

# CITY of POWELL, OHIO

## Income Tax Ordinance 2007-37 Adopted August 7, 2007 Effective September 6, 2007

### 181.01 DEFINITIONS

- (a) As used in this chapter, the following words shall have the meanings ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning. The singular shall include the plural. The masculine gender shall include the feminine and the neuter genders.
- (b) "ADJUSTED FEDERAL TAXABLE INCOME" means a "C" corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute "Adjusted Federal Taxable Income" as if the pass-through entity was a "C" corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code section 5745.03 or to the net profits from a sole proprietorship.
- (c) "ASSOCIATION" means a partnership, limited partnership, limited liability Company, Chapter S Corporations as defined in the federal tax code, 26 U.S.C. 1361, or any other form of unincorporated enterprise owned by one or more persons.
- (d) "BOARD OF APPEALS" means the Board created by and constituted as provided in Section 181.19.
- (e) "BUSINESS" means an enterprise, profession or other activity undertaking of an individual, partnership, fiduciary, trust, association, corporation or any other entity conducted for profit or ordinarily conducted for profit.
- (f) "CITY" means the City of Powell, Ohio.
- (g) "CORPORATION" means a corporation or joint stock association organized under the laws of the United States, State of Ohio, or any other state, territory or foreign country or dependency but not including Chapter S Corporations as defined in the federal tax code, 26 U.S.C. 1361.
- (h) "DOMICILE" means the permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.
- (i) "EMPLOYEE" means one who works for wages, salary, commissions, or other type of compensation in the service of and under the control of an employer.
- (j) "EMPLOYER" means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for

profit, having a place of business or doing business within the City, and who or which employs one or more persons on a salary, wage, commission or other compensation or other income basis.

- (k) "FINANCE DIRECTOR" means the individual charged with the responsibility of managing the fiscal affairs of the City, including the administration of the municipal income tax. The Finance Director shall have the power to appoint a delegate to assist in the administration of this chapter, and such delegate shall be responsible to the Finance Director and shall have The power to do all Things that the finance director may do under this Chapter to the extent so authorized by the Finance Director .
- (l) "FISCAL YEAR" means an accounting period of twelve months or less ending on any day other than December 31.
- (m) "GENERIC FORM" means an electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or separate requests for refunds that contain all the information required on the City's regular tax return and estimated payment forms, and are in a similar format that will allow processing of the generic forms without altering the City's procedures for processing forms.
- (n) "GROSS RECEIPTS" means the total revenue of a business derived from sales, work done, or service rendered, before any deductions, exceptions, or credits are claimed.
- (o) "INCOME" means all monies derived from any source whatsoever, including but not limited to:
  - (a) All salaries, qualifying wages, commissions, other compensation and other income from whatever source received by resident Individuals, including but not limited to:
    - (1) alimony that is received; and
    - (2) lottery, gambling and sports winnings, and games of chance. No deductions shall be allowed against INCOME FROM lottery, gambling and sports winnings, and games of chance unless, for federal income tax purposes, the taxpayer is considered a professional gambler, and then deductions as specified for federal tax purposes shall be allowed for gambling and sports winnings.
  - (b) All salaries, qualifying wages, commissions, other compensation and other income from whatever source received by nonresidents for work done or services performed or rendered or activities conducted in the City.
- (p) "INTANGIBLE INCOME" means that income specified in Ohio Revised Code Section 718.01(A)(5), including any amendments or successor provisions thereto.
- (q) "INTERNAL REVENUE CODE" means the Internal Revenue Service Code, Title 26 of the U.S. Code (26 USC), as amended from time to time.

- (r) "NET PROFITS" means, for taxable years 2004 and later, "adjusted federal taxable income". "Net profits" means, for taxable years prior to 2004, the net gain from the operation of a business, profession, enterprise or other activity whether or not such business, profession, enterprise or other activity is conducted for profit or is ordinarily conducted for profit, after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system (i.e., cash or accrual) used by the taxpayers for federal income tax purposes without deduction of taxes imposed by this chapter, federal, State or other taxes based on income; and in the case of an association, without deduction of salaries paid to partners and other owners; and otherwise adjusted to the requirements of this chapter.
- (s) "NONRESIDENT INDIVIDUAL" means an individual who is not domiciled in the City.
- (t) "NONRESIDENT UNINCORPORATED BUSINESS ENTITY" means an unincorporated business entity not having a place of business within the City.
- (u) "OTHER ACTIVITY" means any undertaking, not otherwise specifically defined herein, which is normally entered into for profit, including, but not limited to, rental of real and personal property and a business conducted by a trust or guardianship estate.
- (v) "PASS-THROUGH ENTITY" means a partnership, S Corporation, Limited Liability Company, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code. Unless otherwise specified, for purposes of this chapter the tax treatment for pass-through entities is the same as "Association".
- (w) "PERSON" means every individual, partnership, fiduciary, trust, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity shall mean the parties or members thereof, and as applied to corporations, the officers thereof.
- (x) "PLACE OF BUSINESS" means any bona fide office, factory, warehouse or other place, other than a mere statutory office, which is occupied and used by the taxpayer in carrying on any business activity individually or through any one or more his regular employees regularly in attendance.
- (y) "QUALIFYING WAGE" means, for taxable years beginning on or after January 1, 2004, wages as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. "Qualifying wage" represents employees' income from which municipal tax shall be deducted by the employer, and any wages not considered a part of "qualifying wage" shall not be taxed by a Municipality.
- (z) "RESIDENT INDIVIDUAL" means any individual who is domiciled in the City.
- (aa) "RESIDENT UNINCORPORATED BUSINESS ENTITY" means an unincorporated business entity having a place of business within the City.

- (bb) "TAXABLE INCOME" means income minus the deductions and credits allowed by this chapter.
- (cc) "TAXABLE YEAR" means the calendar year or the fiscal year upon the basis of which the net profits are to be computed under this chapter and, in the case of a return for a fractional part of the year, the period for which such return is required to be made. Unless otherwise approved by the Finance Director, the taxable year of a wage earner shall be a calendar year.
- (dd) "TAXING MUNICIPALITY" means any municipal corporation, other than the City, that levies a municipal income tax on income earned by individuals and on the net profits earned from the operation of a business.
- (ee) "TAXPAYER" means a person, whether an individual, partnership, association, corporation or other entity, required hereunder to file a return and/or pay a tax.

## **181.02 IMPOSITION OF TAX**

- (a) To provide for the purposes of general operations, maintenance, new equipment, and capital improvements of the City a tax at the rate of three-quarters of one percent (.75%) per annum is hereby levied upon the following:
  - 1. On all income earned and/or received by a Resident Individual.
  - 2. On all income, earned and/or received by a Nonresident Individuals for work done or services performed or rendered in the City. Separation pay, termination pay, reduction-in-force pay, and other compensation paid as a result of an employee leaving the service of an employer shall be allocable only to the City.
    - A. The City shall not, however, tax the Income of a nonresident individual who will be deemed to be an occasional entrant if all of the following apply:
      - (1) The nonresident individual has performed personal services in the City on twelve or fewer days during the calendar year. A day is a full day or any fractional part of a day.
      - (2) The principal place of business of the nonresident individual's employer is located outside the City and the individual pays tax on compensation described in Section 181.02(a)(2) to a taxing municipality, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the nonresident individual.
      - (3) The nonresident individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment

or sports event, or an employee of such a promoter, all as may be reasonably defined by the City.

- B. If a Nonresident Individual is no longer deemed to be an occasional entrant, the employer of said individual shall begin withholding The City income tax from compensation described in Section 181.02(a)(2), including, but not limited to, such compensation that was not taxed when the Nonresident individual was deemed to be an occasional entrant, and shall remit the withheld income tax to The City in accordance with the requirements of this chapter.

3. Net Profits.

- A. On the net profits earned of all resident associations, unincorporated businesses, professions, or other entities or other activities derived from sales made, work done, services performed, or rendered and business or other activities conducted in the City.
- B. On the net profits earned of all nonresident associations, unincorporated businesses, professions, or other entities or other activities derived from sales made, work done, services performed, or rendered and business or other activities conducted in the City.
- C.
  - 1. On the portion of the distributive share of the net profits earned and/or received of a resident partner or owner of a resident unincorporated business entity and/or association not attributable to the City and not levied against such unincorporated business entity and/or association.
  - 2. On the portion of the distributive share of the net profits earned and/or received of a resident partner or owner of a nonresident unincorporated business entity and/or association not attributable to the City and not levied against such unincorporated business entity and/or association.
  - 3. The tax imposed on resident associations and/or unincorporated Business entities, and non-resident associations and/or unincorporated Business entities doing business in the City, and owned by one or more persons is upon the shareholders, owners, and partners, but the associations and entities shall collect and remit the tax on behalf of its shareholders, owners, and partners.
- D. On the net profits of all corporations, estates and trusts that are not pass-through entities derived from sales made, work done or services performed or rendered and business or other activities conducted in the City, whether or not such corporations, estates and trusts have their principal or any place of business located in the City.

- E. On the net profits of all resident sole proprietorships, and on the net profits of all non- resident sole proprietorships for work done or services performed or rendered and business or other activities conducted in the City.
- F. Effective for tax years 2004 and later, the distributive share of income paid to an S corporation shareholder shall be taxable in the following manner:
  - (1) If no portion of the net profits of the S corporation are allocated or apportioned to the State of Ohio, the distributive share is taxable only to the extent that it represents wages or net earnings from self-employment.
  - (2) If any portion of the net profits of the S corporation are allocated or apportioned to the State of Ohio, the full amount of the distributive share is taxable.

(b) Exceptions.

The tax provided for herein shall not be levied upon:

1. Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard.
2. The income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.
3. Poor relief, unemployment insurance benefits, pensions paid as a result of retirement, and disability benefits received from local, State or Federal governments or charitable, religious or educational organizations.
4. Proceeds of insurance paid by reason of the death of the insured, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
5. Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations.
6. Personal earnings of all individuals under eighteen (18) years of age.
7. Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation. The minister must be duly ordained, commissioned, or licensed by a religious body

constituting a church or church denomination and be permitted to perform all the sacraments of the religious body, including that of marriage.

8. Compensation paid to a precinct election official, to the extent that such compensation does not exceed \$1,000 annually.
9. Compensation for personal injuries or for damages to property by way of insurance or otherwise, but this exclusion does not apply to compensation paid for lost salaries or wages, or to compensate for punitive damages.
10. Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio from which the City is specifically prohibited from taxing and income of decedent's estate during the period of administration (except such income from the operation of a business).
11. Other income, salaries, wages, commissions and compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce.
12. Other income, salaries, wages, commissions and compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes.
13. Intangible income as defined in Ohio Revised Code 718.01(A)(5).
14. Unreimbursed employee business expenses deductible on federal form 2106. The deductions shall be subject to federal guidelines, and to review and audit by the City's Income Tax Office. Expenses must be allocated proportionate to the related income.

### **181.03 ALLOCATION OF NET PROFITS**

- (a) Net profit from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable situs in the City for the purpose of the tax in the same portion as the average ratio of:
  1. The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City 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, whenever situated. As used in this subsection, 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.

2. Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City, to wages, salaries and other compensation paid or accrued during the same period to persons employed in the business or profession, wherever their services are performed. For tax year 2004 and subsequent tax years, wages, salaries, and other compensation shall be included to the extent that they represent qualifying wages.
3. Gross receipt of the business or profession from sales made and services performed during the taxable period in the City to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.
4. In the event that the foregoing allocation formula in Section 181.03(a)(1-3) does not produce an equitable result, another basis (including the books and records method) may, under uniform regulations, be substituted by the Finance Director or his delegate so as to produce such result.

(b) As used in this chapter, "sales made in the City" means:

1. All sales of tangible personal property which is delivered within the City regardless of where title passes if shipped or delivered from a stock of goods within the City.
2. All sales of tangible personal property which is delivered within the City regardless of where title passes even though transported from a point outside of the City if the taxpayer is regularly engaged through its own employees in the solicitation of promotion of sales with the City and the sales result from such solicitation or promotion.
3. All sales of tangible personal property which is shipped from a place within the City to purchasers outside the City regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(c) Consolidated Returns.

1. Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the City. However, once the affiliated group has elected to file a consolidated return or a separate return with the City, the affiliated group may not change its method of filing in any subsequent tax year without written approval from the Finance Director.
2. If a corporation carries on transactions with its Stockholders or with other corporations related by stock ownership, interlocking directorates or



some other method, or if any person operates a division, branch, factory, office, laboratory or other activity within the City constituting a portion of its total business, the Finance Director may require such additional information as he/she may deem necessary to ascertain whether or not net profits are properly allocated to the City. If the Finance Director finds net profits are not properly allocated to the City by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directories or transactions with such division, branch, factory, office, laboratory or other activity or by some other method, he or she shall make such allocation as he or she deems appropriate to produce a fair and proper allocation of net profits to the City.

#### **181.04 LEVY OF TAX AND EFFECTIVE PERIOD**

- (a) The income tax of three-quarters of one percent (.75%) per annum shall be levied, collected and paid with respect to the income, earned, accrued and/or received on and after January 1, 1990, and with respect to the net profits of business, professions or other activities earned, accrued and/or received on and after January 1, 1990. Provided, however, that where the fiscal year of the business, profession or other activity differs from the calendar year the tax shall be applied to that part of the net profits for the fiscal year as shall be earned on and after January 1, 1990, to the close of the taxpayer's fiscal year. Thereafter, the taxpayer shall report on its fiscal year basis.
- (b) Where the fiscal year of business, profession or other activity is other than a calendar year, in computing initial tax the net profits of such taxpayer shall be determined by dividing the annual net profits by twelve and multiplying the quotient by the number of months within the period commencing January 1, 1990, and ending at the conclusion of such fiscal year.

#### **181.05 RETURN AND PAYMENT OF TAX**

- (a) Each taxpayer, including each resident individual eighteen years of age or older, who engages in business or other activity, or whose income, are subject to the tax imposed by this chapter shall, whether or not a tax be due thereon, make and file a return on or before April 15 of each year. Provided, however, that when the return is made for a fiscal year or other period different from the calendar year, the return shall be made on or before the fifteenth day of the fourth month after the close of that fiscal year or other period.
- (b) If a taxpayer's entire income is exempt from taxation By the City, the taxpayer, in lieu of filing a return, shall file a one-time information return stating the reasons the taxpayer is exempt. If at any time thereafter the taxpayer once again earns and/or receives income taxable to the City, the Taxpayer must reactivate his City tax account by informing the Finance Director within thirty (30) days after earning or receiving such income.

- (c) The taxpayer shall file the return with the Finance Director on a form furnished by or obtainable from the Finance Director or on an acceptable generic form as defined in this Chapter, setting forth:
1. The aggregate amount of income, earned.
  2. Net profits earned and/or gross receipts from such business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to the tax.
  3. The amount of the tax imposed by this chapter on such earnings and profits.
  4. Such other pertinent statements, information returns or other information as the Finance Director may require, including but not limited to copies of all W-2 forms, 1099 Miscellaneous Income Forms, page one of form 1040, Page One and Two of Form 1120, 1120S (including (K-1), 2106, 1065, Schedule C (including cost of goods manufactured and/or sold), Schedule E, schedule F and any other Federal Schedules, if applicable.
- (d) Payment of Tax.
1. Each taxpayer whose income are subject to the tax imposed by this chapter may offset losses from any business or professional activity when conducted in this City or from losses incurred in any municipality that does not levy an income tax on net profits there from. Offsets shall not be allowed against wage or other non-business income.
  2. A husband and wife, in any taxable year, may elect to file separate or joint returns. If joint returns are filed, a husband or wife may offset losses from any business or professional activity when conducted in this City or from losses incurred in any municipality that does not levy an income tax on net profits there from. Offsets shall not be allowed against wage or other non-business income.
  3. If a net operating loss has been sustained in any taxable year such losses may not be carried forward or backward to any other taxable year.
  4. The taxpayer making a return shall, at the time of the filing thereof, pay to the Finance Director the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 181.07 or where any portion of such tax has been paid by the taxpayer pursuant to the provisions of Section 181.08, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 181.13, shall be due and payable at the time of filing such return.

5. A taxpayer who has overpaid his income tax in any taxable year may request a refund provided, however, there is no other tax liability and provided, further, that no amount of less than one dollar (\$1.00) will be refunded or collected.
6. All returns must be postmarked by the due date for the return. If the due date falls on a weekend or federal holiday, the due date shall be the next business day.

(e) Extensions.

For tax years prior to 2004, the Finance Director shall have the authority to extend the time for filing of the annual return upon the request of the taxpayer for a period not to exceed six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the federal income tax return. For taxable years 2004 and later, the extended due date for individuals shall be the last day of the month following the month to which federal income tax due date has been extended. If a business has filed an extension request through the Ohio Business Gateway the extended due date shall be the last day of the month to which the due date of the federal income tax return has been extended. If not filed through the Ohio Business Gateway, the extended due date shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. A taxpayer may request an extension by filing a copy of the taxpayer's request for a federal filing extension, or by filing a written request. The Finance Director may deny the extension if the taxpayer's income tax account with the City is delinquent in any way. The Finance Director may require a tentative return, accompanied by payment of the amount of the tax shown to be due thereon by the date the return is normally due. Interest but no penalty shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

- (f) A taxpayer shall file information returns, schedules and statement required to support tax returns, which are incomplete without such information within the time limits set forth for the filing of the tax returns, and the failure to file such information returns, schedules and statements shall be deemed to be a violation of this chapter. However, the taxpayer shall have ten (10) days after notification by the Finance Director to file the items required by this section.
- (g) All employers that provide any contractual service within the City, and who employ subcontractors in conjunction with that service, shall provide the City the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax withholding requirements under this chapter.
- (h) Any business, profession, association or corporation reporting a net loss is subject to the filing requirements of this Chapter.
- (i) The officer(s) or employee(s) of such employer having control or supervision or charged with the responsibility of making the return and/or payment (including

any tax, penalties, or interest due as required herein), shall be personally liable for failure to do so. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to make the return and/or or pay taxes, penalties, or interest due.

#### **181.06 AMENDED RETURN AND REFUNDS FOR OVERPAYMENT**

- (a) Where an amended return must be filed in order to report additional income and pay an additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Section 181.05. Such amended return shall on a form obtainable on request from the Finance Director. A taxpayer may not change the method of accounting (i.e., cash or accrual) or apportionment of net profits after the date for filing the original return.
- (b) Within three months from the final determination of any federal tax liability affecting the taxpayer's Municipal tax liability, such taxpayer shall make and file an amended Municipal return showing income subject to the Municipal tax based upon such final determination of federal tax liability, and pay any addition tax shown due thereon or make a claim for refund of any overpayment.

#### **181.07 COLLECTION AT SOURCE**

- (a) Each employer within or doing business within the City shall deduct at the time of payment of such income the tax of three-fourths of one percent (.75%) of the income due by the employer or to the employee and shall make a return showing the amount of taxes so deducted and a record of payments showing that all taxes deducted during the quarter have been paid to the City in accordance with the payment schedule prescribed by subsection (c) hereof.
- (b) Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld. Every employer or officer of a corporation is deemed to be a trustee for this City in collecting and holding the tax required under this chapter to be withheld and the funds so collected by such withholding are deemed to be trust funds.
- (c) Employers shall pay to the City all income taxes withheld or required to be withheld on either a semimonthly, monthly or quarterly basis depending on the amount of taxes involved according to the following payment schedule:
  - 1. Semimonthly payments of the taxes required to be withheld are to be made by an employer if:
    - A. The total taxes required to be withheld in the prior calendar year were twelve thousand dollars (\$12,000) or more and the employer was required to withhold for each month of the calendar year, or
    - B. If the employer was not required to withhold for each month of the previous calendar year, the amount of taxes required to be

withheld for the final quarter was three thousand dollars (\$43,000) or more.

- C. Such payment shall be paid to the City within five banking days after the fifteenth and the last day of the month.
2. Monthly payment of taxes withheld shall be made by an employer if the taxes withheld were less than the amounts specified in (c)(1)A and B above, but equaled or exceeded one thousand two hundred dollars (\$1,200) in accordance with the other provisions of (c)(1)A, or equaled or exceeded three hundred dollars (\$300) in accordance with the other provisions of (c)(1)B. Such monthly payments shall be made to the City within fifteen days after the close of each calendar month.
- (d) All employers not required to make semimonthly or monthly payments of taxes withheld under subsection (c) hereof shall make quarterly payments no later than the last day of the month following the end of each quarter.
  - (e) Each employer, on or before February 28, unless a written request for a thirty days extension, is made to and granted by the Finance Director following any calendar year in which such deduction have been made, or should have been made by an employer, shall file with the Finance Director an information return for each employee from who income tax has been or should have been withheld showing the name and address of the employee, the total amount of income paid the employee during the year and the amount of the Municipal income tax withheld from each employee.
  - (f) Where a resident of the City performs services for the employer in another municipality, which services are subject to withholding in the other municipality, the employer shall have the authority to reduce the withholding to the City to the extent of the tax liability in the other municipality.
  - (g) The officer or the employee having control or supervision of withholding the tax, filing the report, and/or making payment is personally liable for failure to file the report or pay the tax due as required by this section. The dissolution of a corporation does not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or pay tax due.

## **181.08 DECLARATIONS**

- (a) Every person who anticipates any taxable income which is not subject to Section 181.07 and/or from which tax will not be fully withheld, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 181.04, shall file a declaration setting forth such estimated profit or loss from such business activity together with the estimated tax due thereon, if any; provided, however, if a person's income is wholly from income from which the tax will be withheld and remitted to the City in accordance with Section 181.07, such person need not file a declaration.

- (b) Such declaration shall be filed on or before April 15 of each year during the life of this chapter, or on or before the fifteenth day of the fourth month the taxpayer becomes subject to tax for the first time.
- (c) Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year period.
- (d) Such declaration shall be filed upon a form furnished by or obtainable from the Finance Director or on an acceptable generic form as defined in this Chapter. Credit shall be taken for the City's tax to be withheld from any portion of such income. In accordance with the provisions of Section 181.13, credit may be taken for tax to be paid to or be withheld and remitted to another taxing municipality.
- (e) The original declaration, or any subsequent amendment thereof, may be increased or decreased on or before any subsequent quarterly payment day as provided herein.
- (f) If the taxpayer is an individual, such declarations of estimated tax to be paid the City shall be accompanied by a payment of a least one-fourth of the estimated tax, and at least a similar amount shall be paid on or before the last day of the seventh, tenth, and thirteenth months after the beginning of the taxable year; provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid equal installments on or before the remaining payment dates.
- (g) If the taxpayer is a corporation, association, or other business entity, at least a similar amount shall be paid on or before the fifteenth day of the sixth, ninth, and twelfth months of the taxable year; provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.
- (h) The Finance Director shall not assess penalty and interest for not filing a declaration:
  1. On any resident taxpayer who was not domiciled in the City on the first day of January in the year in which they became subject to filing a Declaration and making estimated payments;
  2. If a taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period and the taxpayer filed a return for that year;
  3. On estimated payments if the taxpayer has remitted, by the fourth estimated payment due date, an amount equal to ninety percent of the final tax liability for the tax year due.

4. Compliance with sections (h)2 and 3 above does not exempt assessments for late estimated payments.
- (i) A declaration of estimated tax which is less than ninety percent (90%) of the tax shown on the final return shall not be considered in good faith. The difference shall be subject to penalties and interest as provided for in Section 181.14.
  - (j) The Finance Director may eliminate the requirement to file declarations in instances where a certain minimum amount of tax is not due. The Finance Director shall establish said minimum tax requiring filing by rule and advise the Regional Income tax Authority (RITA) of said minimum filing requirements.

#### **181.09 POWERS AND DUTIES OF THE FINANCE DIRECTOR**

- (a) The Finance Director shall collect and receive the tax imposed by this chapter in the manner prescribed by this chapter, and he/she shall also keep an accurate record for a minimum of six (6) years showing payment received by him from each taxpayer and the date of the payment.
- (b) The Finance Director is hereby charged with the administration and enforcement of the provisions of this chapter and they are hereby empowered to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns and payments. Taxpayers are hereby required to comply with said rules and regulations.
- (c) In any case where a taxpayer has failed to file a return or failed to pay the tax due on a return or has filed a return which does not show the proper amount of tax due, the Finance Director may determine the amount of tax appearing to be due the City from the taxpayer based on any information in the Finance Director's possession and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any. Such determination may be modified or amended based upon information or data subsequently secured by or made available to the Finance Director. If the taxpayer fails to respond to the assessment within 30 days, the tax, penalties, and interest assessed shall become due and payable and collectible as are other unpaid taxes, penalties, and interest.

#### **181.10 INVESTIGATIVE POWERS OF THE FINANCE DIRECTOR**

- (a) The Finance Director is hereby authorized to examine the books, papers, records and federal and State income tax returns of any employer or of any taxpayer or person subject to, or who the Finance Director believes is subject to, the provisions of this chapter for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter, every such employer, supposed employer, taxpayer or supposed

taxpayer is hereby directed and required to furnish within ten (10) days following a written request by the Finance Director the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

- (b) The Finance Director is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or would have been returned for taxation or any transaction tending to affect such income. For this purpose, the Finance Director may compel the production of books, papers, records and federal and State income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he/she believes such persons have knowledge of such income or information pertinent to such inquiry.
- (c) The refusal to produce books, papers, records and copies of federal and State income tax returns, or the refusal to submit to such examination by an employer or person subject or presumed to be subject to the tax, or by an officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Finance Director authorized hereby, shall be deemed a violation of this chapter, punishable as provided in this chapter.
- (d) Every taxpayer shall retain all records necessary to compute his or her tax liability for a period of six (6) years from the date his or her return is filed or the withholding taxes are paid.

#### **181.11 TAX INFORMATION CONFIDENTIAL**

Any information gained as the result of any returns, investigations hearing or verifications required or authorized by this chapter shall be confidential, except for official tax purposes, or except in accordance with proper judicial order, or except as hereinafter provided. The Finance Director may furnish the Internal Revenue Service, Treasury Department of the United States, the Finance Director of Ohio, and the duly authorized income Finance Director of any other city or state with copies of the returns filed. The Finance Director is also authorized to enter into agreements for the exchange of any information with any of the foregoing federal, State or Municipal officials. Any person divulging information, except as herein before authorized, shall, upon conviction thereof, be deemed guilty of a third degree misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than six months, or both. Each disclosure shall constitute a separate offense.

#### **181.12 COLLECTION OF UNPAID TAXES**

- (a) All taxes imposed by this chapter shall be collectible together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable.



- (b) The Finance Director is authorized to institute civil law suits to collect delinquent taxes due and owing the City by virtue of the provisions of this chapter. The Finance Director is authorized to waive penalties and interest and compromise tax liability and the right to accept waiver of State Statutes of Limitation.
- (c) Except in the case of fraud, omission of twenty-five percent of income subject to this tax or failure to file a return, an additional assessment shall not be made after three years from the time the return was due or filed, whichever is later. In the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover Municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later. However, in those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which an additional assessment may be made by the Finance Director shall be one year from the time of the final determination of the Federal tax liability.
- (d) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date when such payment was made or the return was due or within three months after final determination of the Federal tax liability. In addition, the following shall apply regarding refunds of tax withheld from non-qualified deferred compensation plans (NDCP):
1. A taxpayer may be eligible for a refund if the taxpayer has suffered a loss from a NDCP. The loss will be considered sustained only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to the NDCP. Full loss is sustained if no distribution of money and property will be made by the NDCP.
  2. A taxpayer who receives income as a result of payments from a NDCP, and that income is less than the amount of income deferred to the NDCP and upon which municipal tax was withheld, then a refund will be issued on the amount representing the difference between the deferred income that was taxed and the income received from the NDCP. If different tax rates applied to the tax years in which deferrals, a weighted average of the different tax rates will be used to compute the refund amount.
  3. Refunds shall be allowed only if the loss is attributable to the bankruptcy of the employer who had established the NDCP, or the employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified compensation.
- (e) Income tax that has been deposited with the City, but should have been deposited with another municipality, is allowable by City as a refund but is subject to the three-year limitation on refunds. Income tax that should have been deposited with the City, but was deposited with another municipality, shall be subject to recovery by the City. The City will allow a non-refundable credit

for any amount owed the City that is in excess of the amount to be refunded by the other municipality, as long as the tax rate of the other municipality is the same or higher than the City's tax rate. If the City's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the City.

- (f) In the case of delinquencies, payments received shall first be applied to delinquent penalties and interest, beginning with the oldest delinquency. Upon satisfaction of this debt, payments shall then be applied to delinquent taxes, beginning with the oldest delinquency.
- (g) Additional amounts of less than one dollar (\$1.00) shall not be refunded or assessed unless such assessment results from income which the taxpayer has failed to report.

### **181.13 CREDITS**

Every individual taxpayer who resides in the City but who received net profits and income for work done or services performed or rendered outside of the City, if it be made to appear that he/she had paid a municipal income tax or excise tax based on income, on such net profits and income in another municipality, shall be allowed a credit for the amount so paid by him or in the taxpayer's behalf in such other municipality, but the credit shall not exceed one-fourth of one-percent (.25%) of the tax assessed by this chapter. The net tax due the City after application of the credit shall be a minimum one-half percent (.50%).

### **181.14 INTEREST AND PENALTIES; VIOLATIONS**

- (a)
  - 1. All taxes imposed, and all moneys withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid after they become due shall bear interest, in addition to the amount of the unpaid tax, at the rate of one and one-half percent (1.5%) per month or fraction of a month thereof.
- (b) In addition to interest as provided in paragraph A hereof, penalties based on the unpaid tax are hereby imposed as follows:
  - 1. For failure to pay tax due, other than taxes withheld, one percent (1%) per month or fraction of a month thereof.
  - 2. For failure to remit taxes withheld from employees, three percent (3%) per month or fraction of a month thereof. The total penalty shall not exceed fifty percent (50%) of the tax due.
  - 3. Any person required to file a tax return with the City and who fails to file, or to timely file, a return shall be liable to pay a penalty to fifty dollars (\$50) for the first instance and one hundred dollars (\$100) for each subsequent instance, even if no tax is found to be due.

4. A penalty shall not be assessed on an additional tax assessment made by the Finance Director when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Finance Director; provided further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after final determination of the federal tax liability.

- (c) The Finance Director or the Board of Appeal may abate penalty or interest or both.
- (d) In no case shall penalty and interest charges be levied when the total of such penalty and interest is less than one dollar (\$1.00).
- (e) Any person required to withhold the tax, who knowingly fails to withhold such tax or pay over such tax or knowingly attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded or not withheld or not paid over. No other penalty under this section shall be applied to any offense to which this penalty is applied.
- (f) Violations
  - 1. No person shall:
    - A. Fail, neglect, or refuse to make any return or declaration required by this chapter.
    - B. Make an incomplete, false, or fraudulent return.
    - C. Fail, neglect, or refuse to pay the tax, penalties, or interest imposed by this chapter.
    - D. Fail, neglect, or refuse to withhold the tax from his employees and remit the withholding tax to the Finance Director.
    - E. Refuse to permit the Finance Director or any duly authorized agent or employee to examine his or his employer's books, records, papers, and federal and/or State income tax returns.
    - F. Fail to appear before the Finance Director and to produce his or his employer's books, records, papers, or federal and/or State income tax returns upon order or subpoena of the Finance Director.
    - G. Refuse to disclose to the Finance Director any information with respect to the person's or the person's employer's income or net profits.

- H. Fail to comply with the provisions of this chapter or any order or subpoena of the Finance Director.
  - I. Fail, neglect, or refuse to make any payment on the estimated tax for any year as required by Section 181.08.
  - J. Fail to cause the tax withheld from the wages of employees to be paid to the City in accordance with the provisions of Section 181.07.
  - K. Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties, or interest imposed by this chapter.
2. Whoever violates Section 181.14(f)1 shall for the first offense, be guilty of a misdemeanor of the fourth degree and shall be fined not more than two hundred fifty dollars (\$250) and/or imprisonment not more than three (3) months, or both. Each subsequent offense shall be a misdemeanor of the third degree, resulting in fine of not more than five hundred dollars (\$500) and/or imprisonment not more than six (6) months, or both.
  3. Any employee of the City who violates the provisions of the chapter relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

## **181.15 MUNICIPAL CONTRACTS**

Contract Provisions. No contract on behalf of the City for works or improvements of the City shall be binding or valid unless such contract contains the following:

“Said \_\_\_\_\_ hereby further agrees to withhold all Municipal income taxes due or payable under the provisions of Ordinance 89-18, including updates, of the City for wages, salaries and commission paid to its employees and further agrees to any of its subcontractors shall be required to agree to withhold any such Municipal income taxes due under such chapter for services performed under this contract.”

## **181.16 BOARD OF APPEAL**

- (a) A Board of Appeal of three members is hereby created, consisting of the Mayor, the Chairman of the Council Finance Committee, and an additional Council member of the Finance Committee chosen by the Mayor and the Chairman of the Council Finance Committee.
- (b) All rules and regulations and amendments or charges thereto, which are adopted by the Finance Director under the authority conferred by this chapter, must be approved by the Board of Appeal before the same become effective.

After such approval, such rules, regulations, amendments and changes shall be filed with the Clerk of Council and shall be open to public inspection.

- (c) The Board of Appeal shall elect from its members, a Chairman, a Vice-Chairman, and a Secretary. A majority of the members shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. All hearings upon appeal by the Board shall be conducted privately, unless a private hearing is requested by the taxpayer, and the provisions of Section 181.11 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.
- (d) Any person dissatisfied with any ruling or decision of the Finance Director, which is made under the authority conferred by this chapter and the rules and regulations, and who has filed the required returns or other documents pertaining to the contested issue, may appeal therefrom to the Board of Appeal within thirty (30) days from the announcement of the ruling or decision by the Finance Director. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any ruling or decision or any part thereof. The Board must schedule a hearing within forty-five (45) calendar days of receiving the appeal. The Board must issue a written decision within ninety (90) days after the final hearing and send a notice of its decision by ordinary mail to the taxpayer within 15 days after issuing the decision.
- (e) Any person dissatisfied with any ruling or decision of the Board of Appeal may appeal the decision therefrom to a court of competent jurisdiction within thirty (30) days from the announcement of such ruling or decision. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

#### **181.17 SAVINGS CLAUSE**

If any sentence, clause, section, or part of this chapter, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this chapter. It is hereby declared to be the intention of the Council of the City that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

#### **181.18 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER**

- (a) This chapter shall continue in effect insofar as the levy of taxes is concerned until the same has been repealed. Insofar as the collection of taxes levied or enforcing any

provision of this chapter are concerned, it shall continue in effect until all of such taxes levied in the aforesaid period are fully paid and all suits and prosecutions for the collection of such taxes, or for the punishment of violations of this chapter, shall have been fully terminated. The provisions of Section 181.17 (a) are subject to the limitations contained in Sections 181.12 and 181.14.

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the dates provided in Sections 181.04 through 181.05, as though the same were continuing.

## **181.19 RULES AND REGULATIONS**

The Council of the City adopts the Regional Income Tax Agency (RITA) Rules & Regulations for use as the City's Income Tax Rules and Regulations, and they are hereby incorporated by reference as part of this Chapter. In the event of a conflict with any provision(s) of the City's Income Tax Chapter and the RITA Rules & Regulations, the Chapter will supersede. Until and if the contractual relationship between the City and RITA ceases, Section 181.19 will supersede all other provisions within Chapter 181 regarding promulgation of Rules and regulations by the Finance Director and approval of same by the Board of Appeal.