1.384 Allocation of net profits of business..... | page 41 |
| §1.385 Exemptions..... | page 75 |
| §1.386 Collection at source; withholdings..... | page 80 |
| §1.387 Returns by taxpayers..... | page 88 |
| §1.388 Payment of tax to accompany return..... | page 96 |
| §1.390 Limitations..... | page 96 |
| §1.392 Credit for tax paid in another city..... | page 97 |
| §1.393 Refunds..... | page 98 |
| §1.394 Penalties and interest on unpaid tax..... | page 98 |
| §1.395 Duties and authority of Commissioner..... | page 99 |
| §1.396 Taxpayer conferences following assessment..... | page 103 |
| §1.400 Penalty for divulging confidential information..... | page 105 |
| §1.402 Amendments to Regulations..... | page 105 |

§1.381 Definitions.

As used in the Rules and Regulations, the following words shall have the meaning ascribed to them, except as and if the context clearly indicates or requires a different meaning. In all definitions and these regulations, the singular shall include the plural, and the masculine shall include the feminine and the neuter.

- (a) *Base of operations* means the place from which an employee principally works or to which the employee customarily returns to receive instructions from the employer.
- (b) *Business* means any enterprise, activity, profession, trade or undertaking of any nature that generates gross receipts.
- (c) *City* means the City of Kansas City, Missouri, as defined by City Charter.
- (d) *Commissioner* means the Commissioner of Revenue of the city.
- (e) *Compensation* means pay or remuneration given as payment for work done or services rendered, in cash or in kind, and including but not limited to the following: salaries, wages, bonuses, commissions, fees, tips, golden parachute payments, incentive payments, severance pay, vacation pay, sick pay, stock options, and stock as compensation.
- (f) *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.
- (g) *Day worked within the city* means any day or the portion thereof in which the taxpayer renders or performs services in Kansas City, Missouri. Any day that the taxpayer renders or performs any services in the city will be treated as a day worked in the city unless otherwise provided for in these regulations.
- (h) *Days worked outside the city* means any days in which all of the taxpayer's work or services are performed outside of Kansas City, Missouri. Vacation, sick, and holidays shall not be counted as a day worked outside of Kansas City, Missouri.
- (i) *Days worked* will be 260 days per year unless otherwise defined in these regulations.
- (j) *Deferred Compensation* means earnings for which a recipient has a legally binding right during a taxable year not contingent on any future action, service or event and which has not been actually or constructively received and included in the recipient's income, and which pursuant to the terms of a plan or arrangement, is payable to (or on behalf of) the service provider in a later year. Deferred compensation does not include any bona fide vacation leave, sick leave, compensatory time, disability pay or death benefit plan. A deferral of

compensation does not occur solely because compensation is paid after the last day of the service provider's taxable year pursuant to the timing arrangement under which the recipient is normally compensated for services performed during a pay period.

- (k) *Deferred Payment* means income that is earned by an employee for services performed or rendered but not paid to the employee until a future date. Deferred payments may include, but are not limited to, vacation pay, sick pay, back pay, and bonuses. The term deferred payment does not include payments of deferred compensation as defined in section 1.381(j).
- (l) *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.
- (m) *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 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. However, the absence of such withholding or payment requirements will not, in themselves, exclude an individual from being an employee. A statutory employee recognized as an independent contractor under common law and treated as an employee by statute for certain employment tax purposes, shall be considered a regular employee for the purpose of this Regulation.
- (n) *Employer* means an individual, corporation (including a corporation not for profit), partnership, governmental administration agency, arm, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis, whether or not such employer is engaged in business as hereinafter defined.

Any person or entity required to withhold for federal income tax or social security tax, or to make payments under the state Unemployment Compensation Act shall be deemed to be an employer, whether or not such employer is engaged in business. The absence of such requirement shall not, in itself, mean that an individual or an entity is not an employer.

(1) A Professional Employer Organization that has entered into a co-employment relationship with a common law employer will be considered an employer and subject to the provisions of these regulations.

- (o) *Fiscal year* means an accounting period accepted by the Internal Revenue Service for federal income tax purposes and includes a fiscal year of:

(1) 12 months ending on the last day of any month other than December.

(2) 52-53 weeks, always ending on the same day of the week.

- (p) *Independent Contractor* means a person who, while performing services for another, is not under the direction and/or control of such other person or entity as to the details and means by which the agreed upon result is accomplished. An independent contractor is not an employee. To determine whether a person is an independent contractor or employee the Commissioner shall apply the same common law rules used by the Internal Revenue Service that consider the degree of behavioral control the business exercises over the worker, the degree of financial control the business exercises over the worker, and the relationship between the business and the worker.
- (q) *Legal holiday* means a city holiday, a legal holiday on which the United States Postal Service does not deliver mail, or a legal holiday recognized by the Internal Revenue Service for the purpose of determining the due date for Missouri taxpayers filing federal income tax returns.
- (r) *Limited liability company* means a noncorporate business entity created by statute containing some features of a corporation and some features of a partnership. For purposes of the Earnings and Profits Tax, the net profits of a limited liability company will be taxed consistent with the entity's classification as a partnership, corporation or disregarded entity pursuant to Section 7701 of the Internal Revenue Code of 1986, as amended, and the corresponding Treasury Regulations.
- (s) *Net profits* shall be determined by deducting the necessary expenses of operation from the gross profits or earnings.
- (t) *Nonresident* means an individual, business, corporation, fiduciary or other entity which does not meet the definition of a resident as defined herein.
- (u) *Nonqualified stock option* means any stock option that does not meet the requirements to be considered a statutory stock option under Internal Revenue Code sections 421, 422 or 423. Nonqualified stock options are also referred to as "compensatory stock options" or "nonstatutory stock options."
- (v) *Ordinance* means the Revised Ordinances of the City of Kansas City, Missouri, imposing the Earnings and Profits Tax of the City of Kansas City, Missouri.
- (w) *Partnership* means any entity recognized as a partnership, and organized as a partnership under the laws of any state or territory of the United States or any foreign country. Such partnerships include but are not limited to limited partnerships, general partnerships, limited liability partnerships, family limited partnerships, and limited liability companies (LLCs) that are treated as partnerships for federal income tax purposes.

- (x) *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, as defined in section 1.381(f). Trusts are pass-through entities to the extent that items of income and expense are passed through to beneficiaries in a given year.
- (y) *Person* includes 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 organizations rather than natural persons shall mean the partners, members, or owners thereof, and as applied to corporations, the officers thereof.
- (z) *Place of Business* means any bona fide office (other than a mere statutory office as required by state, local, or federal statute), factory, warehouse, retail store or other space which is regularly occupied and used by the taxpayer in carrying on any business activity whether in person or through one or more employees regularly in attendance.
- (aa) *Professional Employer Organization (PEO)* means a third party that contracts with a client, the common law employer, to perform some or all of the employment tax withholding, reporting and payment activities related to workers performing services for the common law employer.
- (bb) *Publicly traded partnership* means any partnership if interests in such partnership are traded on an established market, or are readily tradable on a secondary market (or the substantial equivalent thereof).
- (cc) *Rental Income* means payments received from the use or occupancy of property. Rental income includes, but is not limited to, lease cancellation payments, advance rent, expenses paid by a renter in lieu of rent, and property or services provided in lieu of rent.
- (dd) *Resident* means any individual, business or other entity either residing or domiciled within the city.
- (1) An individual resides within the city if he lives in the city.
 - (2) An individual is domiciled within the city if he has his true, fixed and permanent home and principal establishment in the city, to which he intends to return whenever absent.
 - (3) In the case of a business, corporation, fiduciary or other entity, “resident” means any such entity, whether incorporated or unincorporated, that maintains an office, branch or other place of business within the city.

- (ee) *Statutory stock options* include incentive stock options (ISO's) as described in Internal Revenue Code Section 422 and options granted under an employee stock purchase plan (ESPP) as described in Internal Revenue Code Section 423.
- (ff) *Taxable year* means the calendar year or the fiscal year used as the basis on which net earned profit is to be computed. For Kansas City, Missouri earnings and profits taxes, the taxpayer shall use the same taxable year as is used for state and federal income tax purposes.
- (gg) *Taxpayer* means a person, whether an individual, business, partnership, corporation, fiduciary, or other entity subject to or required to withhold Kansas City, Missouri earnings and/or profits tax.
- (hh) *Telecommuting* refers to the practice of working at home and communicating with the workplace by telephone, fax, computer, or other electronic means.
- (ii) *Other Terms and Terms Not Defined.* Any term used in these regulations shall have the same meaning as when used in a comparable context in the Internal Revenue Code or other laws of the United States relating to federal income taxes as the same may be or become effective for the taxable year, unless a different meaning is provided for or clearly required by the provisions of these regulations. Any reference herein to the Internal Revenue Code shall mean the Internal Revenue Code of 1986, and amendments thereto, and regulations promulgated with respect to the provisions of said Code, as in effect for the taxable year.

§1.382 Imposition of tax.

- (a) The tax for general revenue purposes of 1.0 percent per year imposed by the Ordinance applies to:

- (1) All earnings of resident individuals of the city.

This tax applies to all salaries, wages, commissions, and other compensation earned for work done or services performed or rendered, whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The sources of the earnings, the place or places in or at which the services were performed or rendered, and the location at which payment is received are immaterial. All such earnings wherever earned or paid are taxable.

- (A) Exception for deferred receipt of amounts earned while a nonresident:
In the case where a resident receives taxable compensation that was earned in its entirety during a period of nonresidency, the taxability of such earnings shall be determined as if the taxpayer were still a nonresident. Such amounts shall include, but not be limited to,

compensation in the form of severance pay, bonuses, the exercise of stock options, and the vesting of restricted shares of stock.

(i) Example:

Joyce Smothers lived in Bakersfield, California where she worked for the Gold Company for 25 years. On November 1, 2020, her position was eliminated and she accepted a severance package that would be payable over the next 12 months, beginning on December 1. She would receive \$2,000 per month. On March 12, 2021, Joyce relocated to Kansas City, Missouri.

| Dates | Events |
|-----------------------------------------|---------------------------------------------------------------------------------------|
| 1995-2020 | Lived in California |
| November 1, 2020 | Position eliminated |
| December 1, 2020 – November 30, 2021 | Will receive severance payments of \$2,000 per month on the first of each month |
| March 12, 2021 | Relocated to Kansas City, Missouri |

None of her severance pay is subject to Kansas City earnings tax because it is fully attributable to her work outside Kansas City, Missouri while a nonresident of Kansas City, Missouri.

- (B) Exception for deferred taxability of amounts earned in part while a nonresident. In the case where a resident receives taxable compensation that was earned in part during a period of nonresidency, the taxability of such earnings shall be allocated among periods of residence and nonresidence. Amounts attributable to the period of residence shall be taxed in full. Amounts attributable to the period of nonresidence shall be taxed as if the taxpayer were still a nonresident.
- (i) If the pay rate is substantially consistent throughout the period of earnings, the earnings shall be allocated based on the ratio of the number of days or months in the period of residence to the total period during which the compensation was earned.
- (ii) If the pay rate is not substantially consistent throughout the period of earnings, the earnings shall be allocated based on the ratio of actual earnings during the period of residence to the total earnings from that employer for the time during which the compensation was earned.
- (iii) For compensation that has a substantial risk of forfeiture until the expiration of a specified period of time, both the period to which the compensation is attributable and the vesting period are considered.

(iv) Example 1:

Jason Lee moved from Liberty, Missouri to Kansas City, Missouri on March 1, 2020. He had lived in Liberty for three years prior to the move. On June 30, 2020, his employer awarded him 100 restricted shares of stock. The award was based on Jason's work performance from July 1, 2019 to June 30, 2020, and the shares would vest on July 1, 2021, but only if Jason was still employed by the company. Jason remained with the company and the shares were vested and transferred to him on July 1, 2021, at which time they had a fair market value of \$10,000. Jason worked in an office in Gladstone, Missouri, for the entire period.

| Dates | Events |
|------------------------------|--------------------------------------|
| Through February 28, 2020 | Lived in Liberty, Missouri |
| March 1, 2020 | Moved to Kansas City, Missouri |
| June 30, 2020 | 100 restricted shares awarded |
| July 1, 2019 – June 30, 2020 | Period for which shares were awarded |
| July 1, 2021 | Date shares vested |

Jason's taxable compensation from the vesting of the shares is:

12 months earning period + 12 months vesting period = 24 months for allocation

4 months resident earnings period + 12 months resident vesting period = 16 months residence ÷ 24 months total = $\frac{2}{3}$ x \$10,000 = \$6,667 earnings taxable to Kansas City, Missouri.

(v) Example 2:

Maria Ortega lived in Independence, Missouri from May 1, 2017 through November 30, 2019. On December 1, 2019, she moved to Kansas City, Missouri. On September 1, 2017, she accepted a job in Kansas City, Missouri, where she continues to work. Each year, she works outside the city for 10 percent of the total number of days she works. On June 16, 2021, she received a payment from her current employer in settlement of a lawsuit. The payment included \$20,000 of back pay attributable to the period from September 1, 2017 through December 31, 2020.

Maria's Kansas City, Missouri taxable compensation for the period that she was not a resident of Kansas City, Missouri is 90% of her total compensation based on her days worked in the city.

| Dates | Events |
|---------------------------------------|-----------------------------------|
| May 1, 2017 – November 30, 2019 | Lived in Independence, Missouri |
| September 1, 2017 | Took job in Kansas City, Missouri |
| December 1, 2019 | Moved to Kansas City, Missouri |
| June 16, 2021 | Received settlement |
| September 1, 2017 – December 31, 2020 | Period to which back pay applied |

Maria’s taxable compensation in the form of back pay for the period during which she was not a resident of Kansas City, Missouri:

27 months nonresidence ÷ 40 months total = 67.5% x \$20,000 total back pay amount = \$13,500 x 90% income taxable to Kansas City, Missouri = \$12,150.

Maria’s taxable compensation for the period during which she was a resident of Kansas City, Missouri is:

13 months residence ÷ 40 months total = 32.5% x \$20,000 total back pay amount = \$6,500.

A total of \$18,650 of the \$20,000 Maria received for back pay is subject to the Kansas City, Missouri earnings tax.

- (2) All earnings of nonresident individuals for services performed or rendered in the city.

This tax applies to all salaries, wages, commissions, and other compensation earned for work done or services performed or rendered within the city, whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location at which payment is received or from which payment is made is immaterial.

- (A) Telecommuting:

Compensation for days on which a nonresident individual telecommutes from a location or locations outside the city, whether on a regular or occasional basis, is not subject to the earnings tax.

- (B) Taxability of amounts earned while a resident and received while a nonresident.

In the case where a nonresident receives taxable compensation that was earned in its entirety during a period of residency, the taxability of such earnings shall be determined based on the individual’s residency at the

time the compensation is earned. Such amounts shall include, but not be limited to, compensation in the form of severance pay, the exercise of stock options, and the vesting of restricted shares.

(i) Example 1:

William Yim lived in Kansas City, Missouri, and worked in Kansas City, Missouri, for the Fine Company from March 12, 2012, through July 22, 2019. In July of 2019, the Fine Company transferred William to Detroit, Michigan and he moved to Detroit on July 23, 2019.

The Fine Company grants nonqualified stock options to employees annually on June 30. The options vest one year later, at a time when the fair market value of the options cannot be ascertained, and can be exercised over the following ten years.

On December 11, 2020, William exercised an option for 500 shares and sold them immediately in a cashless transaction. The option was granted to him by the Fine Company on June 30, 2016. For federal income tax purposes William had 2020 taxable compensation of \$4,000 from the exercise of the options.

| Dates | Events |
|--------------------------------|-------------------------------------------|
| March 12, 2012 – July 22, 2019 | Lived and worked in Kansas City, Missouri |
| July 23, 2019 | Transferred to Detroit, Michigan |
| December 11, 2020 | Exercised option |
| June 30, 2016 | Grant date of option exercised |
| June 30, 2017 | Vesting date of option exercised |

The entire \$4,000 is subject to the Kansas City, Missouri earnings tax because the options were granted based on work done while William was a resident of Kansas City, Missouri and William remained a resident during the vesting period.

(ii) Example 2:

Joyce Smothers lived in Kansas City, Missouri where she worked for the Gold Company for 25 years. On November 1, 2020, her position was eliminated and she accepted a severance package that would be payable at \$2,000 per month over the next 12 months, beginning on December 1. On March 12, 2021, Joyce relocated to Bakersfield, California.

| Dates | Events |
|--------------------------------------|---------------------------------------------------------------------------------|
| 1995-2020 | Lived in Kansas City, Missouri |
| November 1, 2020 | Position eliminated |
| December 1, 2020 – November 30, 2021 | Will receive severance payments of \$2,000 per month on the first of each month |
| March 12, 2021 | Relocated to Bakersfield, California |

All of her severance pay is subject to the Kansas City, Missouri earnings tax because it is fully attributable to her work within Kansas City, Missouri while a resident of Kansas City, Missouri.

- (C) Taxability of amounts earned in part while a resident, in part while a nonresident and received while a nonresident.

In the case where a nonresident receives taxable compensation that was earned in part during a period of residency and in part during a period of nonresidency, and that compensation was earned in a location outside of Kansas City, Missouri, the taxability of such earnings shall be prorated according to the relative amounts of time of residency and nonresidency. Such amounts shall include, but not be limited to, compensation in the form of severance pay, the exercise of stock options, and the vesting of restricted shares of stock.

- (i) Example:

Jason Lee moved from Kansas City, Missouri to Liberty, Missouri on March 1, 2020. He had lived in Kansas City, Missouri for three years prior to the move. On June 30, 2020, his employer awarded him 100 restricted shares of stock. The award was based on Jason’s work performance from July 1, 2019 to June 30, 2020, and would vest on July 1, 2021, but only if Jason was still employed by the company. Jason remained with the company and the shares were vested and transferred to him on July 1, 2021, at which time they had a fair market value of \$10,000. Jason worked in an office in Gladstone, Missouri, for the entire period.

| Dates | Events |
|-----------------------------------|--------------------------------------|
| March 1, 2017 – February 28, 2020 | Lived in Kansas City, Missouri |
| March 1, 2020 | Moved to Liberty, Missouri |
| June 30, 2020 | Restricted shares awarded |
| July 1, 2019 – June 30, 2020 | Period for which shares were awarded |
| July 1, 2021 | Shares vested |

Jason's taxable compensation from the vesting of the shares is:

12 month earning period + 12 month vesting period = 24 months for allocation.

8 months residence ÷ 24 months total = 1/3 x \$10,000 = \$3,333 earnings taxable to Kansas City, Missouri.

- (D) Taxability of amounts earned partly in Kansas City, Missouri during a period of nonresidency and partly outside of Kansas City, Missouri during a period of nonresidency and received while a nonresident.

In the case where a nonresident receives taxable compensation that was earned while a nonresident in part in a location within Kansas City, Missouri and partly in a location outside of Kansas City, Missouri, the taxability of such earnings shall be prorated according to the relative amounts of time worked in Kansas City, Missouri and outside of Kansas City, Missouri. Such amounts shall include, but not be limited to, compensation in the form of severance pay, the exercise of stock options, and the vesting of restricted shares of stock.

- (i) Example:

Laura Vega has lived in Independence, Missouri her entire life. On September 1, 2017, she accepted a job in Kansas City, Missouri, where she continues to work. Each year, she works outside Kansas City, Missouri for 10 percent of the total number of days she works. On June 16, 2021, she received a payment from her current employer in settlement of a lawsuit. The payment included \$20,000 of back pay attributable to the period from September 1, 2017 through December 31, 2020.

Laura's income taxable to Kansas City, Missouri each year is 90% of her earnings.

| Dates | Events |
|---------------------------------------|------------------------------------------|
| Entire period | Lived in Independence |
| September 1, 2017 | Accepted job in Kansas City, Missouri |
| June 16, 2021 | Received settlement |
| September 1, 2017 – December 31, 2020 | Period to which back pay is attributable |

A total of \$18,000 of the \$20,000 Laura received for back pay is subject to Kansas City, Missouri earnings tax.

- (3) Net profits of all unincorporated businesses conducted by residents.

The tax applies to the net profits earned of all unincorporated businesses, professions or other activities conducted by a resident or residents of Kansas City, Missouri, including distributive shares of profits from pass-through entities. The location of the business and the location of any transactions are immaterial. All such profits wherever earned or paid are taxable.

- (4) Net profits of all unincorporated businesses conducted in the city by nonresidents.

The tax applies to the net profits of all unincorporated businesses earned as a result of work done or services performed or rendered, or business or other activities conducted in the city by nonresidents. In the case where activities are conducted both within and outside of Kansas City, Missouri, tax will be imposed on profits attributable to Kansas City, Missouri under the methods provided for in the Ordinance and regulations.

- (5) Net profits of all corporations earned as a result of work done or services performed or rendered, or business or other activities conducted in the city.

In the case where activities are conducted both within and outside of Kansas City, Missouri, regardless of whether there is an office or place of business in the city, tax will be imposed on profits attributable to Kansas City, Missouri under the methods provided for in the Ordinance and regulations.

- (b) Partnerships (except for certain publicly traded partnerships) and other pass-through entities shall not be taxed as entities.

- (1) Any member thereof who is a resident of the city shall be taxed individually on his or her entire distributive share of the annual profits thereof, and any nonresident member shall be taxed individually only on that portion of his or her distributive share of the annual profits thereof which is derived by the pass-through entity from work done, services performed or rendered, or business or other activities conducted in the city.

- (A) Example 1:

Fudgeworks is a partnership with five partners. Two of the partners are residents of Kansas City, Missouri and three are residents of Gladstone. Fudgeworks has a single location, in Kansas City, Missouri, where all operations and retail sales are performed. All sales are made from that location, and no products are shipped to customers. All of Fudgeworks' net profits are apportioned to Kansas City, Missouri and each partner is fully taxable on his distributive share of profits.

- (B) Example 2:

Speedy Promotions is a partnership with two partners. George Ransom is a resident of Kansas City, Missouri and a 50% partner. Janice Mason is a Grandview, Missouri, resident and a 50% partner. Speedy Promotions has an office in Lee's Summit, Missouri but does work for businesses and individuals throughout the Kansas City metropolitan area. For the current tax year, 75% of the net profits of \$80,000 are apportioned to Kansas City, Missouri and 25% are apportioned to other locations. Speedy Promotions passes through \$40,000 of profit each to George and Janice. Of the pass-through amounts each receives:

For George, \$40,000 (100% x \$40,000 share of profits) is taxable by Kansas City, Missouri because he is a resident of Kansas City, Missouri.

For Janice, \$30,000 (75% apportioned to Kansas City, Missouri x \$40,000 share of profits) is taxable to Kansas City, Missouri.

- (C) Members shall be taxed on their distributive shares of annual net profits.
 - (i) Annual net profits of a partnership shall be comprised of the following items reported to the taxpayer on federal Schedule K-1:
 - (I) Ordinary business income or loss.
 - (II) Guaranteed payments. Guaranteed payments to partners for services reported on federal Schedule K-1 shall be treated as earnings. Such guaranteed payments to resident partners shall be fully taxable. Such guaranteed payments to a nonresident partner shall be included in the computation of earnings from sources within the city in the same manner as if those payments were a distributive share of the partnership.
 - (III) Unrecaptured section 1250 gain.
 - (IV) Partnership section 179 deduction to the extent allowable on the individual partner's return.
 - (V) Unreimbursed necessary partnership expenses paid by the taxpayer on behalf of the partnership if the partner was required to pay the expenses under the partnership agreement.
 - (a) Personal expenses such as but not limited to retirement contributions, self-employment taxes and health insurance premiums are not deductible as they are not considered necessary business expenses but solely for the benefit of the partners.

- (VI) Unless the partnership attaches documentation establishing that the revenue should be treated as unearned:
 - (a) Farm income.
 - (b) Other items of income or loss.
- (VII) Interest, dividends, rent or royalties reported on the federal Schedule K-1 shall generally be treated as unearned, unless the Commissioner, after review of the facts, finds that the interest, dividends, rent or royalties were received for work done, services performed or rendered, or business or other activities conducted by the taxpayer.
- (D) S-corporations shall not be taxed as pass-through entities but will instead be taxed as corporations.
- (E) A publicly traded partnership shall be taxed on its net profits as a corporation, except as provided in Section 7704(c) of the Internal Revenue Code.
- (F) Estates and trusts will be taxed as pass-through entities to the extent that taxable distributions of annual net profits are made to beneficiaries. Taxable annual net profits that are not distributed shall be taxed to the entity.
- (2) All pass-through entities shall be required to file an informational return for each tax year in a form prescribed by the Commissioner. The informational returns shall list each member or beneficiary to whom profits tax liability flowed, and each corresponding address and social security number or other tax identification number.
- (3) In lieu of the informational return, pass-through entities may elect to file a combined return and pay the tax due on behalf of the partners, members, owners, or beneficiaries. This return must reflect the net profits passed through to and the tax liability of each partner, member, owner, or beneficiary individually, and be in a form prescribed by the Commissioner. Liability for the payment of the tax remains with each person.
- (A) Once a pass-through entity has elected to file and pay on behalf of the partners, owners, members or beneficiaries, that election must be followed in subsequent years unless the partnership applies to and obtains permission from the Commissioner to end the election.

(4) Partners, members, owners, and beneficiaries may not offset pass-through income with expenses from other activities or operations or with any indirect expenses.

(A) Example: Charles Goodwin and Amy MacArthur own the Cam Partnership. Amy McArthur and Jane Master own the Jam Partnership. The two partnerships rent a shared office location and share the office expenses, including the salary of an office manager. Each partnership can only deduct its share of the joint expenses.

(5) Partners, members, owners, and beneficiaries may use pass-through losses to offset net income and losses from activities subject to the profits tax but may not use pass-through losses to offset wages subject to earnings tax.

(A) Residents of Kansas City, Missouri may use all pass-through losses to offset profits from other activities that are subject to the profits tax.

(i) Example:

Roseanne O'Dell is a resident of Kansas City, Missouri. She is a sole proprietor with net profits of \$65,000, all of which are subject to the Kansas City, Missouri profits tax because Roseanne is a resident of Kansas City, Missouri. She is also a partner in two partnerships, Silhouette and Victory, neither of which operates in or has any income attributable to Kansas City, Missouri. However, all profits passed through from these partnerships are taxable to Kansas City, Missouri because Roseanne is a resident of Kansas City, Missouri. Silhouette Partnership passed through a net profit of \$1,200 and Victory Partnership passed through a net loss of \$14,600. Roseanne's net profit subject to the Kansas City, Missouri profits tax is \$51,600 (\$65,000 from the sole proprietorship + \$1,200 profit from Silhouette - \$14,600 loss from Victory).

| Source | Net Profit |
|------------------------|------------|
| Sole proprietorship | \$65,000 |
| Silhouette Partnership | \$1,200 |
| Victory Partnership | (\$14,600) |
| Combined net profit | \$51,600 |

(B) Nonresidents of Kansas City, Missouri may use only pass-through losses that are allocable to Kansas City, Missouri to offset profits from other activities that are allocable to Kansas City, Missouri and subject to the profits tax.

(i) Example:

Felicia Norton is a resident of Olathe, Kansas. She works as a software developer at an office in Kansas City, Missouri, and was paid \$58,000 wages for the current year. She also sells cosmetics as a sole proprietor, and incurred a loss of \$4,500 for the current year, \$1,800 of which was apportioned to Kansas City, Missouri. Felicia is a partner in the Cranston Partnership which passed through a net profit of \$6,000, 40% of which (\$2,400) was apportioned to Kansas City, Missouri. Felicia's net profit subject to Kansas City, Missouri profit tax is \$600 (\$2,400 income from Cranston - \$1,800 loss from cosmetics sales). Felicia's wages of \$58,000 are also subject to the earnings tax because they were earned in Kansas City, Missouri.

| Source | Net Profit | KC Portion |
|----------------------|------------|------------|
| Sole proprietorship | (\$4,500) | (\$1,800) |
| Cranston Partnership | \$6,000 | \$2,400 |
| Combined net profit | \$1,500 | \$600 |

- (c) Such tax shall be levied, collected and paid on the basis of the calendar year; provided, however, that where the fiscal year of any taxpayer differs from the calendar year the tax may be computed on the fiscal year basis.
- (1) The taxpayer's taxable year shall be the same as the taxable year used on the taxpayer's federal tax return for the year, if such return is required and/or filed.
- (2) If no federal tax return is required for the year, the tax year used for the Kansas City, Missouri return must be a year that would be acceptable for federal tax purposes.
- (d) The following are items which are subject to the tax imposed by Section 68-382(a)(1) and (2) of the Ordinance:
- (1) Salaries, wages, bonuses and incentive payments earned by an individual whether directly or through an agent and whether in cash or in property for services rendered.
- (A) The above amounts shall be subject to tax when received by:
- (i) An officer, director, or employee of a corporation (including charitable and other non-profit organizations), joint stock association, or joint stock company.

- (ii) An employee (as distinguished from a partner, member, or owner) of a partnership, a limited liability corporation that has elected to be taxed as a partnership, or any form of unincorporated business enterprise owned by two or more persons.
 - (iii) An employee (as distinguished from a proprietor) of a business, trade or profession conducted by an individual owner, including amounts paid as wages to the owner of an S-corporation.
 - (iv) An officer or employee (whether elected, appointed, or commissioned) of the United States Government (except as provided in Section 68-385 of the Ordinance) or of a corporation created and owned or controlled by the United States Government, or any of its agencies or of the State of Missouri or any of its political subdivisions or agencies thereof; or any foreign country or dependency, except as exempted by treaty.
 - (v) An employee of any other entity or person, whether paid by an individual, partnership, corporation, (including charitable and non-profit corporations), governmental administration, agency, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity.
 - (vi) An estate or beneficiary of a deceased employee. Income in respect of a decedent, which would have been earnings (as salary, wages, bonus, incentive payments or other compensation) in the hands of the decedent if the decedent had lived and received the earnings, shall retain its character as earnings and be subject to the earnings tax when received by the decedent's estate or person who acquired the right to the income by reason of the decedent's death.
- (B) As provided in Section 92.113 of the Revised Statutes of Missouri (RSMo), the terms salaries, wages, commissions and other compensation shall not include any contributions to any deferred compensation plans, such as but not limited to, any salary reduction plans, cafeteria plans or any other similar plans deferring the receipt of compensation by a resident or nonresident if such contribution is not subject to Missouri state income tax at the time such contribution is made.
- (i) Example:

Jane Smith, a Kansas City, Missouri resident, participates in her employer's 401(k) plan. The plan meets all of the qualification requirements of the Internal Revenue Code. Jane's contributions to the plan do not exceed the annual contribution limits of the Internal Revenue Code and are not subject to Missouri income tax. Because Jane's contributions to the 401(k) plan are not subject to Missouri

income tax, under Section 92.113, RSMo they are also not subject to the Kansas City earnings tax.

- (C) Distributions from qualified pension plans, qualified profit sharing plans, qualified stock bonus plans, and other qualified retirement plans shall not be subject to the earnings tax, pursuant to the exemption granted under Section 92.130.1(16), RSMo.

(i) Example:

Jane Smith, from Example (B)(i) above, has recently retired and begun receiving distributions from the qualified trust of the profit-sharing plan in which her 401(k) plan contributions were invested. Although these amounts were earned and deferred while Jane was a Kansas City, Missouri resident, these distributions are exempt from the earning tax under Section 92.130.1(16), RSMo.

- (D) Unless precluded by Public Law 104-95 (Section 114 of Chapter 4, Title 4 of the U.S. Code), distributions from nonqualified deferred compensation plans shall be subject to the earnings tax, regardless of the taxpayer's residence when received, if earned and deferred while a resident of Kansas City, Missouri, or if earned and deferred by a nonresident for work performed in Kansas City, Missouri.

(i) The amount subject to tax shall be limited to the total amount contributed to the plan by the taxpayer and/or employer and not previously subject to earnings tax. Distributions shall be deemed to be made first from taxable amounts.

(ii) Public Law 104-95 exception. Payments from a nonqualified deferred compensation plan to an individual who is not a resident or domiciliary of the state of Missouri shall not be subject to the tax if such payments meet the definition of retirement income under Public Law 104-95.

(iii) Example:

Chandler Jones, a resident of Leawood, Kansas, worked her entire career for XYZ Company in Kansas City, Missouri. As one of the top executives of XYZ, Chandler participated in the company's unfunded executive deferred compensation plan, a nonqualified deferred compensation plan described in Section 3121 (v)(2)(C) of the Internal Revenue Code. The plan provided for payments upon retirement in equal annual installments for fifteen years, so that the payments met the definition of retirement income under Public Law 104-95. Upon her retirement in 2020, Chandler became eligible to receive the amount to which she was entitled from the plan, beginning in January

of 2021. Because Chandler was not a resident of the state of Missouri when she received her 2021 payment from the plan, and because the annuity payments met the definition of retirement income under Public Law 104-95, the 2021 payment, as well as any future years' payments Chandler receives while a nonresident of Missouri, will be exempt from the earnings tax pursuant to Public Law 104-95.

- (2) Commissions earned by a taxpayer whether directly or through an agent and whether in cash or in property for services rendered, regardless of how computed or by whom or whatsoever paid.
- (3) Fees, unless such fees are properly includable as part of the net profits of a trade, business, profession or enterprise regularly carried on by an unincorporated entity (including limited liability corporations that are not taxed as corporations) owned or partly owned by said individual and such net profits are subject to the tax under Section 68-382 (a) (3) or (4) of the Ordinance. Examples of fees subject to the earnings tax include those received by a director or officer of a corporation.
- (4) Other compensation, including tips, bonuses, or gifts of any type in connection with services rendered, and including compensation paid to domestic servants, casual employees and other types of employees.
- (5) Payments made to an employee by an employer as vacation pay, holiday pay, or any other type of payment made under a wage or salary continuation plan during periods of absence from work are taxable when paid. All amounts earned while a resident of Kansas City, Missouri and all amounts earned within Kansas City, Missouri while a nonresident are taxable, regardless of the taxpayer's residency at the time received.
 - (A) For payments that are not fully allocable to periods of residence in Kansas City, Missouri and/or earnings in Kansas City, Missouri, sections 1.382(a)(1) and 1.382(a)(2) of these regulations apply.
- (6) Sick pay is a payment under a plan because of an employee's temporary absence from work due to injury, sickness, or disability. Sick pay includes amounts paid by the employer or by a third party (such as an insurance company or a union) and includes both short-term and long-term benefits. Payments made to an employee by an employer as sick pay are subject to tax unless:
 - (A) The payment is made after the employee's death.
 - (B) The payment is made in part or entirely due to the employee's contributions to or payment for the plan and the employee contributions were not excluded from tax at the time of payment.

- (i) If payment for the plan was made entirely from the employee's taxable funds, none of the sick pay is taxable.
 - (ii) If payment for the plan was made partly from the employee's taxable funds and partly from the employer's funds and/or from the employee's pre-tax funds, the payment is allocated as taxable and nontaxable based on the ratio of employee taxable cost to all other costs. The ratio is based on the policy costs for the three policy years before the calendar year in which the sick pay is paid. If the policy has been in effect fewer than three years, the cost for the policy years it was in effect is used. If the policy has been in effect for less than a year, a reasonable estimate for the cost of the first policy year is used.
- (C) The payment is made for disability retirement, whether treated as retirement income or earned income for federal income tax purposes.
 - (D) The payment is made under a workers' compensation law or made to state or local government employees under a plan that is in the nature of a workers' compensation plan.
 - (E) The payment is made under a definite plan for medical and hospitalization expenses.
 - (F) The payment is made for a reason unrelated to the employee's absence from work, such as permanent physical loss or disfigurement.
- (7) Where compensation is paid or received in property its fair market value, at the time of receipt, shall be subject to the tax and to withholding. Board, lodging and similar items received by an employee in lieu of additional cash compensation shall be included in earnings at their fair market value.
- (A) The value accepted by the state and federal governments for payroll tax purposes may be accepted by the Commissioner.
 - (B) In the case of domestic and other employees whose duties require them to live at their place of employment or assignment, board and lodging will not be considered as wages or compensation earned.
 - (C) The value of meals furnished to employees by the employer for the latter's convenience shall not be considered wages earned.
- (8) Compensation in the form of stock and stock options.
- (A) *General Rule.* Stock and stock options are taxable as earnings for purposes of the earnings tax to the extent they represent compensation for services performed while the recipient was a resident of the city or

compensation for services performed in the city by a nonresident, regardless of the taxpayer's residency at the time the options are exercised.

(i) Example:

Steve Smith lived in Overland Park, Kansas from 2017 through 2021. During that time, he worked for Stern Mart, Inc. in Kansas City, Missouri. Steve filed tax returns with the City of Kansas City, Missouri claiming a refund based on the number of days worked outside Kansas City, Missouri for tax years 2017 through 2021:

| Tax Year | Total Working Days | Days Worked Outside KCMO | Nonresident Percentage |
|----------|--------------------|--------------------------|------------------------|
| 2017 | 260 | 100 | 38.46% |
| 2018 | 260 | 80 | 30.77% |
| 2019 | 260 | 125 | 48.77% |
| 2020 | 260 | 200 | 76.92% |
| 2021 | 260 | 218 | 83.85% |

On December 31, 2021, Steve exercised nonqualified stock options from Stern Mart, Inc. The fair market value of the shares at date of exercise exceeded the grant price by \$100,000. Stern Mart, Inc. included this \$100,000 as compensation on Steve's 2021 federal Form W-2. The options were granted on May 31, 2017 and were fully vested on June 1, 2019. The options had no readily ascertainable fair market value at the time of grant.

| Dates | Events |
|-------------------|-------------------------------------------------------------------------------|
| 2017 - 2021 | Lived in Overland Park, Kansas, and worked partially in Kansas City, Missouri |
| May 31, 2017 | Options were granted |
| June 1, 2019 | Options were fully vested |
| December 31, 2021 | Exercised stock options |

\$44,250 of the nonqualified stock options would be subject to the earnings tax based on the submitted Wage Returns from the grant date through the exercise date. The taxpayer had a historical nonresident percentage average of 55.75% from the spread period of when the options were granted through exercised. When applied to the stock options of \$100,000 x .5575 = \$55,750 were earned when working outside Kansas City, Missouri. \$100,000 - \$55,750 = \$44,250 earnings taxable to Kansas City, Missouri.

- (B) *Nonqualified stock options.* Typically nonqualified stock options will be subject to a vesting schedule tied to continued employment or the attainment of certain performance standards. Nonqualified stock options are subject to the earnings tax after they have vested and their fair market value is readily ascertainable. If the options have no readily ascertainable fair market value at the time of grant, the options will be taxed in the year they are exercised. The measure of earnings subject to tax is equal to the fair market value of the stock at the time of exercise less the option price (also known as the strike price). Any capital gain recognized for federal income tax purposes on the actual sale or disposition of the stock will not be subject to the earnings tax.
- (C) *Statutory stock options.* Compensation from the exercise of statutory stock options is taxable, but only if the taxpayer makes a disqualifying disposition of the stock by selling it within two years of the date of grant or within one year of the date of exercise. In such case, the amount of taxable earnings is equal to the fair market value of the shares at the time of sale less the option price of the shares.
- (D) If at the time the option was granted, the option price per share was less than 100% (but not less than 85%) of the fair market value of the share, and the share is disposed of after meeting the holding period requirement described in section 1.382(d)(8)(C) of these regulations, or the taxpayer dies while owning the share, earnings will include the lesser of:
- The amount, if any, by which the price paid under the option was less than the fair market value of the share at the time the option was granted, or
 - The amount, if any, by which the price paid under the option was less than the fair market value of the share at the time of the disposition or death.
- (E) The fair market value of restricted shares is taxable compensation for purposes of the earnings tax in the year in which the shares are no longer subject to substantial risk of forfeiture.
- (i) If an Internal Revenue Code section 83(b) election is made, the fair market value of the restricted shares is taxable in the year of grant.
- (ii) Dividends paid on restricted shares are taxable until the shares are no longer subject to substantial risk of forfeiture, unless an Internal Revenue Code section 83(b) election has been made. If an Internal Revenue Code section 83(b) election has been made, the dividends are not taxable as compensation.

- (9) Employer-provided adoption benefits, but only to the extent that they are not excluded from federal income tax.
- (10) Cost of employer-provided group term life insurance of more than \$50,000 in coverage.
- (11) The fair market value of employer-provided health insurance coverage for nondependent domestic partners shall be included in earnings; however, the fair market value of employer-provided health insurance coverage for dependents and spouses (including same-sex spouses) shall not be considered earnings.
- (12) Payments upon termination of employment, such as severance pay and payments for accrued vacation and sick pay, change of control, and golden parachute payments. All amounts earned while a resident of Kansas City, Missouri and all amounts earned within Kansas City, Missouri while a nonresident are taxable, regardless of the taxpayer's residency at the time received.
- (13) Reimbursements and allowances paid by an employer for an employee's moving expenses, whether to a third party or directly to the employee.
 - (A) If reimbursement is made under an accountable plan, only reimbursements for expenses that would not be deductible by the employee on his federal tax return are taxable.
 - (B) If reimbursement is made under a nonaccountable plan, the entire reimbursement is taxable.
- (14) Amounts eligible for the foreign earned income and the foreign housing exclusion on the federal return are taxable for any year in which the employee is domiciled in Kansas City, Missouri.
- (15) Fringe benefits that are taxable on the federal return are subject to the earnings tax imposed by Kansas City, Missouri.
- (16) Amounts received by members of the clergy are taxed as follows:
 - (A) Wages and salaries are taxable earnings subject to the earnings tax on wages.
 - (B) Taxable amounts subject to the tax on profits include:
 - (i) Fees and offerings made by individuals for performance of ceremonies such as baptisms, weddings, and funerals.

- (C) Excluded from the earnings tax are:
- (i) The rental value of a home (parsonage) furnished as part of his or her compensation, to the extent excluded by Section 107 of the Internal Revenue Code and the Treasury Regulations, or;
 - (ii) Amounts received as a housing allowance (parsonage allowance), to the extent excluded by Section 107 of the Internal Revenue Code and the Treasury Regulations.
- (D) Amounts not considered received by the individual member but by the religious order or organization under a vow of poverty are exempt from the Kansas City, Missouri earnings tax.
- (e) Net profits from the operation of a business, profession or other enterprise, whether incorporated or unincorporated, shall be determined as follows:
- (1) Unless otherwise provided herein, net profits shall be determined by deducting the necessary expenses of operation from the gross profits or earnings, using the same accounting methods utilized by the taxpayer for federal income tax purposes.
 - (2) Net profits shall not include:
 - (A) Net earnings and profits attributable to those items of income which are exempt from the tax as provided in section 1.385 of these regulations.
 - (B) Loss carryover amounts from other tax periods, whether net operating losses or capital losses, even if allowed for federal or state income tax purposes.
 - (3) Profits shall include all amounts deemed to be earned regardless of the characterization or classification of the income, unless such items are specifically exempt from tax under section 1.385 of these regulations. In the case of a pass-through entity such as a partnership, the determination of whether profits are earned is made at the entity level rather than at the individual level.
 - (4) Net profits from interest, dividends, rent or royalties shall generally be treated as unearned, but if after review of the facts the Commissioner finds that the interest, dividends, rent, or royalties were received for work done, services performed or rendered, or business or other activities conducted by the taxpayer, the Commissioner may determine that the net profits derived therefrom were earned.

- (5) Only the necessary expenses of operation shall be deducted to determine the net profits subject to the earnings tax. Deductions allowed for determining federal taxable income shall not be used to calculate net profits for purposes of the earnings tax unless those federal tax deductions are necessary expenses of operation. The following items are not considered necessary expenses of operation and are not allowed as deductions when calculating the profits subject to the Kansas City, Missouri tax on earnings and profits:
- (A) Taxes paid unless they are directly connected with the business. In addition, the following taxes are not deductible from profits:
 - (i) Tax paid under the earnings tax ordinance.
 - (ii) Federal, State or other taxes based upon income, earnings, or profits.
 - (iii) Gift, estate, and inheritance taxes.
 - (iv) Taxes or assessments for direct benefits or improvements to property that tend to appreciate the value thereof.
 - (B) Premiums for life insurance policies on the lives of officers or employees of a corporation where the corporation is a beneficiary.
 - (C) Expense incurred on behalf of or for the benefit of a business, profession, enterprise or venture, incorporated or unincorporated, other than the taxpayer.
 - (D) Salary, payment, or withdrawal of a proprietor or of the partners, members, or other owners of an unincorporated business or enterprise, when such salaries, payments, or withdrawals are not required to be reported as wages or earned income for federal income tax purposes.
 - (E) Capital gains and losses from the sale, exchange, or other disposition of property used in the trade or business shall not be taken into consideration in arriving at net profits earned. However, any amount received on a sale or other disposition of property used in business, in excess of its adjusted basis, shall be treated as taxable net profits to the extent of depreciation allowed or allowable. The balance shall be treated as unearned capital gains.
 - (i) Gains or losses from involuntary conversions shall not be taken into consideration in arriving at net profits.
 - (ii) For purposes of this Regulation, the term “property used in the trade or business” means:

(I) Property used in the trade or business of a character which is subject to the allowance for depreciation which is not a copyright, a literary, musical, or artistic composition, or similar property held by the taxpayer.

(II) Real property used in the trade or business.

(iii) Example 1:

In conducting its manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the business. The gains or losses resulting from those sales are not considered subject to the earnings tax for profits tax purposes, except to the extent of recapture of depreciation claimed by the taxpayer.

(iv) Example 2:

The taxpayer constructed a plant for use in its manufacturing business and 20 years later sold the property at a gain while it was in operation by the taxpayer. The gain is not subject to the earnings tax for profits tax purposes except to the extent of the recapture of depreciation claimed by the taxpayer.

(F) The deduction under Section 199 of the Internal Revenue Code for income attributable to domestic production activities shall not be allowed as a deduction in computing net profits.

(G) Expenses related to the production of income exempt from the earnings tax shall not be allowed as deductions in computing net profits unless the taxpayer establishes such expenses are necessary expenses of operation.

(i) Personal expenses, including but not limited to retirement contributions, self-employment taxes and health insurance premiums are not deductible since these expenses are incurred for the benefit of the owner and are not considered necessary for the operation of the business.

§1.383 Allocation of earnings of nonresident individuals.

The earnings subject to tax of any nonresident individual in any case in which the work done or the services performed or rendered is both within and outside the city shall be ascertained as follows:

(a) If the amount of such earnings depends primarily upon the amount of time devoted by such individual, then the portion of such earnings subject to tax shall

be that portion of such earnings which the total number of days worked within the city bears to the total number of days worked within and outside the city.

- (1) Any day that the taxpayer renders or performs any services in the city (in part or whole) will be treated as a day worked in the city.
- (2) The taxable portion of earnings is calculated by multiplying the gross taxable earnings by a fraction, the numerator of which is the number of days spent working in Kansas City, Missouri, and the denominator of which is the total working days (including holidays, vacation days, sick days and paid or unpaid leave).

(A) Example:

Raymond Cohen works for Phelps Training, Inc. Raymond lives in Platte City, Missouri and travels regularly to conduct training seminars for the public. Phelps has its corporate offices in Kansas City, Missouri and Raymond works from the corporate office when he is not traveling. Raymond's taxable compensation for the year was \$48,000. His work days were:

100 days traveling (no time in Kansas City, Missouri on these days)
128 days in Kansas City, Missouri for part or all of the day
15 vacation days
11 holidays and personal days
6 sick days
260 total days

160 days allocated to Kansas City, Missouri \div 260 total days actively working = .6154 x \$48,000 = \$29,539 earnings taxable to Kansas City, Missouri.

- (3) An employee will be treated as working five days per week unless either:
 - (A) The taxpayer has maintained contemporaneous records establishing a different number of days worked. In such case, the actual number of days worked by the employee shall be used; or
 - (B) The taxpayer's employer has documented a different number of days as being standard for the taxpayer's position. In such case, the number of days per week established by the employer for the taxpayer's position shall be used.
- (i) Example 1:

Jones Printing schedules salaried supervisors so that each works four twelve hour shifts each week. The total number of work days for a Jones supervisor is 208 (4 days per week x 52 weeks per year).

(ii) Example 2:

Super Convenience Stores requires managers to work six days per week. The total number of work days for a Super manager is 312 (6 days per week x 52 weeks per year).

- (4) Deferred payments, nonqualified deferred compensation or stock options that were earned in full or part during periods of residence within Kansas City, Missouri or for work performed in Kansas City, Missouri are subject in full or part to the earnings tax imposed by Kansas City, Missouri.

- (A) If the taxpayer has maintained adequate records to determine that amounts are directly attributed to a specific period of residency or nonresidency, deferred payments shall be allocated to the specific period identified. If allocated to a period of nonresidency, amounts shall be further allocated based on actual days worked within the city and actual days worked outside the city during the period in which the compensation was earned, based on the taxpayer's records.

(i) Example 1:

Jeremy Purcell lived in Kansas City, Missouri from July 1, 2017 through April 30, 2019. On July 1, 2017, he began working for Carlisle, Inc., at their office in Kansas City, Missouri. On May 1, 2019, Carlisle transferred him to Springfield, Missouri. He continued working for Carlisle until his position was eliminated on March 15, 2021. As part of his termination, he received \$1,500 in vacation pay. Carlisle does not allow employees to carry unused vacation days over from year to year; all must be used by the end of the calendar year or they are forfeited.

| Dates | Events |
|-----------------------------|---------------------------------|
| July 1, 2017-April 30, 2019 | Lived in Kansas City, Missouri |
| July 1, 2017-April 30, 2019 | Worked in Kansas City, Missouri |
| May 1, 2019-present | Lived in Springfield, Missouri |
| May 1, 2019-March 15, 2021 | Worked in Springfield, Missouri |
| March 15, 2021 | Position eliminated |

None of Jeremy's vacation pay is taxable to Kansas City, Missouri because none of it was earned while he lived in Kansas City, Missouri

(because Carlisle does not allow vacation days to be carried over to the next calendar year, all of the vacation pay was earned in 2021 in Springfield).

(ii) Example 2:

Joseph O'Reilly lived in Kansas City, Missouri his entire life until he married and moved to Independence, Missouri, on June 28, 2021. He works for Alton Manufacturing in the City of North Kansas City, Missouri. On July 25, Joseph received a bonus check from Alton representing an annual bonus paid for the period June 1, 2020 through May 31, 2021.

| Dates | Events |
|----------------------------|--------------------------------------|
| Through June 27, 2021 | Lived in Kansas City, Missouri |
| June 1, 2020- May 31, 2021 | Period during which bonus was earned |
| June 28, 2021 | Moved to Independence, Missouri |
| July 25, 2021 | Received bonus check |

The payment is fully taxable to Kansas City, Missouri because all amounts were earned while Joseph lived in Kansas City, Missouri although they were received after he moved to Independence, Missouri.

- (B) If the taxpayer has not maintained adequate records related to periods of residency and nonresidency, deferred payments shall be allocated as taxable or nontaxable based on the taxpayer's filing history for the preceding five taxable years.
- (C) If the taxpayer was a resident for the entire period and filed no tax returns because all tax due had been withheld, the entire amount of the deferred payment is taxable.
- (D) If the taxpayer was a nonresident the entire period and filed no tax returns because he performed no services in Kansas City, Missouri and owed no earnings tax imposed by Kansas City, Missouri, then none of the deferred payment is taxable.
- (E) If the taxpayer was a nonresident some years and a resident other years, then the deferred payment will be allocated based on a fraction. The numerator of the fraction shall be the total number of days shown on nonresident tax return as days worked in Kansas City, Missouri plus 260 days for each year that the taxpayer was a resident of the city the entire year. The denominator shall be the total number of days shown on

nonresident returns as days worked everywhere plus 260 days for each year that the taxpayer was a resident of the city the entire year.

- (F) In the case where a current nonresident was a resident of Kansas City, Missouri but did not work in Kansas City, Missouri, amounts that cannot be directly attributed to periods of residency or nonresidency shall be allocated according to the ratio of days of residency to days of nonresidency.

(i) Example:

Amy Manoc lived in Kansas City, Missouri from September 8, 2017 through April 30, 2019. On September 8, 2017, she began working for Broker, Inc., at their office in Raytown, Missouri. On May 1, 2019, Broker transferred her to Wichita, Kansas. She continued working for Broker until her position was eliminated on March 15, 2021. As part of her termination, she received a \$10,000 lump sum termination payment on April 1, 2021.

| Dates | Events |
|------------------------------------|----------------------------------------|
| September 8, 2017 – April 30, 2019 | Lived in Kansas City, Missouri |
| September 8, 2017 – April 30, 2019 | Worked for Broker in Raytown |
| May 1, 2019 – March 15, 2021 | Lived and worked in Wichita, Kansas |
| April 1, 2021 | Received severance payment of \$10,000 |

Amy lived in Kansas City, Missouri for 600 days and she lived in Wichita for 685 days. Her severance pay is not directly attributable to any specific period of employment, and the amount taxable to Kansas City, Missouri, is allocated based upon the number of days she lived in Kansas City, Missouri while working for Broker. Of her \$10,000 severance payment, \$4,669 is taxable to Kansas City, Missouri (600 days lived in Kansas City, Missouri ÷ 1285 days total employment with Brokers).

- (G) In the case where a nonresident worked in part in Kansas City, Missouri and in part outside of Kansas City, Missouri, payments shall be allocated based on time worked in Kansas City, Missouri taking into account the days worked outside Kansas City, Missouri per the taxpayer's records.
- (i) If the taxpayer does not have records for the entire period to which the payment is attributed, the allocation shall be based on the days worked outside Kansas City, Missouri for the employer as shown on the tax returns for the Kansas City, Missouri earnings tax filed for the last five taxable years to which the payment is attributed.

(ii) Example 1:

Julia Ramos has lived in Grandview, Missouri all her life. She worked for Jones Computing, located in Kansas City, Missouri, from June 18, 2012 until February 12, 2021, when she accepted an early buy-out offer. The early buy-out gave Julia a one-time cash settlement of \$120,000, which she received on May 1, 2021. Julia did not keep records of her days worked outside Kansas City, Missouri for the entire period of her employment with Jones.

| Dates | Events |
|-----------------------------------|-------------------------------------------|
| All dates | Lived in Grandview, Missouri |
| June 18, 2012 – February 12, 2021 | Worked for Jones in Kansas City, Missouri |
| February 12, 2021 | Early buy-out offer |
| May 1, 2021 | Received cash settlement of \$120,000 |

Julia traveled frequently as part of her job, and her prior year tax returns for Kansas City, Missouri for the last five years of her employment showed the following:

| Year | Days Worked Outside of KC | Total Days Worked |
|-------------|----------------------------------|--------------------------|
| 2017 | 79 | 260 |
| 2018 | 83 | 260 |
| 2019 | 62 | 260 |
| 2020 | 98 | 260 |
| 2021 | 14 | 30 |
| Total | 336 | 1070 |

During the five years ending in 2021, Julia worked a total of 734 days in Kansas City, Missouri (1,070 total days worked 2017 through 2021 – 336 days worked outside of Kansas City, Missouri).

Of the \$120,000 settlement, 68.60 % (\$82,320) is taxable to Kansas City, Missouri (734 days worked in Kansas City, Missouri ÷ 1,070 total days worked = .6860).

(iii) Example 2:

Carmine Moretti lived in Mission Hills, Kansas from 2015 through 2020. During that time, he worked for Mandel, Inc. in Kansas City, Missouri. According to Carmine, he traveled regularly for work and was working outside the city about 10 percent of each year. Carmine

never filed a tax return for Kansas City, Missouri claiming a refund of any of the taxes that had been withheld. He has not maintained any records of the time worked in Kansas City, Missouri and the time worked outside Kansas City, Missouri.

On June 6, 2019, Carmine exercised nonqualified stock options from Mandel, Inc. The fair market value of the shares at date of exercise exceeded the grant price by \$100,000. Mandel, Inc. included this \$100,000 as compensation on Carmine’s 2018 federal Form W-2. The options were granted on May 31, 2016 and were fully vested on June 1, 2019. The options had no readily ascertainable fair market value at the time of grant.

| Dates | Events |
|-------------------|--------------------------------------------------------------------|
| 2015 through 2020 | Lived in Mission Hills, Kansas and worked in Kansas City, Missouri |
| May 31, 2016 | Options were granted |
| June 1, 2019 | Options were fully vested |
| June 6, 2019 | Exercised stock options |

The full \$100,000 is earnings subject to the earnings tax because Carmine did not file any Kansas City, Missouri tax returns or maintain any records to establish any days he may have worked outside of Kansas City, Missouri.

(H) In the case where a nonresident who received a deferred payment from an employer had earned the deferred payment during periods of both residency and nonresidency and had worked:

- In part in Kansas City, Missouri while a nonresident of Kansas City, Missouri.
- In part outside of Kansas City, Missouri while a nonresident of Kansas City, Missouri.

Step One: Payments shall first be divided between periods of residency or nonresidency to the extent they can be directly attributed to each.

Step Two: Remaining amounts shall be allocated according to the ratio of days of residency to days of nonresidency.

Step Three: Amounts allocated to the period of nonresidency shall be further allocated based on the ratio of days worked in Kansas City, Missouri to the days worked outside of Kansas City, Missouri during periods of nonresidency, per the taxpayer’s records. If the taxpayer does

not have records for the entire period of nonresidency, the allocation shall be based on the ratio of days worked inside Kansas City, Missouri to total days worked as shown on the Kansas City, Missouri tax returns filed for the last five taxable years to which the payment is attributed.

(i) Example:

Terry Norton worked full-time for Elm Enterprises from January 1, 2008 through December 31, 2019, when her position was eliminated. Her severance package provided one month's pay for each full year worked full-time, to a maximum of twelve years, paid monthly over the next 12 months. Terry's residence and work locations were:

| Dates | Residence | Work |
|----------------------------------------|--------------------------|------------------------------|
| January 1, 2008 – December 31, 2011 | Oakland, California | San Francisco, California |
| January 1, 2012 – December 31, 2013 | Kansas City, Missouri | Kansas City, Missouri |
| January 1, 2014 – December 31, 2019 | Parkville, Missouri | Kansas City, Missouri |

While working in Kansas City, Missouri, Terry sometimes worked in locations outside the city.

In calculating the source of the severance payments:

- Four years (2008 – 2011) are not attributable to Kansas City, Missouri (lived and worked in California).
- Two years (2012 – 2013) are fully attributable to Kansas City, Missouri (lived and worked in Kansas City, Missouri).
- Six years (2014 – 2019) are attributable to Kansas City, Missouri as a nonresident and must be allocated between time worked in the city and time worked outside the city. Assume Terry kept a record of her days worked inside and outside Kansas City, Missouri for this entire six-year period.

Terry's work days within Kansas City, Missouri for her six years that she resided in Parkville were:

- 2014 = 190 of 260 days
 - 2015 = 195 of 260 days
 - 2016 = 199 of 260 days
 - 2017 = 185 of 260 days
 - 2018 = 203 of 260 days
 - 2019 = 198 of 260 days
- Total = 1170 of 1560 days

The amount of each severance check is \$6,000, payable on the last day of the month. Terry received her first severance payment on January 31, 2020. In 2015, Terry received all twelve severance checks (total = \$72,000), representing severance pay for twelve years' work.

Step One (divide between periods of residency and nonresidency):

| Residence | Years | Payments |
|-------------|-------|----------|
| California | 4 | \$24,000 |
| Kansas City | 2 | \$12,000 |
| Parkville | 6 | \$36,000 |

- \$24,000 is attributable to California and is not taxable to Kansas City, Missouri.
- \$12,000 is fully attributable to Kansas City, Missouri and is fully taxable to Kansas City, Missouri.
- \$36,000 is partly taxable to Kansas City, Missouri.

Step Two (allocate amounts that are not directly attributable to a specific period):

Terry has no amounts that cannot be directly attributable to a specific period, so this step is skipped.

Step Three (allocate nonresident days based on days worked in the city):

During the six years ending when payments began in 2020, Terry worked a total of 1170 out of 1560 days (75%) in Kansas City, Missouri. Of the \$36,000 that is partly taxable to Kansas City, Missouri, 75% (\$27,000) is taxable to Kansas City, Missouri.

Of the total \$72,000 severance pay that Terry will receive, \$39,000 (\$12,000 fully allocated to residence in Kansas City, Missouri + \$27,000 partially allocated based on work in Kansas City, Missouri) is subject to the earnings tax imposed by Kansas City, Missouri.

- (5) If the taxpayer is employed by multiple employers concurrently, the amount subject to Kansas City, Missouri earnings tax shall be calculated separately for each employer, following the methods in this section. For each employer, a taxpayer will be treated as having worked in Kansas City, Missouri for any day or part of the day worked in Kansas City, Missouri for that employer. Amounts paid under the same employer identification number are considered amounts paid by the same employer.

(A) Example 1:

Shelley Heath lives in Lee's Summit, Missouri and works full-time for Brindle Brothers, Inc., in Kansas City, Missouri. During the taxable year, she did not work in any other locations for Brindle Brothers. During the holiday season, she works part-time for Hip Clothing stores at their Lee's Summit location. Shelley's earnings from Brindle Brothers are fully taxable to Kansas City, Missouri, but none of her earnings from Hip Clothing are taxable to Kansas City, Missouri.

(B) Example 2:

Lincoln Beaumont lives in Overland Park, Kansas. He works full-time as a meeting planner for Hander Corporation, located downtown in Kansas City, Missouri. Lincoln traveled outside the city for work 126 days this year. Lincoln also works at the box office for the Renaissance Festival in Bonner Springs, Kansas. None of Lincoln's earnings from the Renaissance Festival are taxable to Kansas City, Missouri. His earnings from Hander Corporation are allocated based on days worked in Kansas City, Missouri and days worked outside of Kansas City, Missouri.

(b) Other methods. If it is impracticable to apportion such earnings as put forth in subsection (a) of this section or if such apportionment does not result in a clear reflection of city earnings, other methods of allocation, as defined in these regulations, may be used. However, the final determination of the proper allocation method to be used by a taxpayer may be made by the Commissioner.

(1) *Nonresident athletes*. If the nonresident is employed by a professional athletic team, whether as an athlete, coach, manager or trainer, and spent any days working in Kansas City, Missouri, a portion of that nonresident's earnings shall be taxable.

(A) Taxable earnings include, but are not limited to:

- (i) Exhibition and regular playing season salaries and wages.
- (ii) Guaranteed payments.
- (iii) Strike benefits.
- (iv) Deferred payments.
- (v) Severance pay, termination pay, contract or option year buy-out payments.
- (vi) Bonuses, except for nonforfeitable signing bonuses.

- (I) *Nonforfeitable signing bonus*. If the signing bonus is paid to the athlete solely for signing the first contract with the team, and without any requirement of subsequent service, the bonus is not considered earnings.
 - (II) *Forfeitable signing bonus*. If the signing bonus is predicated on subsequent service by the player or upon being retained by the club for a specified time, it will be considered earnings.
- (vii) Pay received for services rendered in a championship or playoff game.
- (B) The amount that shall be taxable shall be determined by the number of duty days in Kansas City, Missouri during the taxable year as a fraction of the total number of duty days worked everywhere during the taxable year.
- (i) The term “duty days” shall mean all days during the taxable year from the beginning of the professional athletic team’s official pre-season training period through the last game in which the team competes or is scheduled to compete.
 - (ii) Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date which does not fall within the aforementioned period (e.g., participation in instructional leagues, the “Pro Bowl” or promotional caravans). Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.
 - (iii) Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans and pre-season training camps, and days served with the team through all post-season games in which the team competes or is scheduled to compete.
 - (iv) Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in Kansas City, Missouri. However, such travel days shall be included in the total duty days spent everywhere.
 - (v) Duty days for any person who joins a team during the season shall begin on the day such person joins the team, and for any person who leaves a team shall end on the day such person leaves the team. When a person switches teams during a taxable year, a separate duty day calculation shall be made for the period such person was with each team.

- (vi) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when such member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.
 - (vii) Days for which a member of a professional athletic team is on the disabled list, does not conduct rehabilitation activities at facilities of the team in Kansas City, Missouri and is not otherwise rendering services for the team in Kansas City, Missouri shall be presumed not to be duty days spent in Kansas City, Missouri. However, all days on the disabled list shall be included in total duty days spent everywhere.
 - (viii) In the case of severance pay, termination pay, contract or option year buy-out or similar payment, the portion of such payment subject to earnings tax shall be calculated as a fraction, the numerator of which is the number of duty days in Kansas City, Missouri during the term of the contract and the denominator of which is the total number of duty days everywhere during the term of the contract.
- (2) *Nonresident entertainers.* The income of non-resident entertainers who spend any days working in Kansas City, Missouri, shall be in part taxable to Kansas City, Missouri.
- (A) Taxable earnings consist of the entire amount received for performances, engagements or events that occurred in Kansas City, Missouri.
 - (B) In the case of a non-resident entertainer who is not paid specifically for a performance, the income earned and subject to the tax is the total annual compensation multiplied by a fraction:
 - (i) The numerator of the fraction is the number of days the entertainer worked (or was available to work, as, for example with understudies) in Kansas City, Missouri.
 - (ii) The denominator of the fraction is the total number of days which the entertainer worked (or was available to work, as, for example with understudies) in all locations during the taxable year.
- (c) The allocation methods described in this section are for nonresident individuals filing Wage Earner Returns for employee earnings, and do not pertain to the net profits of businesses or self-employed individuals. For allocation of net profits, see section 1.384.

§1.384 Allocation of net profits of business.

- (a) The net profits subject to tax of any business, including any corporation or unincorporated entity, conducted in whole or in part by nonresidents of the city, in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered or conducted both within and without the city, shall be determined as set forth in these regulations.
- (1) The portion of the entire net profits of such taxpayer subject to tax in Kansas City, Missouri shall be determined by multiplying the taxpayer's entire net profits, as computed under these regulations, by an allocation percentage which shall be determined by the formula method based upon the average of the taxpayer's property factor, payroll factor, and gross receipts factor, as provided herein.
 - (A) In the case of a pass-through entity, such as a partnership, that is subject to this tax by passing through net profits to the individual partners or owners, the allocation of net profits to Kansas City, Missouri shall be determined by taking into account the passthrough entity's ratio of property, payroll and gross receipts as determined under these regulations. A nonresident taxpayer who receives profits from such a pass-through entity shall include the full amount of the entity's allocated profits, to the extent of his proportionate profit sharing ratio therein, in determining his individual net profits for purposes of this tax, and shall not further allocate the profits derived from the pass through entity on the basis of the owner's individualized allocation percentage for the city. Further, the property, payroll and gross receipts factors of the pass-through entity shall not be included in the determination of the owner's allocation percentage for this city as they will already be reflected in the amount passed through by the partnership.
 - (B) *Property factor.* The property factor is the percentage which the average value (as determined in accord with this section) of real and tangible personal property owned and used or rented and used in the taxpayer's business and situated within the city during the period covered by the taxpayer's return is of the average value of all real and tangible personal property, owned and used or rented and used in the business wherever situated during the period covered by the return. The term real and tangible personal property includes land, buildings, leasehold improvements, machinery, stocks of goods, equipment, and other real and tangible personal property, but does not include coin or currency.
 - (i) Property shall be included in the factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer.

- (I) Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant that is temporarily idle or raw material reserves not currently being processed are includable in the factor.
- (II) Property or equipment under construction during the tax period (except inventory type goods in process) shall be excluded from the factor until that property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor.
- (III) Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale or conversion to another use, or the lapse of an extended period of time (normally five years) during which the property is held for sale.

(IV) Example 1:

The taxpayer closed its manufacturing plant and held the property for sale. The property remained vacant until its sale one year later. The value of the manufacturing plant is included in the property factor until the plant is sold.

(V) Example 2:

The taxpayer closed its manufacturing plant and held the property for sale. The property was rented until the plant was sold. The plant is included in the property factor until the plant is sold.

- (ii) The percentage of taxpayer's real and tangible personal property within the city is determined by dividing the average value of said property within the city (without deduction of any encumbrances) by the average value of all such property within or without the city. If the denominator of this factor is zero, the factor shall not be considered in determining the allocation percentage under the formula method.
- (I) As a general rule the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the Commissioner may require or allow averaging by monthly or other periodic values if that method of averaging is required to properly

reflect the average value of the taxpayer's property for the tax period.

- (II) The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this city during the tax period in the regular course of the trade or business of the taxpayer.
 - (a) Property in transit between locations of the taxpayer to whom it belongs shall be considered to be at the destination for purposes of the property factor.
 - (b) Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the city of destination. Property not in the denominator shall not be included in the numerator.
 - (c) The value of mobile or movable property, such as construction equipment, trucks or leased electronic equipment, which is located within and outside of Kansas City, Missouri during the tax period shall be determined for purposes of the numerator of the property factor on the basis of total time within the city during the tax period.
 - (d) An automobile assigned to a traveling employee shall be included in the numerator of the factor if the employee's compensation is assigned to Kansas City, Missouri under the payroll factor.
- (iii) Property owned by the taxpayer shall be valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax depreciation purposes at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, and the like. If the original cost of the property is not ascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

(I) Example 1:

The taxpayer acquired a factory building in Kansas City, Missouri at a cost of \$500,000 and 18 months later expended \$100,000 for major remodeling of the building. Taxpayer filed its return for the current taxable year on the calendar-year basis. A depreciation

deduction in the amount of \$22,000 was claimed on the building for its return for the current taxable year. The value of the building includable in the numerator and denominator of the property factor is \$600,000 as the depreciation deduction is not taken into account in determining the value of the building for purposes of the factor.

(II) Example 2:

During the current taxable year, X Corporation merges with Y Corporation in a tax-free reorganization under the Internal Revenue Code. At the time of the merger, X Corporation owns a factory which X built five years earlier at a cost of \$1,000,000. X has been depreciating the factory at the rate of two percent per year, and its adjusted basis in X's hands at the time of the merger is \$900,000. Since the property is acquired by Y in a transaction in which, under the Internal Revenue Code, its basis in Y's hands is the same as its basis in X's hands, Y includes the property in Y's property factor at X's original cost of \$1,000,000, without adjustment for depreciation.

(III) Example 3:

Corporation Y acquires the assets of Corporation X in a liquidation that entitles Y to use its stock cost as the basis of the X assets under Section 334(b)(2) of the Internal Revenue Code (that is, stock possessing 80% control is purchased and liquidated within two years). Under these circumstances, Y's cost of the assets is the purchase price of the X stock prorated over the X assets.

- (iv) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.
- (v) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.
- (vi) In determining the property factor percentage, property rented to the taxpayer as well as real and tangible personal property owned by the taxpayer must be considered.
- (vii) Property rented to the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of property is the annual rental rate paid by the taxpayer for the property less the aggregate annual subrental rates paid by subtenants of the taxpayer. Subrents are not deducted, however, if they are attributable to property

used in the regular course of a trade or business of the taxpayer, because the subrents produce income in connection with such trade or business. Accordingly, there is no reduction in its value.

(I) Example 1:

The taxpayer operates a food market. The taxpayer pays rent to a third party for the occupancy of the market and receives subrents from a bakery concession in a food market operated by the taxpayer. The bakery operation is part of the taxpayer's regular trade or business of operating a food market. The subrents are therefore not deducted from rent paid by the taxpayer for the food market.

(II) Example 2:

The taxpayer pays rent for a 20-story office building and uses only the lower two stories for its general headquarters. The remaining 18 floors are subleased to others. The rental of the 18 floors is not incidental to, but rather is separate from, the taxpayer's regular trade or business operations. The subrents are deducted from the rent paid by the taxpayer.

(III) When property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the taxpayer. However, where the taxpayer has rented property for a term of 12 months and the current tax period covers a period of less than 12 months (due for example, to a reorganization or change of accounting period) the rent paid for the short term shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent in this case shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

(a) Example 1:

Taxpayer A, which ordinarily files its returns on a calendar year basis, is merged into taxpayer B on April 30. The net rent paid under a lease with five years remaining is \$2,500 a month. The rent for the tax period January 1 to April 30 is \$10,000. After the rent is annualized, the net rent for Taxpayer A is \$30,000 ($\$2,500 \times 12$).

(b) Example 2:

Same facts as in example 1 except that the lease would have terminated on August 31. In this case the annualized net rent is \$20,000 ($\$2,500 \times 8$).

(IV) “Annual rent” is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use or possession of the property and includes:

- (a) Any amount paid for the use or possession of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or a percentage of sales, profits, or otherwise.

Example: A taxpayer, pursuant to the terms of a lease, pays a lessor \$1,000 per month as base rent and at the end of the year pays the lessor one percent of its gross sales of \$400,000. The annual rent is \$16,000, consisting of \$12,000 for 12 monthly rental amounts of \$1,000 each, plus the \$4,000 paid as a percentage of sales ($\$400,000 \times 1\% = \$4,000$).

- (b) Any amount paid as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs, or other amounts which are required to be paid by the terms of a lease or other arrangement, not including amounts paid as service charges such as for utilities or janitorial services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items. Annual rent does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles and the like.

(1) Example 1: A taxpayer, under the terms of a lease, pays the lessor \$12,000 a year rent plus taxes in the amount of \$2,000 and interest on a mortgage in the amount of \$1,000. The annual rent is \$15,000.

(2) Example 2: A taxpayer stores part of its inventory in a public warehouse. The total charge for the year was \$1,000, of which \$700 was for the use of storage space and \$300 for inventory insurance, handling and shipping charges, and cash on delivery collections. The annual rent is \$700.

(V) If substantial fluctuations in the values of the property exist during the tax period or if property is acquired after the beginning of the tax period or disposed of before the end of the tax period, averaging using monthly values will generally apply.

(VI) If the subrents that are taken into account in determining the net annual rental rate under these regulations produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Commissioner or requested by the taxpayer. In no case, however, shall that value be less than an amount which bears the same ratio to the annual rental rate paid by the taxpayer for the property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.

(a) Example: The taxpayer rents a ten-story building at an annual rental rate of \$1,000,000. Taxpayer occupies two stories and sublets eight stories for \$1,000,000 a year. Each story of the building has market value equal to one-tenth of the total market value of the building. The net annual rental rate of the taxpayer must not be less than two-tenths (\$200,000 in this example) of the taxpayer's annual rental rate.

(VII) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for that property shall be determined on the basis of a reasonable market rental rate for the property.

(C) *Payroll factor.* The payroll factor is the percentage that the total salaries, wages, commissions and other compensation of employees within the city is of the total salaries, wages, commissions and other compensation of all the taxpayer's employees within and without the city, during the period covered by the taxpayer's profits tax return.

(i) Salaries, wages and other compensation shall be computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the net profits of the taxpayer.

(I) The term compensation means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to independent contractors or any other persons not properly classifiable as employees are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services; provided, that those amounts constitute income to the recipient under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the

determination of whether the benefits or services would constitute income to the employees shall be made as though those employees are subject to the federal Internal Revenue Code.

- (II) Notwithstanding the taxpayer's method of accounting, compensation paid to employees may, at the election of the taxpayer, be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under that method for unemployment compensation purposes.
- (ii) Payments made to an independent contractor or other person not properly classified as an employee are excluded from the factor.
- (iii) Amounts paid to employees include compensation paid to officers of a corporation, and includes all compensation to such employees or officers, whether paid in cash or property, or by other benefit.
- (iv) The denominator of the payroll factor includes the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely within a jurisdiction where the taxpayer is not subject to taxation by Kansas City, Missouri is included in the denominator of the payroll factor.
- (v) Payroll Factor Numerator. Compensation is deemed to be attributable to Kansas City, Missouri if any one of the following tests, applied consecutively, is met:
 - (I) The employee's service for the employer is performed entirely within Kansas City, Missouri.
 - (II) The employee's service for the employer is performed both within and without Kansas City, Missouri, but the service performed without the city is incidental to the employee's service within the city. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.
 - (III) If the employee's services are performed both within and without Kansas City, Missouri, the employee's compensation will be attributed to Kansas City, Missouri if:
 - (a) The employee's base of operations is in Kansas City, Missouri
or

- (b) There is no base of operations in any city in which some part of the service is performed, but the place from which the service is directed or controlled is in Kansas City, Missouri; or
 - (c) The base of operations or the place from which the service is directed or controlled is not in any city in which some part of the service is performed but the employee's residence is in Kansas City, Missouri. The term "place from which the service is directed or controlled" refers to the place for which the power to direct or control is exercised by the taxpayer.
- (D) *Gross receipts factor.* The gross receipts factor is the percentage which the gross receipts of such taxpayer derived from business within the city during the period covered by its return is of the total of such gross receipts wherever derived for such tax period.

- (i) For purposes of this apportionment factor "gross receipts" includes all gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, unless such receipts are specifically excluded in this Regulation, and includes the total revenue derived from sales, work done, service rendered or performed, or rentals of property derived from any business activity that is subject to the profits tax.
- (ii) The numerator of the gross receipts factor shall include gross receipts attributable to the city and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges or time-price differentials charges incidental to the gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

Gross receipts derived from business within the city, and included in the numerator of the gross receipts factor, shall be the amount of gross receipts determined as follows:

- (I) Rents and royalties for the use of property. Gross receipts derived from rents, royalties or other charges for fees derived from the use of property that are subject to this tax under the provisions of these regulations shall be considered to be gross receipts from within Kansas City, Missouri as follows:
 - (a) Gross receipts from the sale, lease, or rental of real property are in Kansas City, Missouri if the real property is located in Kansas City, Missouri.

(b) Gross receipts from the rental, lease, or licensing of tangible personal property are in Kansas City, Missouri if the property is located in Kansas City, Missouri. The rental, lease, licensing or other use of tangible personal property is deemed to be a separate income producing activity for the rental, lease, licensing or other use of the same property while located in another city. Consequently, if property is inside or outside of Kansas City, Missouri during the rental, lease or licensing period, gross receipts attributable to Kansas City, Missouri shall be measured by the ratio which the property was physically present or was used in Kansas City, Missouri bears to the total time or use of the property everywhere during that period.

(1) Example: The taxpayer is the owner of 10 railroad cars. During the year, each railroad car was present in Kansas City, Missouri for all or part of the day on 50 days and each car was used for a total of 365 days. The total receipts for the use of the railroad cars were \$5,000,000. The receipts attributable to the use of the railroad cars in Kansas City, Missouri are a separate item of income and shall be determined as follows:

- 10 cars x 50 days each = 500 total days in Kansas City, Missouri.
- 10 cars x 365 days each = 3,650 total days used everywhere.
- 500 days in Kansas City, Missouri ÷ 3,650 total days everywhere = 13.70% use in Kansas City, Missouri.
- 13.70% x \$5,000,000 total receipts = \$685,000 receipts attributable to Kansas City, Missouri.

(c) Gross receipts from the licensing or other authorized use of patents, copyrights, secret processes and formulas, goodwill, trade-marks, trade-names, or trade brands, franchises, and other like intangible property shall be considered to be within Kansas City, Missouri, if the license is for the privilege of using the property within Kansas City, Missouri. Where the income within Kansas City, Missouri, cannot be reasonably determined on this basis, the income derived from such activities shall be considered to be derived from within Kansas City, Missouri, if:

(1) The income-producing activity which gave rise to the receipts is performed wholly within the city; or

(2) The income-producing activity is performed both within and without the city and a greater proportion of the income-producing activity is performed in the city than outside the city, based on costs of performance. The term “costs of performance” includes direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the taxpayer’s trade or business.

(d) Where the income producing activity with respect to gross receipts from intangible property cannot be readily identified or attributed to a geographic location, the income is excluded from both the numerator and denominator of the factor.

(II) The following sales of tangible personal property are in the city:

(a) Sales of tangible personal property to the United States Government shall be considered to be sales within this city if the property is shipped from an office, store, warehouse, factory, or other place of storage in the city and the purchaser is the United States Government. However, a sale made to a prime contractor or subcontractor, for a contract with the United States Government, does not constitute sales to the United States Government.

(1) Example 1:

A taxpayer contracts with the General Services Administration to deliver 15 trucks that were paid for by the United States Government. The trucks are shipped from a storage facility in Kansas City, Missouri. The sale is a sale to the United States Government and is considered to be a sale within Kansas City, Missouri.

(2) Example 2:

The taxpayer, as a subcontractor to a prime contractor with the National Aeronautics and Space Administration, contracts to build a component of a rocket for \$1,000,000. The taxpayer delivers the rocket component to the prime contractor outside Kansas City, Missouri. The sale by the subcontractor to the prime contractor is not a sale to the United States Government and is not considered to be a sale within Kansas City, Missouri.

- (b) All sales of property delivered or shipped to a purchaser within Kansas City, Missouri, regardless of the freight on board (f.o.b.) point or other conditions of the sale, other than sales to the United States government, are in Kansas City, Missouri:
- (c) Property shall be deemed to be delivered or shipped to a purchaser within Kansas City, Missouri, if the recipient is located in Kansas City, Missouri, even though the property is ordered from outside Kansas City, Missouri.
 - (1) Example: The taxpayer, with inventory in Oklahoma, sold \$100,000 of its products to a purchaser having branch stores in several locations, including Kansas City, Missouri. The order for the purchase was placed by the purchaser's central purchasing department located in Texas, but \$25,000 of the purchaser's order was shipped directly to purchaser's branch store in Kansas City, Missouri. The branch store in Kansas City, Missouri is the purchaser with respect to \$25,000 of the sales. The \$25,000 of inventory delivered to the store located in Kansas City, Missouri is considered to be a sale within Kansas City, Missouri and is included in both the numerator and denominator of the gross receipts factor.
- (d) Property is delivered or shipped to a purchaser within Kansas City, Missouri if the shipment terminates in Kansas City, Missouri, even though the property is subsequently transferred by the purchaser to another city or state.
 - (1) Example: The taxpayer makes a sale to a purchaser who maintains a central warehouse in Kansas City, Missouri at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in another state for sale. All of the taxpayer's product shipped to the purchaser's warehouse in Kansas City, Missouri, is property delivered or shipped to a purchaser within Kansas City, Missouri, and thus is treated as a sale within Kansas City, Missouri, that is included in both the numerator and the denominator of the gross receipts factor.
- (e) The term purchaser within Kansas City, Missouri, shall include the ultimate recipient of the property if the taxpayer in Kansas City, Missouri, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within Kansas City, Missouri.

- (1) Example: A taxpayer in Kansas City, Missouri, sold merchandise to a purchaser in Illinois. The taxpayer directed the manufacturer or supplier of the merchandise in Minnesota to ship the merchandise to the purchaser's customer in Kansas City, Missouri, pursuant to purchaser's instructions. The sale by the taxpayer is in Kansas City, Missouri, and is included in both the numerator and the denominator of the gross receipts factor.
- (f) When property being shipped by a seller from the city of origin to a consignee in another city is diverted while en route to a purchaser in Kansas City, Missouri, the sales are in Kansas City, Missouri.
- (1) Example: The taxpayer, a produce grower in Milo, Missouri, begins shipment of perishable produce to the purchaser's place of business in Liberty, Missouri. While en route, the produce is diverted to the purchaser's place of business in Kansas City, Missouri. The sale by the taxpayer is attributed to Kansas City, Missouri, and is included in both the numerator and denominator of the gross receipts factor.
- (III) Charges for work done or services performed incident to a sale, whether or not included in the price of the property, shall be considered gross receipts from such sale.
- (IV) Sales, other than sales of tangible personal property, are in the city if:
- (a) The income-producing activity which gave rise to the receipts is performed wholly within Kansas City, Missouri; or
- (b) The income-producing activity is performed both within and without Kansas City, Missouri, and a greater proportion of the income-producing activity is performed in Kansas City, Missouri, than outside Kansas City, Missouri, based on costs of performance. The term "costs of performance" includes direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the taxpayer's trade or business.
- (V) The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or

business for the ultimate purpose of obtaining gains or profit. This activity does not include transactions and activity performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, “income producing activity” includes, but is not limited to the following:

- (a) The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service.
 - (b) The sale, rental, leasing, licensing, or other use of real property.
 - (c) The rental, leasing, licensing, or other use of tangible personal property.
 - (d) The sale, licensing, or other use of intangible personal property. However, the mere holding of intangible personal property is not, of itself, an income producing activity.
- (VI) Gross receipts for the performance of personal services are attributable to Kansas City, Missouri, to the extent those services are performed in Kansas City, Missouri. If services relating to a single item of income are performed partly within and partly outside of Kansas City, Missouri, the gross receipts for the performance of those services shall be attributable to Kansas City, Missouri, only if a greater proportion of the services were performed in the city, based on costs of performance. Usually, where services are performed partly within and partly outside of Kansas City, Missouri, the services performed in each city will constitute a separate income-producing activity; in that case, the gross receipts for the performance of services attributable to Kansas City, Missouri, shall be measured by the ratio which the time spent in performing the services in Kansas City, Missouri, bears to the total time spent in performing the services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to the gross receipts. Personal service not directly connected with the performance of the contract, or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

(a) Example 1:

The taxpayer, a road show, gave theatrical performances at various locations in Chicago, Illinois, and in Kansas City, Missouri, during the tax period. All gross receipts from

performances given in Kansas City, Missouri are attributed to Kansas City, Missouri.

(b) Example 2:

The taxpayer, a public opinion survey corporation, conducted a poll by its employees in Jefferson City, Missouri, and in Kansas City, Missouri, for the fee of \$9,000. The project required 600 man-hours to obtain the basic data and prepare the survey report. Two hundred of the 600 man-hours were expended in Kansas City, Missouri. The receipts attributable to Kansas City, Missouri are \$3,000: $200 \text{ man-hours in Kansas City, Missouri} \div 600 \text{ total man-hours} \times \$9,000 \text{ fee}$.

(VII) Where the income producing activity in respect to earned income from intangible personal property can be readily identified, that income can be included in the denominator of the gross receipts factor, and if the income-producing activity occurs in Kansas City, Missouri, in the numerator of the gross receipts factor as well. For example, usually the income-producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property and income from the sale, licensing or other use of intangible personal property.

(VIII) Where income from intangible property cannot readily be attributed to any particular income-producing activity of the taxpayer, which income cannot be assigned to the numerator of the sales or gross receipts factor for any state or city and shall be excluded from the denominator of the gross receipts factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends and interest shall be excluded from the denominator of the gross receipts factor.

(E) *Combined Reports Prohibited.* Returns which combine and allocate the taxable income of more than one corporation are prohibited.

(F) *Allocation percentage.* The allocation percentage is the total of the percentages determined in accordance with these regulations for the property, payroll, and gross receipts factors, or such of the aforesaid percentages as may be applicable to the taxpayer's business, divided by the number of percentages used in ascertaining said total. The result so obtained is the allocation percentage.

- (i) In determining the allocation percentage, if the denominator of any factor is zero that factor shall not be considered as part of the allocation percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be allocable entirely outside the city. A factor is excluded only when it does not exist anywhere.
- (ii) The allocation percentage is applied to the total of the taxpayer's net profits as determined under these regulations to determine the portion of such net profits subject to this tax.

(iii) Example 1:

Ron Marlin has a small C-corporation that he runs from an office in Kansas City, Missouri. He does not own any property located outside of Kansas City, Missouri, and has no payroll expense. Of his gross receipts, 42% are attributable to Kansas City, Missouri. His apportionment factor is calculated as:

| | |
|-----------------------|--------------------------------------------------------------------------------------------|
| Property factor | 100% |
| Gross receipts factor | 42% |
| Total for all factors | $142\% \div 2$ relevant factors = 71% of net profits apportioned to Kansas City, Missouri. |

The payroll factor is not considered because it does not exist anywhere for this corporation.

(iv) Example 2:

Marlin Norris has a small C-corporation with an office, on property owned by the corporation, located in Leawood, Kansas. He has no property located in Kansas City, Missouri. Of his gross receipts, 82% are attributable to Kansas City, Missouri, and 68% of his payroll is attributable to Kansas City, Missouri. His apportionment factor is calculated as:

| | |
|-----------------------|--------------------------------------------------------------------------------------------|
| Property factor | 0% |
| Payroll factor | 68% |
| Gross receipts factor | 82% |
| Total for all factors | $150\% \div 3$ relevant factors = 50% of net profits apportioned to Kansas City, Missouri. |

(2) Other Methods of allocation.

- (A) *General Rule.* In the event a just and equitable result cannot be obtained under the formula method, or use of that method does not fairly represent

the extent of the taxpayer's business activity in the city, the Commissioner may, upon the taxpayer's application, substitute other methods of allocating net income to Kansas City, Missouri, to effect a fair and proper allocation or to clearly reflect the taxpayer's income. Examples of such methods that may be used, if reasonable, are:

- (i) Separate accounting;
 - (ii) The exclusion of one or more of the factors;
 - (iii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in the city; or
 - (iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.
- (B) *Taxpayer Requests to Use Other Methods.* A taxpayer may apply to the Commissioner to substitute other factors in the formula or to use a different method to allocate net profits. Any such request must be made in writing not less than 60 days before the end of the taxable year. The application shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. The taxpayer may not begin using such substitute method until receipt of approval from the Commissioner. Upon receipt of approval, the taxpayer shall continue to so file under the approved substitute method unless and until the taxpayer requests permissions to use a different method and such request is approved by the Commissioner.
- (C) In the case of certain industries, if the allocation provisions contained in these regulations do not set forth appropriate procedures for determining the apportionment factors, the Commissioner may adopt special apportionment regulations or modify the standard formula method provided herein to accommodate the unique attributes for such industries. However, the allocation formula rules for any such industries shall be applied uniformly. The Commissioner hereby adopts the special allocation rules for the following industries, as defined in said rules:
- Airlines.
 - Rail Transportation Companies.
 - Trucking Companies.
 - Construction Companies.
- (D) In the case of an allocation question that is not specifically addressed in these regulations, it is the general policy of the Commissioner in matters involving the determination of a taxpayer's property, payroll, and gross receipts factors to follow the Missouri state income tax regulations

governing the apportionment of multi-state income with respect to the same matters, to the extent the state regulations are applicable to the individual facts and circumstances, and are otherwise consistent with these regulations. However:

- (i) A single-factor shall not be allowed.
 - (ii) The Commissioner reserves the discretion to make the final determination of the applicability of a particular state regulation to the city earnings and profits tax.
- (E) *Special Allocation Rules for Trucking Companies.* The allocation rules set forth herein may be modified as follows in the case of a taxpayer that operates a trucking company, including a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation.
- (i) *Definitions.* As used in this Regulation for allocating the net profits of trucking companies:
 - (I) “Mobile property” means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property, except for support vehicles used predominantly in a local capacity.
 - (II) A “mobile property mile” is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.
 - (III) A “mobile property worker” is an employee who is paid to drive or work on mobile property while it is moving.
 - (ii) For purposes of the property factor mobile property, as defined in this Regulation, which is located both within and outside of the city during the tax year, shall be included in the numerator of the property factor in the ratio that mobile property miles in the city bear to the total mobile property miles within and without of the city. All property other than mobile property shall be included in the numerator of the property factor in accordance with the other provisions of these regulations.
 - (I) Example: Concrete Carriers is a corporation based in Kansas City, Missouri. The company has five concrete mixer trucks and mixes and delivers concrete in Kansas City, Missouri, and Raytown, Missouri. All other real and tangible personal property owned and rented by Concrete Carriers is located in Kansas City, Missouri, all year. Concrete Carriers’ records for the year show the following:

| Truck | Miles in Kansas City, Missouri | Miles in Raytown | Total Miles |
|-------|--------------------------------|------------------|-------------|
| 1 | 8,000 | 4,000 | 12,000 |
| 2 | 800 | 5,000 | 5,800 |
| 3 | 16,000 | 500 | 16,500 |
| 4 | 9,500 | 4,500 | 14,000 |
| 5 | 6,200 | 6,000 | 12,200 |

The trucks had the following average values

| Truck | Value (Denominator) | KC Percentage | Numerator Value |
|-------|---------------------|---------------|-----------------|
| 1 | \$28,000 | 66.67% | \$18,667.60 |
| 2 | \$25,000 | 13.79% | \$3,447.50 |
| 3 | \$17,000 | 96.97% | \$16,484.90 |
| 4 | \$35,000 | 67.86% | \$23,751.00 |
| 5 | \$30,000 | 50.82% | \$15,246.00 |

(iii) For purposes of the payroll factor, compensation paid to mobile property workers who perform services both within and outside of the city shall be included in the numerator of the payroll factor in the ratio which their services performed in the city bear to their services performed everywhere based on mobile property miles. All workers other than mobile property workers shall be included in the numerator of the payroll factor in accordance with the other provisions of these regulations

(l) Example: Concrete Carriers has six employees who are considered mobile property workers.

| Emp. | Miles in Kansas City, Missouri | Miles in Raytown | Total Miles |
|------|--------------------------------|------------------|-------------|
| 1 | 10,000 | 0 | 10,000 |
| 2 | 12,000 | 2,000 | 14,000 |
| 3 | 500 | 5,500 | 6,000 |
| 4 | 4,500 | 1,500 | 6,000 |
| 5 | 9,000 | 3,000 | 12,000 |
| 6 | 4,500 | 8,000 | 12,500 |

The employees had the following annual wage amounts:

| Emp. | Wage (Denominator) | KC Percentage | Numerator Value |
|------|--------------------|---------------|-----------------|
| 1 | \$40,000 | 100% | \$40,000.00 |
| 2 | \$57,400 | 85.71% | \$49,197.54 |

| | | | |
|---|----------|--------|-------------|
| 3 | \$18,000 | 8.33% | \$1,499.40 |
| 4 | \$21,000 | 75.00% | \$15,750.00 |
| 5 | \$40,800 | 75.00% | \$30,600.00 |
| 6 | \$40,625 | 36.00% | \$14,625.00 |

(iv) For purposes of the gross receipts factor, the total revenue attributable to the city during the tax year from hauling freight, mail, and express shall be:

- (I) Intra-city: all receipts from any shipment that both originates and terminates within the city.
- (II) Inter-city: That portion of the receipts from movements or shipments passing into or out of the city as determined by the ratio which the mobile property miles traveled by such movements or shipments in Kansas City, Missouri, bear to the total mobile miles traveled by movements or shipments from points of origin to destination.

(III) Example: Lumber Carriers had trip miles for the year as follows:

| Origination | Termination | KC Miles | Mosby Miles |
|-----------------------|-----------------------|----------|-------------|
| Kansas City, Missouri | Mosby, Missouri | 4,000 | 16,000 |
| Kansas City, Missouri | Kansas City, Missouri | 36,500 | 0 |

Gross receipts for lumber and delivery for the year were as follows:

| Trip Type | Gross Receipts (Denominator) | KC Percentage | Numerator Value |
|------------|------------------------------|---------------|-----------------|
| Inter-City | \$2,200,000 | 20.00% | \$440,000 |
| Intra-City | \$4,300,000 | 100% | \$4,300,000 |

- (v) The total revenue of the taxpayer other than from hauling freight, mail, and express shall be attributable to the city in accordance with the other provisions of these regulations.
- (vi) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by city the mobile property miles traveled by such mobile property as those terms are used in this Regulation. Such records are subject to review by the Commissioner of revenue.

(F) *Special Allocation Rules for Railroad Companies.* The allocation rules set forth herein may be modified as follows in the case of a taxpayer that operates a railroad.

(i) *Definitions.* As used in this Regulation:

- (I) “Locomotive mile” is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of one mile under its own power.
- (II) A “car mile” is a movement of a unit of car equipment a distance of one mile.
- (III) A “revenue passenger mile” means the movement of one passenger for a distance of one mile.

(ii) In determining the numerator of the property factor, all property shall be included in the numerator of the property factor in accordance with the general allocation rules of these regulations, except that mobile or movable property (for example, passenger cars, freight cars, locomotives, and freight containers which are located within and without the city during the tax year), shall be included in the numerator of the property factor in the ratio which locomotive miles and car miles in the city bear to the total everywhere.

(iii) For purposes of the payroll factor, with respect to all personnel except enginemen and trainmen performing services on interstate trains, compensation paid to employees shall be included in the numerator as provided in the general allocation rules of these regulations. Compensation paid to enginemen and trainmen performing services on inter-city or interstate trains shall be included in the numerator of the payroll factor in the ratio which their services performed in the city bear to their services performed everywhere, based on locomotive miles.

(iv) For purposes of the gross receipts factor, the total revenue attributable to the city during the tax year from hauling freight, mail and express shall be:

- (I) Intra-city: all receipts from shipments that both originate and terminate within the city.
- (II) Inter-city: That portion of the receipts from movements or shipments passing into, or out of the city as determined by the ratio which the car miles traveled by such movements or

shipments in the city bear to the total miles traveled from origin to destination.

- (v) Receipts from Transporting Passengers. For purposes of the gross receipts factor, the total revenue attributable to the city during the tax year from hauling passengers shall be:
 - (I) Intra-city: all receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate within the city.
 - (II) Inter-city: That portion of the receipts from the transportation of inter-city passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in the city bear to the total everywhere.
 - (vi) The total revenue of the taxpayer other than from hauling freight, passengers, mail, and express shall be attributable to the city in accordance with the other provisions of these regulations.
- (G) *Special Allocation Rules for Airlines.* The allocation rules set forth herein may be modified as follows in the case of a taxpayer that operates an airline.
- (i) *Definitions.* As used in this Regulation:
 - (I) “Aircraft ready for flight” means aircraft owned or acquired through rental or lease (but not interchange) that are in the possession of the taxpayer and are available for service on the taxpayer’s routes.
 - (II) “Revenue service” means the use of aircraft ready for flight for the production of revenue.
 - (III) “Transportation revenue” means revenue earned by transporting passengers, freight, and mail as well as revenue earned from liquor sales, pet crate rentals, and the like.
 - (IV) “Departures” means all takeoffs for regularly scheduled or charter flights that occur during revenue service.
 - (ii) In determining the numerator of the property factor, all property except aircraft ready for flight shall be included in the numerator of the property factor in accordance with the general allocation rules of these regulations. Aircraft ready for flight shall be included in the numerator of the property factor in the ratio calculated as departures of aircraft

from locations in the city weighted as to the cost of aircraft by type compared to total departures similarly weighted.

- (iii) For purposes of the payroll factor, compensation paid to non-flight employees who perform services both within and without of Kansas City, Missouri, shall be included in the numerator of the payroll factor in accordance with the general allocation rules of these regulations. Compensation paid to flight personnel (the air crew aboard an aircraft assisting in the operation of the aircraft or the welfare of passengers while in the air) shall be included in the numerator of the payroll factor in the ratio of departures of aircraft from locations within the city, weighted as to the cost of aircraft by type compared to total departures similarly weighted, multiplied by the total flight personnel compensation.
- (iv) For purposes of the gross receipts factor, the total revenue attributable to the city during the tax year is the result of the following calculation: the ratio of departure of aircraft in Kansas City, Missouri, weighted as to the cost of aircraft by type, as compared to total departures similarly weighted, multiplied by the total transportation revenue. The product of the calculation is added to any non-flight revenues allocated to the city.
- (v) The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these regulations. Such records are subject to review by the Commissioner of revenue.
- (vi) Example: An airline for the tax year has:
 - 1. Ten 747s ready for flight and in revenue service at an average cost per unit of \$40,000,000 for nine of the aircraft. It rents the tenth 747 from another airline for \$9,000,000 per year. At eight times rents, the latter is valued at \$72,000,000 for apportionment purposes. The total 747 valuation is, therefore, \$432,000,000 for property factor denominator purposes.
 - 2. Twenty 727s ready for flight in revenue service at an average cost per unit of \$20,000,000. The total 727 valuation is, therefore, \$400,000,000 for property factor denominator purposes.
 - 3. It has nonflight tangible property (n.t.p.) valued at an original cost of \$200,000,000.
 - 4. It has the following annual payroll:

| | |
|----------------------------|---------------|
| Flight personnel | \$60,000,000 |
| Nonflight personnel (n.p.) | \$40,000,000 |
| Total | \$100,000,000 |

5. From its operations, it has total receipts of \$50,000,000 and net profits of \$1,000,000. There are no nonflight revenues.

6. It has the following within Kansas City, Missouri:

| Item | Percent | Calculation | Total |
|-----------------------|---------|---------------------|--------------|
| 747 flight departures | 10% | .10 x \$432,000,000 | \$43,200,000 |
| 727 flight departures | 20% | .20 x \$400,000,000 | \$80,000,000 |
| n.t.p. | 5% | .05 x \$200,000,000 | \$10,000,000 |
| n.p. payroll | 15% | .15 x \$40,000,000 | \$6,000,000 |

7. The airline's tax liability to Kansas City, Missouri is determined as follows:

Property Factor:

$$\$43,200,000 \text{ (KC 747s)} + \$80,000,000 \text{ (KC 727s)} + \$10,000,000 \text{ (KC n.t.p.)} = \$133,200,000$$

$$\$432,000,000 \text{ (747s)} + \$400,000,000 \text{ (727s)} + \$200,000,000 \text{ (n.t.p.)} = \$1,032,000,000$$

$$\$133,200,000 \div \$1,032,000,000 = 12.91\%$$

Gross Receipts Factor:

$$\$43,200,000 \text{ (KC 747s)} + \$80,000,000 \text{ (KC 727s)} = \$123,200,000$$

$$\$432,000,000 \text{ (747s)} + \$400,000,000 \text{ (727s)} = \$832,000,000$$

$$\$123,200,000 \div \$832,000,000 = 14.81\%$$

Payroll Factor:

$$\$6,000,000 \text{ (n.p.)} + (.148 \times 60,000,000 \text{ (flight)}) = \$14,880,000 \div \$100,000,000 = 14.88\%$$

Average Ratio of Factors:

$$(12.91\% + 14.81\% + 14.88\%) = 42.60\% \div 3 = 14.20\%$$

Net profits subject to tax in Kansas City, Missouri: $14.20\% \times \$1,000,000 = \$142,000$

Tax Liability to Kansas City, Missouri: $\$142,000 \times 1.0\% = \$1,420$

(H) *Special Allocation Rules for Construction Companies.* The allocation rules set forth herein may be modified as follows in the case of a taxpayer that is a construction company.

(i) When a taxpayer elects to use the percentage of completion method of accounting, or the completed contract method of accounting for long-term contracts (construction contracts covering a period in excess of one year from the date of execution of the contract to the date on which the contract is finally completed and accepted), and has net profits from sources both within and outside of Kansas City, Missouri, from a trade or business, the amount of business income derived from these long-term contracts from sources within Kansas City, Missouri, shall be determined pursuant to this rule.

(ii) *Percentage of Completion Method.* Under this method of accounting for long-term contracts, the amount to be included each year in net profits from each contract is the amount by which the gross contract price that corresponds to the percentage of the entire contract that has been completed during the tax year exceeds all expenditures made during the tax year in connection with the contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the tax year for use in each long-term contract.

(I) Example: A taxpayer using the percentage of completion method of accounting for long-term contracts entered into a long-term contract to build a structure in Kansas City, Missouri, for \$9,000,000. The contract allowed three years for completion and as of the end of the second tax year the taxpayer's books of account, kept on the accrual method, disclosed the following:

| | Receipts | Expenditures |
|---------------------|--------------------|--------------------|
| End of 1st tax year | \$2,500,000 | \$2,400,000 |
| End of 2nd tax year | \$4,500,000 | \$4,100,000 |
| Totals | \$7,000,000 | \$6,500,000 |

In computing these expenditures, consideration was given to material and supplies on hand at the beginning and end of each tax year. It was estimated that the contract was 30% completed at the end of the first tax year and 80% completed at the end of the second tax year. The amount to be included in net profits for the first tax year is \$300,000 (30% of \$9,000,000 or \$2,700,000 less expenditures of \$2,400,000 equals

\$300,000). The amount to be included in net profits for the second tax year is \$400,000 (50% of \$9,000,000 or \$4,500,000 less expenditures of \$4,100,000 equals \$400,000).

- (iii) *Completed Contract Method.* Under this method of accounting, net profits derived from long-term contracts is reported for the tax year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of net profits attributable to Kansas City, Missouri, from each completed contract. All receipts and expenditures applicable to these contracts, whether complete or incomplete as of the end of the tax year, are excluded from net profits derived from other sources as, for example, short-term contracts, interest, rents, royalties, and the like, which are allocated by the regular three-factor formula of property, payroll and gross receipts.
- (iv) In general, the numerator and denominator of the property factor shall be determined in accordance with the general allocation rules under the formula method set forth in these regulations. However, the following special rules are also applicable:
 - (I) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent the costs exceed progress billings (accrued or received depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts) shall be included in the denominator of the property factor. The value of any construction costs attributable to construction projects in Kansas City, Missouri, shall be included in the numerator of the property factor.

(a) Example 1:

The taxpayer commenced a long-term construction project in Kansas City, Missouri as of the beginning of the tax year. By the end of its second tax year, its equity in the costs of production to be reflected in the numerator and denominator of its property factor for that year is computed as follows:

| | Year One | | Year Two | |
|---------------------------------|-----------|-------------|-----------|-------------|
| | Beginning | Ending | Beginning | Ending |
| Construction Costs | 0 | \$1,000,000 | | |
| Progress billings | | \$600,000 | | |
| Balance 12/31—1/1 | | \$400,000 | \$400,000 | |
| Construction Costs | | | | |
| Total from beginning of project | | | | \$5,000,000 |
| Progress billings | | | | |

| | | | | |
|----------------------------------------------------|--|--|--|--------------------|
| Total from beginning of project | | | | \$4,000,000 |
| Balance 12/31 | | | | \$1,000,000 |
| Balance beginning of year | | | | \$400,000 |
| Total | | | | \$1,400,000 |
| Average (1/2)—Value used in property factor | | | | \$700,000 |

Note: It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity, as provided in the general allocation rules of these regulations.

(b) Example 2:

Same facts as in Example 1 except that progress billings exceeded construction costs. No value for the taxpayer's equity in the construction project is shown in the property factor.

(II) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate even though this rental expense may be capitalized into the cost of construction.

(III) The property factor is computed in the same manner for all long-term contract methods of accounting and is computed for each tax year even though under the completed contract method of accounting, net profits is computed separately.

(v) In general, the numerator and denominator of the payroll factor shall be determined in accordance with the general allocation rules under the formula method set forth in these regulations. However, the following special rules are also applicable:

(I) Compensation paid employees that is attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(II) Compensation paid employees who in the aggregate perform most of their services in a state to which their employer does not report them for unemployment tax purposes shall be attributed to the state where the services are performed.

(a) Example: A taxpayer engaged in a long-term contract in Kansas City,

Missouri, sends several key employees to Kansas City, Missouri, to supervise the project. The taxpayer, for unemployment tax purposes, reports these employees to Nebraska, where the main office is maintained and where the employees reside. For payroll factor purposes, the compensation is assigned to the numerator of Kansas City, Missouri.

(III) The payroll factor is computed in the same manner for all long-term contract methods of accounting and is computed for each tax year even though, under the completed contract method of accounting, net profit is computed separately.

(vi) In general, the numerator and denominator of the gross receipts factor shall be determined in accordance with the general allocation rules under the formula method set forth in these regulations. However, the following special rules are also applicable:

(I) Gross receipts derived from the performance of a contract are attributable to Kansas City, Missouri, if the construction project is located in Kansas City, Missouri. If the construction project is located partly within and partly outside of Kansas City, Missouri, the gross receipts attributable to Kansas City, Missouri, are based upon the ratio which construction costs incurred during the tax year for the project in Kansas City, Missouri, bear to the total of construction costs for the entire project during the tax year, or any other method, such as engineering cost estimates, which will provide a reasonable apportionment.

(a) Example 1:

A construction project was undertaken in Kansas City, Missouri, by a calendar year taxpayer that had elected one of the long-term contract methods of accounting. The following gross receipts (progress billings) were derived from the contract during the three tax years that the contract was in progress:

| | 1st Year | 2nd Year | 3rd Year |
|----------------|-----------------|-----------------|-----------------|
| Gross Receipts | \$1,000,000 | \$4,000,000 | \$3,000,000 |

The gross receipts to be reflected in both the numerator and denominator of the gross receipts factor for each of the three years are the amounts shown.

(b) Example 2:

A taxpayer contracts to build a bridge over a river at a point that lies half within Kansas City, Missouri, and half within the state of Kansas. During the taxpayer's first tax year construction costs in Kansas City, Missouri, were \$2,000,000. Total construction costs for the project during the tax year were \$3,000,000. Gross receipts (progress billings) for the year were \$2,400,000. The ratio of construction costs attributable to Kansas City, Missouri, are $\$2,000,000 \div \$3,000,000 = 66.67\%$. Accordingly, the gross receipts of $\$2,400,000 \times 66.67\% = \$1,600,000$ are included in the numerator of the gross receipts factor.

(II) If the percentage of completion method is used, the gross receipts factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the tax year.

(a) Example: A taxpayer that had elected the percentage of completion method of accounting entered into a long-term construction contract. At the end of its current tax year (the second since starting the project) it estimated that the project was 30% completed. The bid price for the project was \$9,000,000 and it had received \$2,500,000 from progress billings as of the end of its current tax year. The amount of gross receipts to be included in the gross receipts factor for the current tax year is \$2,700,000 ($30\% \times \$9,000,000$), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

(III) If the completed contract method of accounting is used, the gross receipts factor includes the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the tax year attributable to each contract.

(a) Example 1:

A taxpayer that had elected the completed contract method of accounting entered into a long-term construction contract. By the end of its current tax year (the second since starting the project), it had billed and accrued on its books a total of \$5,000,000 of which \$2,000,000 had accrued in the first year the contract was undertaken and \$3,000,000 had accrued in the current (second) year. The amount of gross receipts to be included in the gross receipts factor for the current tax year is \$3,000,000.

(b) Example 2:

Same facts as in Example 1, except the taxpayer keeps its books on the cash basis and as of the end of its current tax year had received only \$2,500,000 of the \$3,000,000 billed during the current year. The amount of gross receipts to be included in the gross receipts factor for the current tax year is \$2,500,000.

- (IV) The gross receipts factor, except as noted in this section, is computed in the same manner, regardless of which long-term method of accounting the taxpayer has elected, and is computed for each tax year, even though under the completed contract method of accounting net profits is computed separately.
- (vii) The total of the property, payroll, and gross receipts percentages is divided by three (or by the number of applicable factors if the denominator of one or more of the factors is zero) to determine the allocation percentage. The allocation percentage is then applied to net profits to establish the amount allocated to Kansas City, Missouri.
- (viii) The completed contract method of accounting requires that the reporting of net profits (or loss) be deferred until the year the construction project is completed or accepted. Accordingly, a separate computation is made for each contract completed during the tax year regardless of whether the project is located within or outside of Kansas City, Missouri, in order to determine the amount of net profits which is attributable to sources within Kansas City, Missouri. The measure of tax for the tax year is the amount of profits from each contract completed during the tax year allocated to Kansas City, Missouri, plus any other net profits allocated to Kansas City, Missouri, by the regular three-factor formula from other sources or business activities.
- (ix) The amount of net profit (or loss) from each contract which is derived from sources within Kansas City, Missouri, using the completed contract method of accounting is computed as follows:
 - (I) In the tax year the contract is completed, the net profits (or loss) is determined; and
 - (II) The net profit (or loss) is allocated to Kansas City, Missouri, by the following method:
 - (a) A fraction is determined for each year the contract was in progress. The numerator is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator is the total of all construction costs for the project;

- (b) Each percentage is multiplied by the apportionment formula percentage for that particular year; and
- (c) The percentages determined for each year the contract was in progress are totaled. The amount of total income (or loss) from the contract is multiplied by the total percentage. The resulting income (or loss) is the amount of the net profits from the contract derived from sources within Kansas City, Missouri.

(III) Example 1:

A taxpayer using the completed contract method of accounting for long-term contracts is engaged in three long-term contracts:

- Contract L in Kansas City, Missouri.
- Contract M in Olathe, Kansas.
- Contract N in Grandview, Missouri.

In addition, it has other net profits (fewer expenses) during the tax year 2020 from interest, rents and short-term contracts amounting to \$500,000. During 2020 it completed Contract M in Olathe, Kansas, at a profit of \$900,000. Contracts L and N in Kansas City, Missouri, and Grandview, Missouri, respectively, were not completed during that year. The apportionment percentages of the taxpayer and the percentages of contract costs for each year Contract M in Olathe, Kansas was in progress are as follows:

| | 2018 | 2019 | 2020 |
|------------------------------------------------------------------------------------------|------|------|------|
| Apportionment Percent | 30% | 20% | 40% |
| Percent of Construction Costs of Contract M each year to total Construction costs—(100%) | 20% | 50% | 30% |

The corporation's net profits subject to tax in the city for 2020 is computed as follows:

| | |
|----------------------------------------------------------------|-----------|
| Net Profits Other Sources | \$500,000 |
| Apportioned 40% to Kansas City, Missouri | \$200,000 |
| Add: Income from Contract M* | \$252,000 |
| Total income derived from sources within Kansas City, Missouri | \$452,000 |

* Income from Contract M apportioned to Kansas City, Missouri:

| | 2018 | 2019 | 2020 | Total |
|-------------------------------|------|------|------|-------|
| Apportionment Percentage | 30% | 20% | 40% | |
| Percent of construction Costs | 20% | 50% | 30% | 100% |
| Product | 6% | 10% | 12% | 28%* |

* The amount subject to Kansas City, Missouri tax is 28% of \$900,000 = \$252,000

(IV) Example 2:

Same facts as in Example 1, except that Contract L was started in 2020 in Kansas City, Missouri, the first year the taxpayer was subject to tax in Kansas City, Missouri. Contract L in Kansas City, Missouri, and Contract N in Grandview, Missouri, are incomplete in 2020. The corporation's net income subject to tax in Kansas City, Missouri, for 2020 is computed as follows:

| | |
|---------------------------------------------------------------------|-----------|
| Net Profits Other Sources | \$500,000 |
| Apportioned 40% to Kansas City, Missouri | \$200,000 |
| Add: Income from Contract M* | \$108,000 |
| Total Net Profits derived from sources within Kansas City, Missouri | \$308,000 |

* Income from Contract M apportioned to the city:

| | 2018 | 2019 | 2020 | Total |
|-------------------------------|------|------|------|-------|
| Apportionment percent | 0% | 0% | 40% | |
| Percent of Construction Costs | 20% | 50% | 30% | 100% |
| Product | 0% | 0% | 12% | 12%* |

* 12% of \$900,000 = \$108,000

Note: Only 12% is used to determine the net profits derived from sources within the City since the corporation was not subject to tax in Kansas City, Missouri prior to 2020.

(V) Example 3:

Same facts as in Example 1 except:

- The figures relate to Contract L in Kansas City, Missouri.
- 2020 is the first year the corporation was taxable outside Kansas City, Missouri.

Contracts M and N in Olathe, Kansas, and Grandview, Missouri, were started in 2020 and are incomplete. The corporation's net income subject to tax in Kansas City, Missouri, for 2020 is computed as follows:

| | |
|--------------------------------------------------------|-----------|
| Net profits Other sources | \$500,000 |
| Apportion 40% to this state | \$200,000 |
| Add: Income for Contract L* | \$738,000 |
| Total net profits derived from sources within the city | \$938,000 |

* Income from Contract L apportioned to the city:

| | 2018 | 2019 | 2020 | Total |
|----------------------------------|------|------|------|-------|
| Apportionment Percent | 100% | 100% | 40% | |
| Percentage of Construction Costs | 20% | 50% | 30% | 100% |
| Product | 20% | 50% | 12% | 82%* |

82% of \$900,000 = \$738,000

(VI) Computation for Year of Withdrawal, Dissolution, or Cessation of Business: Completed Contract Method. Use of the completed contract method of accounting for long-term contracts requires that net profits derived from sources within Kansas City, Missouri, from incomplete contracts in progress outside Kansas City, Missouri, on the date of withdrawal, dissolution or cessation of business in Kansas City, Missouri be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in Kansas City, Missouri.

- (a) The amount of net profits (or loss) from each contract to be allocated to Kansas City, Missouri, by the allocation method shall be determined as if the percentage of completion method of accounting were used for all contracts on the date of withdrawal, dissolution, or cessation of business. The amount of net profits (or loss) for each contract shall be the amount by which the gross contract price from each contract that corresponds to the percentage of the entire contract which has been completed from the commencement of the contract to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during this period in connection with each contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the tax year for use in each contract.

- (b) Example: A construction contractor qualified to do business in Kansas City, Missouri, had elected the completed contract method of accounting for long-term contracts. It was engaged in two long-term contracts. Contract L in Kansas City, Missouri, was started in 2018 and completed at a profit of \$900,000 on December 16, 2020. The taxpayer withdrew on December 31, 2020. Contract M in Lawrence, Kansas, was started in 2019 and was incomplete on December 31, 2019.

The allocation percentages of the taxpayer and the percentages of construction costs are determined for each year Contract M in Lawrence, Kansas, was in progress and are as follows:

| | 2018 | 2019 | 2020 | Total |
|-----------------------------------|------|------|------|-------|
| Allocation percent | 30% | 20% | 40% | |
| Percentages of Construction costs | 20% | 50% | 30% | 100% |
| Contract L, Kansas City | | | | |
| Contract M, Lawrence | 0% | 10% | 25% | 35% |

The corporation had other net profits of \$500,000 during 2019 and \$300,000 during 2020. The gross contract price of Contract M (Lawrence) was \$1,000,000 and it was estimated to be 35% completed on December 31, 2020. Total expenditures to date for Contract M (Lawrence) were \$300,000 for the period ended December 31, 2020.

The measure of tax for the taxable year ended 12/31/20 is computed as follows:

| | Taxable Year 2020 | |
|------------------------------------------------------|-------------------|-----------|
| | 2019 | 2020 |
| Net profits other sources | \$500,000 | \$300,000 |
| Allocation percentage to the city | 20% | 40% |
| Amount apportioned to the city | \$100,000 | \$120,000 |
| Add: Income from Contracts *L (Kansas City) | | \$252,000 |
| **M (Lawrence) | | \$ 6,000 |
| Total income derived from sources within Kansas City | \$100,000 | \$378,000 |

* Income from Contract L apportioned to Kansas City, Missouri:

| | 2018 | 2019 | 2020 | Total |
|----------------------------------|------|------|------|-------|
| Allocation percentages | 30% | 20% | 40% | |
| Percentage of construction costs | 20% | 50% | 30% | 100% |
| Product | 6% | 10% | 12% | 28% |

28% of \$900,000 = \$252,000

** Income from Contract M apportioned to Kansas City, Missouri:

| | 2018 | 2019 | 2020 | Total |
|----------------------------------|------|------|------|-------|
| Apportionment Percentages | 0% | 20% | 40% | |
| Percentage of construction costs | 0% | 10% | 25% | 35% |
| Product | 0% | 2% | 10% | 12% |

Computation of allocated income from Contract M based on percentage of completion method:

| | |
|----------------------------------|-------------|
| Total contract price | \$1,000,000 |
| Estimated to be 35% completed | \$350,000 |
| Less: Total expenditures to date | \$300,000 |
| Apportionable income | \$50,000 |

12.0% of \$50,000 = \$6,000 of income from Contract M apportioned to Kansas City, Missouri.

§1.385 Exemptions.

A tax is not levied on the following:

- (a) Earnings and profits, the taxation of which is prohibited by the United States Constitution, any Act of Congress, or the State of Missouri, including income referred to in Section 92.130, RSMo, which exempts the income received by:
 - (1) Labor, agricultural or horticultural organizations.
 - (2) Mutual savings bank not having a capital stock represented by shares.
 - (3) Fraternal-beneficiary society or order, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society or order or their dependents.

- (4) Domestic building and loan associations and credit unions without capital stock organized and operated for mutual purposes and without profit.
- (5) A cemetery company owned and operated exclusively for the benefit of its members, unless said cemetery is operated for profit.
- (6) Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.
- (7) Business league, chamber of commerce or board of trade not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual.
- (8) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare.
- (9) Club organized and operated exclusively for pleasure, recreation and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member.
- (10) Farmers or other mutual hail, cyclone or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses.
- (11) Farmers, fruit growers or like association, organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them.
- (12) Corporation organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by Chapter 143, RSMo.
- (13) Federal land banks and national farm loan associations, as provided in Section 26 of an Act of Congress approved July 17, 1916, entitled "An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgages, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositories and financial agents for the United States, and for other purposes."

- (14) Joint stock land banks as to income derived from bonds or debentures or other joint stock land banks or any federal land bank belonging to such joint stock land bank.
 - (15) Express companies which now pay an annual tax on their gross receipts in this state and insurance companies which pay an annual tax on their gross premium receipts in this state.
 - (16) Trust created by an employer and employees as part of a stock bonus, pension or profit-sharing plan, for the exclusive benefit of employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, or a trust consisting solely of one or more restricted retirement funds created for one or more self-employed persons as part of a retirement plan for the exclusive benefit of such self-employed person or persons, to which contributions are made by such self-employed person or persons, for the purpose of distributing to such self-employed person or persons the earnings and principal of the fund accumulated by the trust in accordance with such plan and the amount actually distributed, or made available to any distributee.
 - (17) The exemptions in subsections (a)(1) through (a)(15) apply to the income of the organizations, associations, societies, clubs, boards, leagues, companies, corporations, or other entities themselves described therein, and do not exempt the salaries, wages, and other compensation of the employees of such entities from the earnings tax.
- (b) The following income shall be exempt:
- (1) The proceeds of life insurance policies paid to the individual beneficiaries upon the death of the insured.
 - (2) The amount received by the insured as a return of premium or premiums paid by him under life insurance or endowment contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.
 - (3) Any amount received under workers' compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness, or through the war risk insurance act or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States.
 - (4) Disability pensions, regardless of whether received before or after attainment of minimum retirement age.

- (5) Government benefit payments, such as unemployment insurance, social security, veterans' benefits, and similar payments.
- (6) Income of a decedent's estate during the period of administration (except such income arising from the operation of a business.
 - (A) However, income in respect of a decedent, as that term is defined in the Internal Revenue Code, which would have been earnings if received by the decedent, retains its character as earnings and is subject to the earnings tax when received by the decedent's estate or person who acquired the right to the income by reason of the decedent's death.
- (7) Gains from sale of a taxpayer's residence, except for gain due to business use of the home when:
 - (A) Gain from the recapture of depreciation is taxable on the federal return, or would be if a federal return were filed; and
 - (B) Expenses related to the business use of the home have been previously deducted in determining net profits subject to Kansas City, Missouri tax.
- (8) Gifts not in connection with services rendered or work performed.
- (9) Interest upon the obligations of this state or of any political subdivision thereof, or upon the obligations of the United States or its possessions.
- (10) Any income derived from any public utility performing functions of national government or those incident to the state or any political subdivision thereof, or from the exercise of any essential government function accruing to any state, territory or the District of Columbia; provided, that whenever any state, territory or the District of Columbia, or any political subdivision of a state or territory has, prior to the passage of Chapter 143, RSMo, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of chapter 143, RSMo, upon the income derived from the operation of such public utility so far as the payment thereof will impose a loss or burden upon such state, territory or the District of Columbia, of a political subdivision of this state; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in Chapter 143, RSMo, upon the part or portion of said income to which such person or corporation shall be entitled under such contract.
 - (A) This exemption applies to the public utility itself which performs governmental functions, and does not exempt the salaries, wages or other

compensation of the employees of those public utilities from the earnings tax.

- (11) Amounts received from an employer for expenses under an accountable plan and used as such by the individual receiving them are not deemed to be compensation.
 - (12) Receipts on account of scholarships or fellowships, except the part of any scholarship, fellowship, or tuition reduction that represents payment for past, present, or future teaching, research, or other services, unless the scholarship or fellowship represents qualifying payment for teaching, research or other services received under:
 - (A) The National Health Service Corps Scholarship Program, or
 - (B) The Armed Forces Health Professions Scholarship and Financial Assistance Program.
 - (13) Income received by the Federal government, its agencies, the State or its agencies or political subdivisions shall be exempt from taxation under the Ordinance.
 - (14) Any statutory per diem compensation paid any witness, juror, or election worker is not subject to this tax.
 - (15) Alimony or maintenance received and support payments made by one spouse for the benefit of the other spouse or children in connection with any divorce or separation, whether or not awarded by the court
- (c) Pursuant to The Servicemembers Civil Relief Act (Chapter 50, Title 50 of the U.S. Code), active-duty service pay of members of the armed forces who are not residents or domiciled in Kansas City, Missouri, but who perform their military duties in Kansas City, Missouri, is not taxable under the ordinances.
- (1) 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 the Ordinances, whether such member is a resident or nonresident of the city.
 - (A) This exemption does not apply to federal or government services contractors or any other non-military pay status.

§1.386 Collection at source; withholdings.

- (a) Except as otherwise provided herein, it is the duty of each employer maintaining an office or transacting any business within the city, and making payment of any earnings taxable under the Ordinance to a resident or nonresident employee, to deduct and withhold each time any compensation is paid the earnings tax of one percent from the earnings subject to the tax.
 - (1) For employees who are residents of the city, withholding is required on the amount of all salaries, wages, bonuses, incentive payments, fees, commissions or other forms of compensation paid that is subject to the earnings tax imposed by Kansas City, Missouri, regardless of the place where the services are rendered, and
 - (2) For employees who are nonresidents of the city, withholding is required on that portion of the amount of all salaries, wages, bonuses, incentive payments, fees, commission or other forms of compensation paid which is subject to the earnings tax imposed by Kansas City, Missouri and that is attributable to services rendered, work performed or other activities engaged in within the city.
 - (3) Earnings tax must be withheld from cash compensation based on the taxable value of noncash compensation, to the extent that there is sufficient cash compensation to allow the withholding. If there is not sufficient cash compensation in the period in which the noncash compensation is paid, the remaining tax shall be withheld in subsequent pay periods, unless the employee does not have sufficient cash compensation to allow for the remaining withholding by the end of the calendar year.
 - (4) Where a nonresident receives compensation for personal services rendered or performed partly outside the city, the employer shall deduct, withhold, and remit the tax on that portion of the compensation which is earned within the city in accordance with the rules of apportionment detailed in section 1.383 of these regulations.
 - (A) For the apportionment of compensation required by section 1.386, the employer may elect to apportion the current compensation of the nonresident employee using one of the methods below:
 - (i) On the basis of the immediate preceding year's experience for the job or position in which the nonresident is currently employed. In the event the tax deducted and withheld by the employer pursuant to this rule does not approximate the tax actually due for the current year, the nonresident employee shall file an earnings tax return and pay any additional tax shown due thereon or may file a claim with the city for

the overpayment of the tax, in accordance with the provisions of the Ordinance and regulations.

- (I) At the start of each calendar year, the employer must adjust the apportionment to accurately reflect the preceding year's experience. The adjusted apportionment must be used for all pay periods ending later than January 31.
 - (II) In determining the apportionment to use for a job or position, the employer may determine:
 - (a) The average experience for all individuals who held the job or position in question the preceding year; or
 - (b) The average experience for each specific employee, if that employee held the same position for the entire preceding year; or
 - (c) The average experience for a specific individual or individuals who, in the previous year, preceded an individual employee in his or her current job or position.
 - (ii) On the basis of the actual location in which the employee works on any given day. All earnings on any day or part of day spent in Kansas City, Missouri for work purposes are treated as subject to withholding.
 - (iii) For the apportionment of compensation required by section 1.386, the employer may elect to withhold on all taxable earnings of a nonresident employee who works partly within and partly outside of Kansas City, Missouri. If the employer exercises this option, they shall have no responsibility to maintain records to determine or differentiate the amounts of such compensation that may be taxable or nontaxable for the earnings tax under the allocation rules in sections 1.382 and 1.383 of these regulations.
- (5) An employer who withholds earnings tax on only a portion of the compensation of a nonresident, as allowed under these regulations, must maintain adequate and contemporaneous records to support the apportionment for a period of five years following the due date of the annual withholding return for the calendar year. Adequate records may be in either paper or electronic form and may consist of, but are not limited to:
- (A) Appointment calendars.
 - (B) Mileage logs.

- (C) Receipts and logs documenting travel.
- (D) Work schedules that include, date, time and full name of employees working in each location.
- (6) Occasional work in the city. Employers shall not be required to withhold earnings tax for the occasional entry into the city of a nonresident employee who performs the duties for which he or she is employed primarily outside the city.
 - (A) Exception for professional athletes and entertainers. Professional athletic teams and employers of entertainers shall be required to withhold earnings tax for all earnings paid to their nonresident employees that is earned in the city and subject to the earnings tax, regardless of the itinerant nature of the services performed in the city.
- (b) 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.
 - (1) Every employer required to deduct and withhold the tax at the source, and who certifies to the city that tax is withheld but fails to remit such tax, is liable as a fiduciary directly to the city for payment of such tax.
 - (2) The dissolution, bankruptcy, merger or spin-off or reorganization of any such employer does not discharge an employer's liability for a prior failure of such business to file a return or pay taxes due.
 - (3) Any tax deducted and withheld is to be considered paid to Kansas City, Missouri whether or not the employer actually remits the tax to Kansas City, Missouri, for purposes of determining employee payments or credits.
- (c) Commissions and fees paid to professionals, brokers, and others who are independent contractors, and not employees of the payer, are not subject to withholding or collection of the tax at the source. The recipient of such commission or fees shall in all instances file a return and pay the tax.
- (d) *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 Commissioner setting forth the compensation paid to and earnings tax withheld from employees, as well as the amount of tax remitted for the quarter.
 - (1) If the last day falls on a Saturday, Sunday, or legal holiday, the return shall be due on the next day that is not a Saturday, Sunday, or legal holiday.
 - (2) A return is required each quarter until the employer files a final return.

- (3) If no taxes have been withheld a return is still required to be filed until the employer files a final return.
- (e) *Annual returns.* Each employer shall make to the Commissioner a return for the preceding calendar year. All returns shall be in a form prescribed by the Commissioner and shall be subject to the rules and regulations prescribed therefore by the Commissioner 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 Form W-2 information provided to the federal and/or state authorities for such year that includes this information. No part of this provision shall be construed to require any taxpayer to furnish the Commissioner with a copy of his federal or state income tax return.
- (1) Due dates. 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 legal holiday.
- (2) The gross compensation to be reported for each employee shall be for the full twelve calendar months of the year or such portion thereof as the employee reported on was employed.
- (3) In addition to the withholding statements, and at the time they are filed, each employer shall file with the Commissioner an Employer’s Annual Reconciliation of Earnings Tax Withheld on a form prescribed by the Commissioner, comparing the returns of earnings tax withheld to the total amount of taxes withheld as disclosed by the withholding statements. If there are any discrepancies between the Employer’s Annual Reconciliation of Earnings Tax Withheld and the Employer’s Quarterly Return then the quarterly filings must be amended.
- (f) *Penalties for noncompliance.* 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 the 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 \$30.00 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 imposed for all such failures during any calendar year shall not exceed \$500,000.00.

(g) *Exceptions to penalty.* The following are exceptions to the fees or penalties for noncompliance with filing requirements in subsection (f).

- (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.

(h) *Accounting to employees.* Every employer withholding Kansas City, Missouri earnings tax shall furnish each employee or former employee with earnings in Kansas City, Missouri for the calendar year with a statement of his earnings and withholding for the preceding year.

- (1) The statement shall include 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 and may be included on Form W-2.
- (2) The statement must be furnished to the employee on or before the last day of January, or the next succeeding day which is not a Saturday, Sunday, or legal holiday.

(i) *Remittance of earnings tax withheld.* Any employer who deducts and withholds the city earnings taxes from employees' earnings shall remit such tax timely.

- (1) Employers who remit withheld taxes to the State of Missouri on a quarter-monthly basis must remit earnings tax withheld to Kansas City, Missouri on the same quarter-monthly schedule.
- (2) Employers who remit withheld taxes to the State of Missouri on a quarterly basis must remit earnings tax withheld to Kansas City, Missouri on the same quarterly schedule.
- (3) Employers who remit withheld taxes to the State of Missouri on an annual basis must remit earnings tax withheld to Kansas City, Missouri on a quarterly schedule, following the quarterly schedule in section 1.386(i)(2).

- (4) Employers who remit no withheld taxes to the State of Missouri must remit earnings tax withheld to Kansas City, Missouri:
 - (A) Quarterly, if taxes withheld are \$1,000 or less annually.
 - (B) Monthly, if taxes are more than \$1,000 but less than \$12,000 annually.
 - (C) Quarter-monthly, if taxes are more than \$12,000 annually.
- (5) Employers may remit on alternative schedules pending the approval of the Commissioner.
- (6) Withholding may be remitted by mail, in person, online, or via ACH credit transactions.
 - (A) A remittance made by mail must be accompanied by a properly executed check for the amount due and include the taxpayer's name, address, federal tax identifying number, and city account number.
 - (B) A remittance made in person must be accompanied by cash, check, or credit/debit card and include the taxpayer's name, address, federal tax identifying number, city account number, and the amount being remitted.
 - (C) An online remittance must include information for an electronic check (ACH debit transaction) including valid bank account number, transit routing number for the financial institution, and type of account (checking or savings) or valid credit/debit card information. The online transaction must be processed on the taxpayers account established in the City's online system.
 - (D) Remittances may be made via ACH credit transactions through the Federal Reserve System. The ACH payment must be transmitted in the format prescribed by the Commissioner to include the taxpayer's name, federal tax identifying number, city account number and the account being remitted.
- (7) Employers must file and remit all returns and payments electronically via the city's approved online system; remittances may also be made via ACH credit payments.
- (j) *Change in remittance schedule.* Employers may petition the Commissioner in writing for a change in remittance frequency. If approved the frequency change will be effective the next quarterly filing period. If a requested change is not approved, the employer shall continue to remit on the established schedule. Requests should include the employer's name, address, federal identification

number and Kansas City, Missouri, withholding account number, and shall cite one of the following reasons for consideration:

- (1) The employer has a payroll in Kansas City, Missouri that is significantly smaller than or different from the rest of its Missouri payroll. In this case, the employer shall certify the portion of its total Missouri payroll that is paid for services rendered in the city.
 - (2) The employer has been assigned a new frequency by the State of Missouri.
- (k) *Final return required.* Any entity that ceases business and holds withholding tax that has not been remitted must make a final return and remittance to the Commissioner.
- (1) The final remittance of withheld taxes must be made according to the employer's regularly assigned frequency.
 - (2) A final quarterly return of earnings withheld must be filed for the quarter in which the entity ceased doing business. The date the business closed shall be indicated on the final quarterly return.
 - (3) A final annual reconciliation of earnings tax withheld must be filed by January 31 of the year following the calendar year in which the entity ceased business.
 - (4) Copies of the employees' Forms W-2 must be filed by January 31 of the following calendar year in which the entity ceases business.
- (l) *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 (Chapter 21, Title 26, U.S. Code).
- (1) The lack of a withholding requirement will not, in and of itself, mean that the income is not subject to tax.
 - (2) An employer may voluntarily withhold tax due on earnings not subject to social security tax.
- (m) *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.
- (n) 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. However, a nonresident employer not

otherwise subject to the provisions of this article may discontinue withholding for resident employees at the employer's discretion.

- (o) The failure of any employer to withhold the earnings tax when required to do so by this Regulation or to remit the amount of tax withheld to the Commissioner in the time prescribed in this Regulation 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. The liability for the tax shall be discharged upon payment of the tax by the employee but the employer is not relieved of penalties and interest assessed for such failure or refusal.
 - (1) 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 and paying the tax that is due but that was not withheld.
 - (2) If the employer has withheld the tax and failed to pay the tax withheld to the Commissioner, the employee is not liable for the tax so withheld.
 - (3) A Kansas City, Missouri employer, required to withhold the tax from a resident of the city for work done or services performed in another municipality, and who does so withhold and remit to such other municipality, shall be relieved from the requirements of withholding the Kansas City, Missouri tax from such resident of the city except where the rate of tax for such other municipality is less than the rate of tax imposed by the Kansas City, Missouri earnings tax ordinance. In such case the employer shall withhold and remit the difference to the Commissioner.
 - (4) In those cases in which the tax withheld during a tax year from an employee and remitted to the Commissioner by the employer is in excess of the amount owed by the employee for that year, the employee may obtain a refund by filing a return with the Commissioner, except that refunds will not be made unless claimed within one year from the end of the taxable period.
 - (5) In deducting and withholding the tax at source and in payment of tax due under the Ordinance, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. No person shall be entitled to a refund merely because such rounding of the tax results in an apparent overpayment based on his total earnings.
 - (6) No person shall be required to withhold the tax on the wages or other compensation paid domestic servants employed exclusively in or about such person's residence, but such employee shall be subject to all of the requirements of the Ordinance.
 - (7) The tips or gratuities earned or received by an employee are earnings subject to the withholding provisions of the earnings tax when the employee has

collected or earned \$20.00 or more in tips in one month while working for the Kansas City, Missouri based employer. In the event that the employee earns or collects less than \$20.00 in tips, the withholding provisions do not apply and the employee is required to file an earnings tax return.

§1.387 Returns by taxpayers.

(a) A tax return must be filed with the Commissioner:

(1) By each individual whose salaries, wages, commissions, or other compensation, are subject to the earnings tax, unless withholding is equal to or greater than the tax liability.

(A) All individuals whose salaries, wages, commissions or other compensation earned are taxable under section 1.382 of these regulations must file a Kansas City, Missouri Wage Earner Return, stating therein the aggregate amount of salaries, wages, commissions and other compensation subject to the earnings tax that is earned or received for the year covered by the return and such other pertinent facts and information in detail as the Commissioner may require.

(B) However, in the following instances a return is not required:

(i) Individuals for whom the full amount of earnings tax imposed by Kansas City, Missouri has been withheld are not required to file a Wage Earner Return.

(ii) Any individual taxpayer who has taxable earnings from which the Kansas City, Missouri taxes withheld exceed the taxpayer's Kansas City, Missouri tax liability if he does not seek a refund of any money withheld but not owing.

(C) A return must be filed by an individual who has taxable earnings from which taxes have not been withheld, regardless of whether such withholding was required.

(D) Individuals required to file a Wage Earner Return who also have net business profits that are taxable to Kansas City, Missouri shall file two returns, a Wage Earner Return and a Profits Return. Wages and related withholding shall be reported on the Wage Earner Return and business profits and losses, including the taxpayer's share of pass-through profits from a partnership, limited liability company, estate, or trust, shall be reported on the Profits Return.

- (E) Individuals required to file a Wage Earner Return shall file only one Wage Earner Return, regardless of the number of employers and other payers of compensation.
 - (F) Each individual required to file a Wage Earner Return shall file his own return. Married individuals may not file joint returns.
 - (G) Individuals required to file Wage Earner Returns may not reduce earnings by any expenses, even if those expenses are related to the generation of the earnings. Statutory employees should file Wage Earner Returns as regular employees, and no deductions are allowed to be taken from the gross earnings, except for items recognized under Section 1.382(d)(1)(B) and Section 92.113, RSMo
- (2) All taxpayers earning or receiving net earned profits or a net earned loss from a business, including profits passed through from another entity, must file a Profits Return. A return is required in all years, even those years in which a net loss is sustained.
- (A) An individual who is a resident of Kansas City, Missouri and who is a partner in a partnership shall file a profits tax return reporting his share of net income from the partnership.
 - (i) If the partnership has not paid the profits tax on behalf of all partners, payment of the tax shall accompany the return.
 - (ii) If the partnership has elected to pay the profits tax on behalf of all partners, but has not paid the full amount of a partner's share of the tax that partner shall attach a copy of the statement provided by the partnership showing the amount of tax paid on the partner's behalf. Any underpayment of tax attributable to the partnership income must be made by the partner and must accompany the return.
 - (B) A return is required even if a loss was incurred by the taxpayer for the previous calendar year. A loss in one year cannot be carried forward or back to another taxable year.
 - (C) An individual, but not an entity other than an individual, who operates, participates, or invests in multiple businesses that are subject to the profits tax shall file one return combining the net profits and losses from all businesses that are subject to Kansas City, Missouri tax on earnings and profits.
 - (i) If the taxpayer is a resident of Kansas City, Missouri, all profits and losses from all businesses of the taxpayer shall be combined.

- (ii) If the taxpayer is not a resident of Kansas City, Missouri, only the profits and losses apportioned to Kansas City, Missouri and subject to Kansas City, Missouri tax on earnings and profits shall be combined.
- (D) An individual who is subject to the earnings tax and who is required to or elects to file an earnings tax return shall file a separate Profits Return.
- (3) By each business, corporation, fiduciary or other entity, whose profits are subject to the earnings or profits tax.
 - (A) The filing of consolidated returns by parent companies or subsidiary companies shall not be permitted, except as provided herein for disregarded entities.
 - (i) An entity treated as a disregarded entity for federal income tax purposes (such as certain single member limited liability companies) shall also be treated as a disregarded entity for the profits tax. The net profits of the disregarded entity shall be reported on the Profits Return of the owner of the disregarded entity.
- (4) An annual return:
 - (A) Calendar-year taxpayers must file by April 15 of the year following the taxable year.
 - (B) Fiscal-year taxpayers must file by the 15th day of the fourth month following the taxable year.
- (5) In a form prescribed by the Commissioner and showing the amount of tax due and owing and such other pertinent information as the Commissioner may require.
- (6) All returns shall be subject to audit and to correction or adjustment by the Commissioner, or his authorized delegate, as well as to reassessment of tax due, at any time during the latest of:
 - (A) The five years following the due date of such returns.
 - (B) The five years following the extended due date of such returns for which a valid extension is granted.
 - (C) The five years following later of the date, including extensions, the return was due, plus the number of days, if any, that the statute of limitations was waived by the taxpayer.

- (7) Any Profits Return filed shall include total income, total deductions and net profits and shall identify and eliminate items of income that are not subject to the profits tax, expenses that are directly attributable to that income, and all unallowable expenses.
- (8) Where space on the return is inadequate to clearly indicate how net earned profit was determined, additional schedules shall be attached.
- (A) The Commissioner may require additional information at any time he deems necessary to verify the accuracy of any return.
- (B) Schedules and statements needed to support tax returns shall be filed within the time limits set forth for filing the tax returns.
- (9) To be considered complete, valid, and filed, every return must be signed by the taxpayer under penalties of perjury.
- (A) An individual must sign his own return unless he designates authority to sign on his behalf to another individual as allowed in section 1.387(g).
- (B) A valid Power of Attorney must accompany any return signed by the taxpayer's designee. Kansas City, Missouri Form RD-PA or federal Form 2848 may be used.
- (C) Returns for corporations must be signed by any authorized corporate officer or other authorized agent.
- (D) Returns for partnerships must be signed by one general partner or, if a limited liability company (LLC), the LLC member manager.
- (E) Returns for estates and trusts must be signed by the fiduciary for the entity.
- (10) Any tax return prepared by a tax return preparer shall include:
- (A) The tax return preparer's signature, signed in a manner consistent with the allowed manner for signing a federal income tax return.
- (B) The tax return preparer's identifying number, which may be any of the following:
- (i) The tax return preparer's federal preparer tax identification number (PTIN).
- (ii) The tax return preparer's social security number (SSN).

- (C) The date on which the return was signed by the tax return preparer.
- (b) Upon written request of the taxpayer made on or before the date for filing the return, an automatic extension of a period of not to exceed six months shall be granted if the taxpayer has, by the original due date of the return, paid at least 90% of the estimated tax liability for the period for which the extension is requested.
- (1) If a taxpayer is required to file a Wage Earner Return and a Profits Return, separate requests for extension must be filed for each return. Such copy must be:
- (A) A request for extension of time to file a Profits Return may be made by filing Form RD-111.
- (B) A request for extension of time to file a Wage Earner Return may be made by filing Form RD-112.
- (2) If an individual receives an automatic extension of time to file his federal return by virtue of serving in a combat zone, the time to file his Kansas City, Missouri returns will be extended for the same period as the federal return, regardless of the amount of tax owed with the return.
- (c) If an extension of time to file is granted, any tax deemed to be due and owing will be deemed to be due on the original due date.
- (1) A request for an extension of time to file must include a statement of:
- (A) The estimated tax liability for the period.
- (B) The amount that has been paid against the tax liability.
- (C) The estimated tax balance due after subtracting the amounts already paid from the tax liability.
- (D) Ninety percent of the amount determined in section 1.387(c)(1)(C) must be paid by the original due date of the tax return. If at the time the tax return is filed, less than ninety percent of the tax liability shown on the tax return was paid by the due date of the tax return, the balance not paid shall be subject to penalty and interest from the original due date of the return until the date of payment.
- (i) Example 1:
- ABC Corporation's tax year ends on December 31. ABC Corporation filed a request for extension (Form RD-111) to file its 2020 Profits

Return on April 10, 2021. The extension request listed an estimated tax liability of \$2,000. A payment of \$2,000 was made with the extension request. ABC Corporation filed their 2020 Profits tax return on October 13, 2021 reporting tax due of \$3,000 and made a \$1,000 payment with the return. The \$1,000 balance is subject to penalties and interest based on the original due date because the extension request failed to pay the required 90% based on the actual tax due.

(ii) Example 2:

Smith Corporation's tax year ends on December 31. Smith Corporation filed a request for extension to file its 2020 Profits Return on April 15, 2021. The extension request listed an estimated tax liability of \$5,000. A payment of \$3,000 was made with the extension request. Smith Corporation had an available credit of \$2,000 based on the 2019 Profits Return. Smith Corporation filed their 2020 Profits Return on October 10, 2021 reporting tax due of \$5,500 and made a \$500 payment with the return. The \$500 balance is not subject to penalties and interest because the extension request paid 90% of the actual tax due based on the payment and credit.

(2) When the return is filed within the extended filing period and a balance of tax due is indicated after all payments and credits provided in the Ordinance have been applied, the balance of tax due, together with interest on that balance, shall be paid. The interest shall be computed from the date the return was originally due, even though an extension has been granted.

(d) A taxpayer who files a Kansas City, Missouri return may subsequently file an amended return.

(1) The amended return may be filed to:

(A) Report and pay additional tax liability.

(B) Report a lower tax liability and file a claim for a refund. A claim for refund must be filed within one year from the end of the taxable period.

(C) Notify the city of a change on the federal and/or state tax return that affects the Kansas City, Missouri return. To avoid assessment of a penalty, a return amended for this reason must be filed within 90 days of the taxpayer's notification of the final change amount.

(2) A taxpayer may not change the method of accounting or method of apportionment of net profits after the due date for filing the original return, including extensions if a request for extension was granted for the original return.

- (e) Every taxpayer must retain records necessary to compute his tax liability for a period of five years from the date the return is due, including extensions if a request for extension was granted for the original return.
- (1) All taxpayers must maintain records that show:
- (A) The total amount of taxable wages.
 - (B) The amount of taxable wages subject to the earnings tax imposed by Kansas City, Missouri.
 - (C) The amount of Kansas City earnings tax withheld from wages.
 - (D) The amount of tax paid to another municipality, along with the wage amount subject to tax by the other municipality.
 - (E) Total gross business receipts along with substantiation of related allowable deductions.
- (2) A nonresident claiming a refund of earnings tax withheld must maintain records that support:
- (A) The total number of days worked. Examples of such records include calendars, appointment books, paystubs and time sheets.
 - (B) The total number of days worked outside of Kansas City, Missouri in their entirety. Examples of such records include calendars, appointment books, paystubs and time sheets, mileage logs, and travel receipts.
- (3) A part year resident must maintain records that support the dates of moves into and out of Kansas City, Missouri. Examples of such records include lease agreements, real estate closing documents, and utility bills.
- (4) A nonresident filing a Profits Return must maintain records that support:
- (A) Gross receipts within and without Kansas City, Missouri.
 - (B) Payroll within and without Kansas City, Missouri.
 - (C) Real and other tangible property owned and the locations of that property.
- (5) An employer required to withhold and remit earnings tax must maintain records that support:
- (A) Taxable amounts paid to Kansas City, Missouri residents.

- (B) Taxable amounts sourced to Kansas City, Missouri and earned by nonresidents.
 - (C) The residence of each employee.
 - (D) Amounts earned by and withheld from each employee.
- (f) Trustees of a trust and executors and administrators of estates having taxable income are required to file a return and:
- (1) Pay the tax on taxable amounts not passed through to beneficiaries; or
 - (2) File an informational return for each tax year in a form prescribed by the Commissioner. The informational returns shall list each member or beneficiary to whom profits tax liability flowed, and each corresponding address and social security or other tax identification number.
- (g) The Commissioner or other designated official is permitted to disclose all tax information, returns, reports or facts relating to a particular taxpayer's return to the duly authorized representative of the taxpayer with respect to the tax matter designated by the taxpayer.
- (1) In order for a third party to qualify as a duly authorized representative, the taxpayer must execute and file with the Division of Revenue a power of attorney designating the third party as taxpayer's duly authorized representative on a form prescribed by the Commissioner.
 - (A) City tax matters include all taxes and fees administered by the Division of Revenue.
 - (2) "Third party" includes the tax return preparer, a certified public accountant and an attorney.
 - (3) The power of attorney must be executed by an individual authorized to sign the return:
 - (A) In the case of an individual taxpayer, by the individual.
 - (B) In case of a partnership or limited liability company, by all members or by one of the members, or partners, duly authorized to act for the limited liability company or partnership who shall certify that he has authority.
 - (C) In the case of a corporation, by an officer of the corporation having authority to bind the corporation, who shall certify that he has authority;

(D) In the case of an estate, by any personal representative who shall provide evidence of his status as a personal representative with regard to Kansas City, Missouri taxes.

(E) In the case of a taxpayer who has appointed a trustee, by the duly authorized trustee.

§1.388 Payment of tax to accompany return.

Each taxpayer making a return shall at the time of the filing thereof pay to the Commissioner the amount of tax shown as due thereon.

- (a) If the amount shown as due on the return is less than ten dollars, no payment is required.
- (b) In determining the amount due, any prior payment made or tax withheld at source is subtracted from the total tax liability for the tax period. To receive credit for withholding, all Forms W-2, Schedules K-1, and other documents that include Kansas City, Missouri withholding must be submitted with the tax return.
 - (1) The Form W-2 must be submitted electronically by entering the information shown on the Form W-2 directly into the field provided for this information.
 - (A) Forms W-2 must be filed under the federal employer identification number used for filing annual withholding returns.
 - (B) The taxpayer must retain a copy of the Form W-2 for five years following the due date of the return.
 - (C) The taxpayer must provide a copy of all documents showing Kansas City, Missouri withholding upon the request of the Commissioner.
- (c) In determining the amount due, any income tax, profits tax, or earnings tax liability incurred with respect to another city, as calculated per section 1.392, is subtracted from the total tax liability for the year.
- (d) The balance, if any, shall be due and payable at the time of filing said return.

§1.390 Limitations.

No assessment shall be made by the Commissioner:

- (a) Of any tax found to be due after five years from the date the tax return was due including extensions. Provided however, that the Commissioner may, prior to the expiration of the limitation period prescribed herein, enter into an agreement, in

writing, with the taxpayer to extend the period for assessment to such date as mutually agreed.

- (1) If extended, the tax may be assessed at any time prior to the expiration of the period agreed upon.
 - (2) The agreed upon period may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
- (b) For any tax that the amount due and owing including interest and penalties is less than ten dollars per tax period.

§1.392 Credit for tax paid in another city.

A credit shall be allowed to:

- (a) Every individual taxpayer who resides in the city but who receives earnings for work done or services rendered outside the city and has paid or has had withheld a city income or earnings tax on such profits or earnings in another city.
- (b) Every individual taxpayer who resides outside the city but who receives deferred payment of earnings for work done or services rendered at a time that he resided within the city so long as he has an income, earnings, or profits tax liability on such profits or earnings in another city.
- (c) The amount of the credit shall be limited to the lesser of:
 - (1) The amount actually due and paid or payable to the other city.
 - (2) One percent of the earnings or profits taxable to the other city and also taxable to Kansas City, Missouri.
- (d) No credit will be given unless the taxpayer claims such credit on his return for the tax year and presents adequate documentation of the tax liability and the earnings or profits subject to tax in the other city.
 - (1) For a credit against the earnings tax, taxpayers shall provide the following documentation:
 - (A) A copy of Form W-2 showing income taxable to the other city or a copy of the tax return filed with the other city.
 - (2) For a credit against the profits tax, taxpayers shall provide a copy of the tax return filed with the other city, showing the profits subject to tax and the tax on those profits.

§1.393 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 the earnings tax ordinance, a refund of the amount so overpaid shall be made.

~~(1) A wage earner refund request (including a refund from an extension payment) is required to follow the provisions of Section 139.031, RSMo in order to be a valid refund request.~~

~~(2)~~ The city shall apply the overpayment in the following order:

(A) First to any delinquent tax liability owed by the taxpayer to the city.

(B) The city shall next apply the overpayment to any interest owed by the taxpayer to the city.

(C) The city shall next apply the overpayment to any penalty owed by the taxpayer to the city.

(D) If the taxpayer owed delinquent amounts to the city for more than one year, the overpayment shall be applied first to all delinquent amounts for the earliest period before being applied to the next earliest period.

~~(3)~~ In the case of a partnership that has submitted a payment of tax on behalf of its partners, any refund may only be claimed by the partnership and may not be claimed by the individual partners.

~~(3)~~ Proper claim. A proper claim for refund of overpayment shall be completed whenever the taxpayer timely submits a current version of the applicable Wage Earner Return(s) or Profits Return, together with any documentation demonstrating that the taxpayer is entitled to a refund.

~~(4)~~ Due date. A proper claim for refund of such overpayment must be filed within one year from the end of the taxable period, in a manner prescribed by the Commissioner.

~~(5)~~ No refund of less than one dollar shall be allowed.

(b) No refund shall be made to any taxpayer until he has complied with all provisions of the Ordinance and has furnished all information required by the Commissioner.

(c) No interest shall be paid on any claim for refund.

(d) A married taxpayer must file a separate return from his or her spouse and may not make a joint claim for refund.

Formatted: Indent: Left: 0", First line: 0"

§1.394 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 penalties and interest as provided herein.
 - (1) A penalty is imposed on all taxes imposed by this article and remaining unpaid after they have become due, in the amount of five percent for each month or fraction of a month during which the failure to pay continues, not to exceed a maximum penalty of twenty-five percent of the unpaid tax.
 - (2) All taxes imposed by this article and remaining unpaid after they have become due shall be subject to interest at the rate of 12 percent per annum from the last date prescribed for payment to the date paid.
 - (A) For purposes of this section, the last date prescribed for the payment of tax shall be determined without regard to any extension of time.
 - (B) The interest imposed by this section is simple interest, not compounded.
- (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.
 - (1) Interest will accrue on unpaid amounts from the original due date of the return until such time as they are paid.
 - (2) For any amount remaining unpaid after the extended due date, penalties shall apply from the original due date of the return.
 - (3) Taxes withheld by an employer 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.
- (c) In addition to any other charges for interest or penalties which may be applicable, when any payment of taxes is not honored by the bank or other financial institution upon which the payment was drawn sections 50-114, 50-115, and 50-116 of the Kansas City, Missouri Code of Ordinances shall apply.

§1.395 Duties and authority of Commissioner.

The Commissioner is authorized and empowered to enforce and administer all provisions of the Earnings and Profits Tax Ordinance of the City, to examine returns and taxpayer records to be certain that the proper tax is paid, to enforce payment of all earnings and profits taxes owing the city, and to receive the tax imposed by the Ordinance in the manner prescribed therein from taxpayers. The Commissioner has authority to do any

acts necessary for the proper application of the Ordinance, and is expressly authorized and empowered, but not limited, to do the following:

- (a) *Collect and deposit taxes.* The Commissioner is authorized and empowered to collect and receive the tax, interest, and penalties imposed by the Ordinance and pay over the proceeds thereof to the city treasurer.
- (b) *Keep accurate records.* The Commissioner is authorized and empowered to keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file or make any return, including but not limited to returns showing taxes withheld, and to show the dates and amounts of payments thereof.
- (c) *Adopt and enforce rules and regulations.* The Commissioner is authorized and empowered to adopt, promulgate, amend and enforce rules and regulations relating to any matter or thing pertaining to the application, administration or enforcement of the Ordinance. Any regulations adopted by the Commissioner are subject to approval by the City Council of Kansas City, Missouri, and shall not become final and effective until so approved.
 - (1) Such regulations, together with all amendments and supplements thereto, shall be on file with the City Clerk and at the office of the Commissioner and will be open to public inspection.
- (d) *Adopt and prepare returns and forms.* The Commissioner is authorized and empowered to adopt, prepare and make available all forms necessary to comply with the Ordinance.
- (e) *Conduct investigations:*
 - (1) The Commissioner or his duly authorized agent is authorized and empowered to examine the books, papers, records and returns made under this Ordinance of any employer, taxpayer, or person subject to the Ordinance, for the purpose of verifying the accuracy of any return made to the city, or if no return was made, to ascertain the tax due under the Ordinance.
 - (2) Within ten days following service of a written order of the Commissioner, or his duly authorized agents, any employer or taxpayer shall furnish the means, facilities and opportunity for making examinations and investigations authorized by the Ordinance.
 - (A) The order shall be served in person or in writing upon an individual employer or taxpayer, or in the case of a corporation, upon any corporate officer or managing agent.
 - (B) The order shall be served by the Commissioner or his duly authorized agent.

- (C) The Commissioner's order to examine any document mentioned in the preceding paragraph shall state whether the examination is to be at the office of the taxpayer or at the office of the Commissioner.
- (3) Authority to subpoena records and persons.
- (A) The Commissioner may compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed earned compensation or profits or supposed transactions of the taxpayer.
- (B) The Commissioner may order the appearance before him, or his duly authorized agent, of any party whom he believes to have any knowledge of a taxpayer's income or withholding, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Commissioner is specifically authorized to order the appearance of the local manager or representative of any taxpayer.
- (C) A person required to appear before the Commissioner shall be notified not less than ten days prior to the time of the appearance. The notice shall show the time and place the person is to appear and identify what books, papers or records the person is to make available at the appearance to the Commissioner.
- (D) The notice shall be served by the Commissioner or his duly authorized agent, by delivering it to the person named in the notice or by leaving the notice at his usual place of business or last known residence, or by mailing it to the person by certified mail, return receipt requested, addressed to his usual place of business or last known residence.
- (4) Retention of records. All employers and taxpayers are required to keep such records as will enable the filing of true and accurate returns whether of taxes withheld at the source or of taxes payable upon earnings or net profits or both.
- (f) *Waive penalties.* The Commissioner may waive all or any portion of penalties imposed under this article as a result of nonpayment of tax.
- (1) This authority may be exercised at the sole discretion of the Commissioner under special circumstances.
- (2) This authority shall in no way be construed so as to authorize the waiver, forgiveness or compromise of principal tax or interest by the Commissioner.

- (3) The Commissioner may also waive penalties by entering into voluntary disclosure agreements with taxpayers under criteria established by the Commissioner.
- (g) *Enter into agreements.* The Commissioner 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.
- (h) The Commissioner is authorized to arrange for the payment of unpaid taxes, other than taxes that have been withheld from wages, interest, and penalties on a schedule of installment payments.
- (1) Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed.
- (2) Interest and late payment penalties shall continue to accrue on all unpaid amounts until they are paid.
- (3) A request to make installment payments must be made to the Commissioner in the form prescribed by the Commissioner and must indicate:
- (A) The total amount of tax outstanding.
- (B) A proposed schedule of payment dates and amounts.
- (4) Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Section 68-391 of the Ordinance shall apply.
- (A) When any taxpayer subject to the provisions of the Ordinance has filed a return indicating the amount of tax due and has failed to pay said tax into the city treasury as required by the Ordinance, the Commissioner need not issue an assessment but may proceed to collect the amount of the tax, penalty and interest due, under the provision of Section 68-391 of the Ordinance.
- (B) When an employer subject to the provisions of the Ordinance has filed a return indicating the amount of tax withheld and has failed to pay into the city treasury as required by the Ordinance, the Commissioner may proceed under the provisions of the Ordinance and need not issue an assessment.
- (i) *Assessment against delinquent taxpayers.* If the Commissioner determines that any taxpayer subject to the provisions of the Ordinance 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 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. If the taxpayer does not respond to the assessment, by contacting the Commissioner, 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 of the Ordinance. 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 Commissioner 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 of the Ordinance.

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

§1.396 Taxpayer conferences following assessment.

- (a) *Conference request, time for making and contents.* A taxpayer who disagrees with an assessment issued by the Commissioner may request a conference with the Commissioner by making a request in writing within thirty (30) days of the mailing of the assessment. The request shall be addressed to the Commissioner and shall include the taxpayer's name, address and taxpayer identification number, a copy of the notice of assessment in dispute, the tax period(s) in dispute, a statement of the items in the assessment with which the taxpayer disagrees, and the reasons for disagreement. Documents supporting the taxpayer's position, such as federal tax returns, financial statements, property deeds, Forms W-2, or other relevant documents may be submitted with the conference request. In the alternative, the taxpayer may submit such supporting documents at the conference or between the filing of the conference request and the date of the conference. The request may be delivered in person, by mail or by facsimile to the Commissioner, but must be received within thirty days of the mailing of the assessment. Failure to timely submit the request for conference or to include the required information shall result in a denial of the request for conference.
- (b) *Actions on conference request.* After receipt of the taxpayer's conference request, the Commissioner shall mail the taxpayer a notice within 120 days, at the address provided in the request, acknowledging the receipt of the conference request and notifying the taxpayer of one of the following actions taken on the request:
 - (1) That a conference will be held at a date and time stated in the notice;

- (2) That the conference request was denied because the request was not timely made or the request did not contain the required information; the taxpayer shall have an additional thirty days after notification the conference request was denied to pay the tax or to pay the tax under protest pursuant to Section 139.031, RSMo.
- (3) That a conference will not be granted because the Commissioner was able to make a determination on the merits from the information contained in or submitted with the request for conference. The notice shall inform the taxpayer of such determination, after which the taxpayer shall have an additional thirty days to pay the tax or pay the tax under protest pursuant to Section 139.031, RSMo.
- (4) That a conference will not be granted because the taxpayer provided new information that will be considered by the revenue agent assigned to the case, and a revised assessment will be made by the revenue agent. Any such revised assessment shall be treated as a new assessment for purposes of the taxpayer's right to respond.
- (c) *Continuances.* The taxpayer may be granted a continuance of a scheduled conference for good cause shown. Requests for continuance must be in writing and received no later than three days before the scheduled conference date.
- (d) *Conference procedure.* Conferences shall be conducted at city hall or such other location within the city designated by the Commissioner and subject to the confidentiality provisions of Section 68-400 of the Ordinance. The formal rules of evidence shall not apply. The taxpayer may be represented by an attorney licensed to practice in the state of Missouri, a certified public accountant licensed in the state of Missouri, an enrolled agent authorized to appear before the Internal Revenue Service, or such other persons as may be authorized under the regulations.
- (e) *Conference determination.* After the conference is held and the Commissioner has considered all of the information presented, the Commissioner shall make a determination affirming, reversing or revising the assessment, and shall mail the determination to the taxpayer. Failure by the taxpayer or his representative to attend a scheduled conference shall result in a determination affirming the assessment.
- (f) *Effect of conference on collection and time to pay under protest.* The granting of a taxpayer's request for conference shall suspend collection of the assessment and extend the taxpayer's time for payment under protest of the tax pursuant to Section 139.031, RSMo until thirty (30) days after the conference determination is mailed. Payment under protest and the filing of a petition for refund in circuit court following a conference determination shall be governed by the provisions of Section 139.031, RSMo. A conference determination shall be considered the final

determination of the assessment by the Commissioner, and shall be deemed true and correct and recoverable by the city under the provisions of Section 68-391 of the Ordinance if the assessment is not paid or paid under protest within 30 days of the mailing of the conference determination.

§1.400 Penalty for divulging confidential information.

Any information gained as a result of any returns, investigations, verifications or hearings required by the Ordinance or authorized by these rules and regulations shall be confidential and no disclosure thereof shall be made except for tax administration purposes. The tax administration purposes that would allow disclosure include the use of tax returns, tax assessment information and other taxpayer information gained as the result of an investigation or audit as evidence in court proceedings involving the earnings tax liability of that taxpayer. Nothing herein shall protect a taxpayer who is a party in a court proceeding involving the earnings tax from being identified by name in the lawsuit.

Any person otherwise willfully divulging such information shall be charged with an ordinance violation. In addition to the above penalty, any officer or employee of the city who violates the provisions of Section 68-400 of the Ordinance relative to the disclosure of confidential information shall be immediately dismissed from the service of the city.

§1.402 Amendments to Regulations.

- (a) From time to time, amendments and supplements to these regulations may be issued by the Commissioner, subject to the approval of the City Council of Kansas City, Missouri.
- (b) The Regulations and any amendments thereto shall be effective on the same date that the ordinance approving same shall become effective unless a different date is specified.