

ORDINANCE NO. 2023 -084

AN ORDINANCE AMENDING CHAPTER 187 OF THE CODIFIED ORDINANCES OF THE CITY OF KENT TITLED "INCOME TAX", AND DECLARING AN EMERGENCY.

WHEREAS the City of Kent periodically reviews the laws relating to municipal income taxes; and

WHEREAS the State of Ohio recently adopted HB 33, the Operating Appropriations for Fiscal Years 2024-2025, which made several changes to the Ohio Revised Code municipal taxation portions; and

WHEREAS the City of Kent Income Tax Division has recommended certain changes to the City's Municipal Tax Code relating to municipal income taxes to be consistent with the changes in the Ohio Revised Code; and

WHEREAS it is recommended to amend Chapter 187 of the Kent Municipal Code to incorporate these changes.

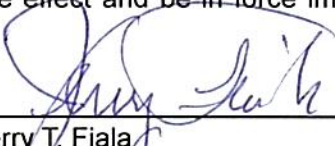
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio:

SECTION 1. That Council does hereby enact Chapter 187 titled "Income Tax ", with new language to be added in **bold** and text to be deleted in ~~strikeout~~, specifically Sections 187.03, 187.05 and 187.18 of the Codified Ordinances as listed on Exhibit "A", attached hereto and made a part thereof.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

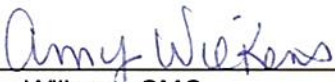
SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the residents of this City, for which reason and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: November 15, 2023
Date



Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: November 15, 2023
Date

ATTEST: 

Amy Wilkens, CMC
Clerk of Council

I, AMY WILKENS, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF *ORDINANCE No.* 2023-084, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON November 15, 2023.

(SEAL)


AMY WILKENS, CMC
CLERK OF COUNCIL

EXHIBIT "A"

187.03 IMPOSITION OF TAX.

Businesses.

- (F) This division applies to any taxpayer engaged in a business or profession in the City of Kent, Ohio, unless the taxpayer is an individual who resides in the City of Kent, Ohio or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745 of the ORC.
- (1) Except as otherwise provided in divisions (F)(2) and (G) of this section, net profit from a business or profession conducted both within and without the boundaries of the City of Kent, Ohio shall be considered as having a taxable situs in the City of Kent, Ohio for purposes of municipal income taxation in the same proportion as the average ratio of the following:
- (a) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the City of Kent, Ohio during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.
- As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight (8);
- (b) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the City of Kent, Ohio to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under Section 187.04 (C);
- (c) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the City of Kent, Ohio to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.
- (2) (a) If the apportionment factors described in division (F)(1) of this section do not fairly represent the extent of a taxpayer's business activity in the City of Kent, Ohio, the taxpayer may request, or the Tax Administrator of the City of Kent, Ohio may

require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

- (i) Separate accounting;
 - (ii) The exclusion of one or more of the factors;
 - (iii) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation;
 - (iv) A modification of one or more of the factors.
- (b) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by Section 187.12 (A).
- (c) The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (F)(2)(a) of this section, but only by issuing an assessment to the taxpayer within the period prescribed by Section 187.12 (A).
- (d) Nothing in division (F)(2) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by the Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.
- (3) As used in division (F)(1)(b) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:
- (a) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:
 - (i) The employer;
 - (ii) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
 - (iii) A vendor, customer, client, or patient of a person described in (F)(3)(a)(ii) of this section, or a related member of such a vendor, customer, client, or patient.
 - (b) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;
 - (c) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (F)(3)(a) or (b) of this section solely in order to avoid or reduce the

employer's municipal income tax liability. If the Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.

- (4) For the purposes of division (F)(1)(c) of this section, **and except as provided in division (G) of this section**, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:
- (a) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation only if, regardless of where title passes, the property meets either of the following criteria:
 - (i) The property is shipped to or delivered within the City of Kent, Ohio from a stock of goods located within the City of Kent, Ohio.
 - (ii) The property is delivered within the City of Kent, Ohio from a location outside the City of Kent, Ohio, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Kent, Ohio and the sales result from such solicitation or promotion.
 - (b) Gross receipts from the sale of services shall be situated to the City of Kent, Ohio to the extent that such services are performed in the City of Kent, Ohio.
 - (c) To the extent included in income, gross receipts from the sale of real property located in the City of Kent, Ohio shall be situated to the City of Kent, Ohio.
 - (d) To the extent included in income, gross receipts from rents and royalties from real property located in the City of Kent, Ohio shall be situated to the City of Kent, Ohio.
 - (e) Gross receipts from rents and royalties from tangible personal property shall be situated to the City of Kent, Ohio based upon the extent to which the tangible personal property is used in the City of Kent, Ohio.
- (5) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual, or by a disregarded entity owned by the individual, shall be subject to the City of Kent, Ohio's tax only if the property generating the net profit is located in the City of Kent, Ohio or if the individual taxpayer that receives the net profit is a resident of the City of Kent, Ohio. The City of Kent, Ohio shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.

- (6) (a) Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the City of Kent, Ohio, if applicable, based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the City of Kent, Ohio to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.
 - (b) An individual who is a resident of the City of Kent, Ohio shall report the individual's net profit from all real estate activity on the individual's annual tax return for the City of Kent, Ohio. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such a credit is allowed under the City of Kent, Ohio's income tax ordinance.
- (7) When calculating the ratios described in division (F)(1) of this section for the purposes of that division or division (F)(2) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.
 - (8) Intentionally left blank.
 - (9) Intentionally left blank.

(G)(1) As used in this section:

- (a) **“Qualifying remote employee or owner” means an individual who is an employee of a taxpayer or who is a partner or member holding an ownership interest in a taxpayer that is treated as a partnership for federal income tax purposes, provided that the individual meets both of the following criteria:**
 - (i). **The taxpayer has assigned the individual to a qualifying reporting location.**
 - (ii). **The individual is permitted or required to perform services for the taxpayer at a qualifying remote work location.**
- (b) **“Qualifying remote work location” means a permanent or temporary location at which an employee or owner chooses or is required to perform services for the taxpayer, other than a reporting location of the taxpayer or any other location owned or controlled by a customer or client of the taxpayer. “Qualifying remote work location” may include the residence of an employee or owner and may be located outside of the City of Kent or**

a municipal corporation that imposes an income tax in accordance with this chapter. An employee or owner may have more than one qualifying remote work location during a taxable year.

- (c) **“Reporting location” means either of the following:**
 - (i). A permanent or temporary place of doing business, such as an office, warehouse, storefront, construction site, or similar location, that is owned or controlled directly or indirectly by the taxpayer;
 - (ii). Any location in this state owned or controlled by a customer or client of the taxpayer, provided that the taxpayer is required to withhold taxes under section 187.05 on qualifying wages paid to an employee for the performance of personal services at that location.
- (d) **“Qualifying reporting location” means one of the following:**
 - (i). The reporting location in this state at which an employee or owner performs services for the taxpayer on a regular or periodic basis during the taxable year;
 - (ii). If no reporting location exists in this state for an employee or owner under division (C)(i)(d)(1) of this section, the reporting location in this state at which the employee’s or owner’s supervisor regularly or periodically reports during the taxable year;
 - (iii). If no reporting location exists in this state for an employee or owner under division (C)(i)(d)(1) or (2) of this section, the location that the taxpayer otherwise assigns as the employee’s or owner’s qualifying reporting location, provided the assignment is made in good faith and is recorded and maintained in the taxpayer’s business records. A taxpayer may change the qualifying reporting location designed for an employee or owner under this division at any time.

- (2) A taxpayer may elect to apply the provisions of this section to the apportionment of its net profit from a business or profession. For taxpayers that make this election, the provisions of division (F) of this section apply to such apportionment except as otherwise provided in this division.

A taxpayer shall make the election allowed under this section in writing on or with the taxpayer’s net profit return or, if

applicable, a timely filed amended net profit return or a timely filed appeal of an assessment. The election applies to the taxable year for which that return, or appeal is filed and for all subsequent taxable years, until the taxpayer revokes the election.

The taxpayer shall make the initial election with the tax administrator of each municipal corporation with which, after applying the apportionment provisions authorized in this section, the taxpayer is required to file a net profit tax return for that taxable year.

A taxpayer shall not be required to notify the tax administrator of a municipal corporation in which a qualifying unless the taxpayer is otherwise required to file a net profit return with that municipal corporation due to business operations that are unrelated to the employee's or owner's activity at the qualifying remote work location.

After the taxpayer makes the initial election, the election applies to every municipal corporation in which the taxpayer conducts business. The taxpayer shall not be required to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in such municipal corporation.

Nothing in this section prohibits a taxpayer from making a new election under this section after properly revoking a prior election.

- (3) For the purpose of calculating the ratios in division (F)(1) of this section, all of the following apply to a taxpayer that has made the election described in division (G)(2):
 - (a) For the purpose of division (F)(1)(a) of this section, the average original cost of any tangible personal property used by a qualify remote employee or owner at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.
 - (b) For the purpose of division (F)(1)(b), any wages, salaries, and other compensation paid during the taxable period to a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

- (c) For the purpose of division (b)(1)(c) and notwithstanding 187.06(b)(4), any gross receipts of the business or profession from services performed during the taxable period by qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to the individual's qualifying reporting location.
- (4) Nothing in this section prevents a taxpayer from requesting, or a tax administrator from requiring, that the taxpayer use, with respect to all or a portion of the income of the taxpayer, an alternative apportionment method as described in division (f)(2). However, a tax administrator shall not require an alternative apportionment method in such a manner that it would require a taxpayer to file a net profit return with the municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in the municipal corporation.
 - v. Except as otherwise provided in this section, nothing in this section is intended to affect the withholding of taxes on qualifying wages pursuant to Section 187.04.

187.05 ANNUAL RETURN

(A) An annual City of Kent income tax return shall be completed and filed by every taxpayer for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon.

- (G) (1) (a) Except as otherwise provided in this chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state individual income tax returns under division (G) of Section 5747.08 of the ORC. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City of Kent, Ohio. No remittance is required if the net amount due is ten (\$10.00) dollars or less.
- (2) Any taxpayer that has duly requested an automatic six (6) month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of the City of Kent, Ohio's income tax return. The extended due date of the City of Kent,

Ohio's income tax return shall be the fifteenth (15th) day of the tenth (10th) month after the last day of the taxable year to which the return relates. **For tax years ending on or after January 1, 2023, the extended due date of the City of Kent, Ohio's income tax return for a taxpayer that is not an individual shall be the 15th day of the eleventh month after the last day of the taxable year to which the return relates.** An extension of time to file under this division is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

- (a) A copy of the federal extension request shall be included with the filing of the City of Kent Ohio's income tax return.
 - (b) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the Tax Administrator grant the taxpayer a six (6) month extension of the date for filing the taxpayer's City of Kent Ohio income tax return. If the request is received by the Tax Administrator on or before the date the City of Kent Ohio income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.
- (3) If the tax commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of Section 5747.08 of the ORC, a taxpayer shall automatically receive an extension for the filing of the City of Kent Ohio's income tax return. The extended due date of the City of Kent Ohio's income tax return shall be the same as the extended due date of the state income tax return.
- (4) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the City of Kent Ohio, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this division, including taxpayers not otherwise required to file annual returns.
- (5) **If a taxpayer receives an extension for the filing of a municipal income tax return under division (G)(2), (3), or (4) of this section, the tax administrator shall not make any inquiry or send any notice to the taxpayer with regard to the return on or before the date the taxpayer files the return or on or before the extended due date to file the return, whichever occurs first.**
If a tax administrator violates division (G)(5) of this section, the municipal corporation shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, up to \$150.

Division (G)(5) of this section does not apply to an extension received under division (G)(2) of this section if the tax administrator has actual knowledge that the taxpayer failed to file for a federal extension as required to receive the extension under division (G)(2) of this section or failed to file for an extension under division (G)(2)(b) of this section.

- (6) To the extent that any provision in this division (G) of this section conflicts with any provision in divisions (N), (O), (P), or (Q) of this section, the provisions in divisions (N), (O), (P), or (Q) prevail.

187.18 INTEREST AND PENALTIES

- (C) (3) With respect to returns other than estimated income tax returns, the City of Kent, Ohio may impose a penalty of ~~not exceeding twenty five dollars (\$25.00) for each failure to timely file each return, regardless of the liability shown thereon, except that the City of Kent, Ohio shall abate or refund the penalty assessed on a taxpayer's first for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed one hundred fifty dollars (\$150.00 for each failure to timely file a return after the taxpayer files that return.~~