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**CHAPTER 201  
INCOME TAX****§201.01 DEFINITIONS**

As used in this Chapter, the following words shall have the meanings ascribed to them in this Chapter, except as and if the context clearly indicates or requires a different meaning.

**Association:** means a partnership, limited partnership or any other form of unincorporated enterprise owned by two (2) or more persons.

**Business:** means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, fiduciary, trust, association, corporation or any other entity.

**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.

**Employee:** means one (1) who works for wages, salary, commissions or other type of compensation in the service of an employer.

**Employer:** means an individual, partnership, association, corporation, governmental body, unit or agency or any other entity whether or not organized for profit, that employs one (1) or more persons on a salary, wage, commission or other compensation basis.

**Finance Department:** means the Finance Department of the City of Upper Arlington.

**Finance Director:** means the individual charged with the responsibility of managing the fiscal affairs of the City of Upper Arlington.

**Fiscal Year:** means an accounting period of twelve (12) months or less ending on any day other than December 31.

**Fundamental Change:** means any substantial alteration by an employer including liquidation, dissolution, bankruptcy and reorganizations such as merger, consolidation, acquisition, transfer or change in identity, form or organization.

**Gross Receipts:** means the total income from any source whatsoever.

**Limited Liability Company:** means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.

**Manager:** means any of the employer's officers, responsible persons, employees having control or supervision, and employees charged with the responsibility of filing the return, paying taxes and otherwise complying with this Chapter.

**Net Profits:** means 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 used by the taxpayer for Federal Income Tax purposes. Net gain shall be computed using the taxpayer's adjusted federal taxable income as defined and provided for in Ohio Revised Code § 718.01. (Per Ordinance No. 114-2009)

**Nonqualified Plan:** means a nonqualified deferred compensation plan as defined in section 3121(v)(2)(C) of the Internal Revenue Code or any plan, agreement, method, or arrangement, that does not satisfy all of the requirements of section 401(a) of the Internal Revenue Code, regardless of whether the plan, agreement, method or arrangement is a trust. (Per Ordinance No. 114-2009)

**Non-Resident Individual:** means an individual who is not domiciled in the City of Upper Arlington and whose usual place of abode is outside the City of Upper Arlington.

**Non-Resident Unincorporated Business Entity:** means an unincorporated business entity not having an office or place of business within the City of Upper Arlington.

**Ohio Business Gateway:** means the online computer network system, initially created by the Department of Administrative Services under Ohio Revised Code § 125.30, that allows private businesses to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system. (Per Ordinance No. 114-2009)

**Pass-Through Entity:** means a partnership, 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 (excluding S corporations).

**Pass-Through Entity (Income from):** means partnership income of partners, membership interests of members of a limited liability company, or other distributive or proportionate ownership shares of other pass-through entities.

**Person:** means every natural person, partnership, fiduciary, 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.

**Place of Business:** means any bona fide office (other than a mere statutory office), factory, warehouse or other place which is occupied and used by the taxpayer in carrying on any business activity individually or through any one (1) or more of his regular employees regularly in attendance.

**Resident Individual:** means any individual who is domiciled in the City of Upper Arlington or whose usual place of abode is in the City of Upper Arlington.

**Resident Unincorporated Business Entity:** means an unincorporated business entity having an office or place of business within the City of Upper Arlington.

**S Corporation:** means a corporation that has made an election under Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

**Schedule E:** means internal revenue service schedule E filed by a taxpayer pursuant to the Internal Revenue Code. *(Per Ordinance No. 114-2009)*

**Singular and Plural, Gender:** the singular shall include the plural; the masculine gender shall include the feminine and the neuter genders.

**Tax Administrator:** means the person designated by the Finance Director to administer or enforce the provisions of the municipal income tax, or his designee.

**Taxable Income:** means wages, salaries, commissions and other compensation paid by an employer or employers before any deductions and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this ordinance.

**Taxable Year:** means the calendar year or the fiscal year upon the basis of which the net profits are to be computed under this ordinance and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

**Wages:** means qualifying wages as defined under Ohio Revised Code §718.03. *(Per Ordinance No. 114-2009)*

## §201.02 IMPOSITION OF TAX

To provide for the purposes of general municipal operations, capital improvements, maintenance and repair of equipment, streets and other physical properties, purchase of new equipment, and the payment of principal and interest on debt issued by the City,

there is hereby levied a tax at the rate of two and one-half percent (2.5%) per annum upon the following:

(A) On all salaries, wages, commissions, gambling/lottery winnings, prize monies or value thereof and other compensation earned by Residents of the City.

(B) On all salaries, wages, commissions and other compensation earned by non-residents of the City for work done or services performed or rendered in the City.

(C) On the net profits of all unincorporated businesses, professions or other activities conducted by Residents of the City.

(D) On the net profits of all unincorporated businesses, professions or other activities conducted in the City by non-residents.

(E) For the purposes of C.O. §§ 201.02 (C) and (D) above, an association shall not be taxable as an entity, but any member thereof who is a Resident of the City shall be taxed individually on his entire share, whether distributed or not, of the annual net profits of the association, and any non-resident member thereof shall be taxed individually only on that portion of his share, whether distributed or not, of the annual net profits of the association as is derived from work done, services performed or rendered, and business or other activities conducted in the City.

(F) On the net profits of all corporations, estates and trusts derived from 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

(G) On a Resident's entire distributive share income from pass-through entities conducting business outside the City. Income from a pass-through entity includes partnerships, limited liability companies and trusts. Credit on the tax imposed by the paragraph shall be given for tax paid to any other municipality under C.O. § 201.20 of this Chapter.

#### §201.03 ALLOCATION OF NET PROFITS

(A) Except as otherwise provided in subsection (B) below, net profit from a business or profession conducted both within or without the boundaries of the City shall be considered as having a taxable situs in the City in the same proportion as the average ratio of the following: *(Per Ordinance No. 114-2009)*

(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, wherever situated. *(Per Ordinance No. 114-2009)*

As used in the preceding paragraph, 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 professions for services performed in the City, to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable under Ohio Revised Code § 718.011. *(Per Ordinance No. 114-2009)*

(3) Gross receipts 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.

(B) In the event that the foregoing allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted by the Finance Director so as to produce such result.

(C) As used in this Chapter, ***Sales Made in the City*** mean:

(1) All sales of tangible personal property 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 the City if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within 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 delivery is made.

(D) Add together the percentages determined in accordance with C.O. §§ 201.03(A)(1), (2) and (3) or such of the aforesaid percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in

deriving such total in order to obtain the business allocation percentage referred to in C.O. § 201.03(A). A factor is applicable even though it may be allocable entirely in or outside the City of Upper Arlington.

#### §201.04 LEVY OF TAX

The income tax at the rate of two and one-half percent (2.5%) shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of business, professions or other activities.

#### §201.05 RENTALS

Rental income received by a taxpayer shall be included in the computation of net profits in the same amount as the net profit from rental activities required to be reported by the taxpayer on Schedule E for the taxable year. *(Per Ordinance No. 114-2009)*

#### §201.06 OPERATING LOSS

(A) Commencing with taxable years beginning subsequent to December 31, 1998, a net operating loss sustained in any taxable year may not be carried forward or backward to any other taxable year.

(B) The net loss from an unincorporated business activity may not be used to offset salaries, wages, commissions or other compensation. However, if a taxpayer is engaged in two (2) or more taxable business activities to be included in the same return, the net loss of one (1) unincorporated business activity (except any portion of a loss separately reportable for municipal tax purposes to another taxing entity) may be used to offset the profits of another for purposes of arriving at overall net profits.

#### §201.07 EXEMPTIONS

The tax provided for herein shall not be levied on the following:

(A) Pay or allowance of active members of the armed forces of the United States or 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.

(B) Poor relief, unemployment insurance benefits, old age pensions or similar payments including disability benefits received from local, state or federal governments or charitable, religious or educational organizations.

- (C) Proceeds of insurance paid by reason of the death of the insured; pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.*(Per Ordinance No. 114-2009)*
- (D) Receipts 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.
- (E) Alimony received.
- (F) Personal earnings of any natural person under eighteen (18) years of age.
- (G) Compensation for personal injuries or for damages to property by way of insurance or otherwise.
- (H) Interest, dividends and other revenue from intangible property.
- (I) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, items of income already taxed by the State of Ohio from which the municipality is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business).
- (J) Salaries, wages, commissions and other 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.
- (K) Salaries, wages, commissions and other 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 municipality to impose net income taxes.
- (L) A non-resident individual who works in the City of Upper Arlington for twelve or fewer days per calendar year shall be considered an occasional entrant pursuant to Section 718.01(F)(8) of the Ohio Revised Code, and shall not be subject to Upper Arlington municipal income tax for those twelve days. For purposes of the twelve-day calculation, any portion of a day worked in the City of Upper Arlington shall be counted as one day worked in Upper Arlington. Beginning with the thirteenth (13<sup>th</sup>) day, the individual can no longer be considered to have been an occasional entrant and thus the employer is further required to remit taxes on income earned in Upper Arlington by the individual for the first twelve days. The twelve-day occasional entry rule does not apply to entertainers or professional athletes, their employees or individuals who perform service on their

behalf or to promoter and booking agents of such entertainment events and sporting events. If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the City of Upper Arlington.

(M) Payments received from a Nonqualified Plan are not exempted under this section and shall be subject to taxation as wages or other compensation. *(Per Ordinance No. 114-2009)*

## §201.08 RETURNS

(A) Any person who has taxable income must file a tax return with the Tax Administrator. Any person who has exempt income must file a return and declare to the Tax Administrator the nature of his exemption. Any person who has no taxable income need not file an annual return, but must file a declaration of no taxable income with the Tax Administrator. *(Per Ordinance No. 114-2009)*

(B)(1) Except as provided for in subsection (C)(1) below, persons required to file a return or declaration of exemption or no taxable income shall do so on or before April 15 of the year following the year for which they are filing. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the 15<sup>th</sup> day of the fourth month following the end of such fiscal year or period. *(Per Ordinance No. 114-2009)*

(C)(1) Any person that has requested an extension for filing a federal income tax return may request an extension for filing a return with the City. Except as provided for in subsection (C)(2) below, the person shall make the request by filing a copy of the person's request for a federal filing extension with the Tax Administrator no later than the last day for filing the City income tax return. The City may deny the request for an extension if the person fails to timely file the request, fails to file a copy of the request for the federal extension, owes the City any delinquent income tax or any penalty, interest, assessment, or other charge for the late payment or nonpayment of income tax, or has failed to file any required income tax return, report, or other related document for a prior tax period. *(Per Ordinance No. 114-2009)*

(2) Any person subject to tax on the net profit from a business or profession that has received an extension to file the federal income tax return shall not be required to notify the City of the federal extension and shall not be required to file any municipal income tax returns until the last day of the month to which the due date for filing the federal return has been extended, provided that, on or before the date for filing the municipal income tax return, the person notifies the tax commissioner of the federal extension through the Ohio Business Gateway. *(Per Ordinance No. 114-2009)*



(3) An extension of time to file is not an extension of time to pay any tax due. Interest shall apply to any unpaid tax during the period of extension at the rate set out by C.O. § 201.22. *(Per Ordinance No. 114-2009)*

(D) Except as provided for in subsection (E), The return shall be filed with the Tax Administrator on a form or forms furnished by or obtainable upon request from such Tax Administrator, setting forth: *(Per Ordinance No. 114-2009)*

(1) The aggregate amounts of salaries, wages, commissions and other compensation earned and gross income from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to such tax.

(2) The amount of the tax imposed by this Chapter on such earnings and profits.

(3) Such other pertinent statements, information returns or other information as the Tax Administrator may require. *(Per Ordinance No. 114-2009)*

(E) A person subject to the City's tax on net profits from a business or profession may file any municipal income tax return or estimated municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway. *(Per Ordinance No. 114-2009)*

(F) A consolidated income tax return shall be filed by any affiliated group of corporations subject to the City's net profits tax if that affiliated group filed a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code for the same tax reporting period. For non-corporate taxpayers, the filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Tax Administrator. *(Per Ordinance No. 114-2009)*

(G) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the City of Upper Arlington constituting a portion only of its total business, the Tax Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City. If the Tax Administrator finds that net profits are not properly allocated to the City by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the City.

(H) A husband and wife, in any taxable year, may elect to file separate or joint returns.

#### §201.09 AMENDED RETURNS

Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a return of tax overpaid, subject to the requirements, limitations, or both, contained in C.O. §§ 201.13 and 201.20. Such amended return shall be on a form obtainable on request from the Tax Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

Within three (3) 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 City return showing income subject to the City tax based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.

#### §201.10 PAYMENT OF TAX

(A) The taxpayer making a return shall, at the time of filing thereof, pay to the Tax Administrator the amount of taxes shown as due thereon; provided, however, that:

(1) Where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of C.O. § 201.11.

(2) Where any portion of such tax shall have been paid by the taxpayer pursuant to the provisions of C.O. § 201.12.

(3) Where an income tax has been paid on the same income to another municipality, credit for the amount so deducted or paid, or credit to the extent provided for in C.O. § 201.20, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing such return.

(B) A taxpayer who has overpaid the amount of tax to which the City of Upper Arlington is entitled under the provisions of this Chapter may have such overpayment applied against any subsequent liability hereunder, or, at his election, indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

(C) If any employer which is liable for tax obligations imposed by this Chapter undergoes a fundamental change, then the employer and its manager shall be liable for taxes due up to the date of the fundamental change. Taxes and final tax returns shall be

due immediately after the fundamental change. Any successor employer shall withhold from any purchase price that the successor owes to the predecessor an amount sufficient to pay all unpaid taxes, interest and penalty which the predecessor employer owes pursuant to this Chapter. The successor employer shall make such withholding until such time that the predecessor employer has paid such taxes, interest and penalties. If the successor fails to withhold such amount, then the successor and, in a personal manner, the successor's manager shall be jointly and severally liable for the payment of such taxes, interest and penalty.

#### §201.11 COLLECTION AT SOURCE

(A) Each employer within or doing business within the City, shall deduct at the time of payment of such salaries, wages, commissions or other compensation, the tax of two and one-half percent (2.5%) of the gross salaries, wages, commissions or other compensation due by the said employer to said employee and shall, on or before the last day of the month following the close of each calendar quarter, 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 C.O. § 201.11(A)(1), (2) and (3).

Employers shall pay to the City all income taxes withheld or required to be deducted and withheld on either a semi-monthly, monthly or quarterly basis depending on the amount of taxes involved according to the following payment schedule:

(1) Semi-monthly payments of the taxes deducted are to be made by an employer if, (1) the total taxes deducted in the prior calendar year were twelve thousand dollars (\$12,000.00) or more or, (2) the amount of taxes deducted for any month in the preceding quarter exceeded one thousand dollars (\$1,000.00). Such payment shall be paid to the City within five (5) banking days after the fifteenth (15<sup>th</sup>) and the last day of each month.

(2) Monthly payments of taxes withheld shall be made by an employer, if the taxes withheld in the prior calendar year were less than twelve thousand dollars (\$12,000.00) but more than three thousand five hundred ninety nine (\$3,599.00); or, if the taxes withheld during any month for the preceding quarter exceeded three hundred dollars (\$300.00). Such payments shall be paid to the City within fifteen (15) days after the close of each calendar month. However, those taxes accumulated for the third month of a calendar quarter by employers making monthly payments pursuant to this paragraph need not be paid until the last day of the month following such quarter.

(3) All employers not required to make semi-monthly or monthly payments of taxes withheld under C.O. § 201.11(A)(1) and (2) shall make quarterly payments no later than the last day of the month following the end of each quarter.

(B)(1) Except as provided in subsection (B)(2) below, all employers required to file returns of withheld taxes shall make such returns on a form or forms prescribed or acceptable to the Tax Administrator and shall be subject to the rules and regulations prescribed therefore by the Tax Administrator. *(Per Ordinance No. 114-2009)*

(2) An employer may report the amount of income tax withheld, and may make remittance of such amounts, by using the Ohio Business Gateway. *(Per Ordinance No. 114-2009)*

(3) An 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. *(Per Ordinance No. 114-2009)*

(C) Such employer in collecting such tax shall be deemed to hold the same until payment is made by such employer to the City of Upper Arlington as a trustee for the benefit of the City, and any such tax collected by such employer from his employees shall, until the same is paid to the City, be deemed a trust fund in the hands of such employer.

(D) No person shall be required to withhold the tax on wages or other compensation paid domestic servants employed by him exclusively in or about such person's residence, even though such residence is in the municipality, but such employee shall be subject to all of the requirements of this Chapter.

(E) Manager's Obligation

(1) Every manager is deemed to be a trustee of the City of Upper Arlington 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. Every manager is liable directly to the City for payment of such trust, whether actually collected by such employer or not. Any tax deducted and withheld is to be considered paid to the City, whether or not the employer actually remits the tax to the City, for purposes of determining employee payments or credits.

(2) All managers shall be personally liable to the extent of the tax, interest and penalty, jointly and severally, for failure to file the employer's return or to pay the employer's tax, interest and penalty as required under this Chapter.

(3) No change in structure by an employer, including a fundamental change, discharges its managers from liability for the employees' or manager's failure to remit funds held in trust, to file a tax return or to pay taxes.

## §201.12 DECLARATIONS

(A) Every person who anticipates any taxable income which is not subject to C.O. § 201.11, or who engages in any business, profession, enterprise or activity subject to the tax imposed by C.O. §§ 201.02 (C) and (D) shall file a declaration setting forth such estimated income or the 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 wages, salaries, commissions or other compensation from which the tax will be withheld and remitted to the City in accordance with C.O. § 201.11, such person need not file a declaration. If the estimated tax amounts to not more than one hundred dollars (\$100.00), no declaration or payment of estimated tax is required.

(B) For individual taxpayers such declarations and the estimated tax due thereon shall be remitted as set forth in subsections (1) through (4) below: *(Per Ordinance No. 114-2009)*

(1) Twenty-two and one-half percent of the taxpayer's estimated tax liability for the current year shall be remitted on or before the fifteenth day of April; *(Per Ordinance No. 114-2009)*

(2) Forty-five percent of the taxpayer's estimated tax liability for the current year shall be remitted on or before the thirty-first day of July; *(Per Ordinance No. 114-2009)*

(3) Sixty-seven and one-half percent of the taxpayer's estimated tax liability for the current year shall be remitted on or before the thirty-first day of October; *(Per Ordinance No. 114-2009)*

(4) Ninety percent of the taxpayer's estimated tax liability for the year referred to in subsection (B)(1), (2), and (3) shall be remitted on or before the thirty-first day of January. *(Per Ordinance No. 114-2009)*

(C) For taxpayers that are not individuals, such declarations and the estimated tax to be paid to the City shall be remitted as set forth in subsections (1) through (4) below: *(Per Ordinance No. 114-2009)*

(1) Twenty-two and one-half percent of the taxpayer's estimated tax liability for the current year shall be required to be remitted on or before the fifteenth day of April or, in the case of a fiscal year taxpayer, the fifteenth day of the fourth month of the taxpayer's taxable year; *(Per Ordinance No. 114-2009)*

(2) Forty-five percent of the taxpayer's estimated tax liability for the current year shall be remitted on or before the fifteenth day of June or, in the case of a fiscal year taxpayer, the fifteenth day of the sixth month of the taxpayer's taxable year; *(Per Ordinance No. 114-2009)*

(3) Sixty-seven and one-half percent of the taxpayer's estimated tax liability for the current year shall be remitted on or before the fifteenth day of September or, in the case of a fiscal year taxpayer, the fifteenth day of the ninth month of the taxpayer's taxable year; *(Per Ordinance No. 114-2009)*

(4) Ninety percent of the taxpayer's estimated tax liability for the current year shall be remitted on or before the fifteenth day of December or, in the case of a fiscal year taxpayer, the fifteenth day of the twelfth month of the taxpayer's taxable year. *(Per Ordinance No. 114-2009)*

(D) Such declaration shall be filed upon a form furnished by or obtainable from the Tax Administrator provided, however, credit shall be taken for the City tax to be withheld from any portion of such income. In accordance with the provisions of C.O. § 201.10, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality. A taxpayer subject to the City's tax on net profits from a business or profession may file the declaration and remit payment of the estimated tax by using the Ohio Business Gateway. *(Per Ordinance No. 114-2009)*

(E) The original declaration or any subsequent amendment thereof may be increased or decreased on or before any subsequent quarterly payment day as provided for herein.

(F) On or before the last day of the fourth (4<sup>th</sup>) month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City shall be paid therewith in accordance with the provisions of C.O. § 201.10.

(G) No penalty for failure to pay estimated tax will apply to a taxpayer whose tax for the year, after credit for tax withheld, is less than one hundred dollars (\$100.00). A declaration of estimated tax which is less than eighty percent (80%) of the tax shown to be due on the final return shall not be considered filed in good faith. The difference shall be subject to penalties and interest as provided for in C.O. § 201.22. *(Per Ordinance No. 114-2009)*

## §201.13 REFUNDS OF OVERPAYMENTS

(A) Claims for refunds of municipal income taxes must be brought within the time limitation provided in Ohio Revised Code § 718.12. *(Per Ordinance No. 114-2009)*

(B) If a claim for refund is timely made, the City shall pay interest on any overpayment by a taxpayer of any municipal income tax obligation in accordance with Ohio Revised Code § 718.12. *(Per Ordinance No. 114-2009)*

(C) Amounts of less than one dollar (\$1.00) shall not be refunded. *(Per Ordinance No. 114-2009)*

#### §201.14 REGISTRATION OF TENANTS, CONTRACTORS AND EMPLOYEES

(A) Each owner, or the duly designated agent thereof, of one (1) or more units of real property located within the City and which are rented or available for rent as of January 1, 1992, and thereafter, shall submit to the Tax Administrator, or the designee thereof, on or before September 30 of each year a list of tenants presently occupying those rental units and those units vacant. For the purposes of this section, **Rented Units** includes any unit of real property which is subject to a rental agreement, whether oral or written, for residential, commercial or industrial purposes.

(B) All employers, contractors or subcontractors who do work in the City shall register with the Tax Administrator. The Tax Administrator may request a list of all employees, subcontractors, contractors or others who may do work for them whose profits, wages or earnings are not presently subject to withholding of the City of Upper Arlington income tax.

#### §201.15 DUTIES OF THE FINANCE DIRECTOR

(A) It shall be the duty of the Finance Director to collect and receive the tax imposed by this Chapter in the manner prescribed by said Chapter, and it shall also be his duty to keep an accurate record showing the payment received by him from each taxpayer and the date of said payment. The Finance Director may appoint an Income Tax Administrator and designate others as agents to carry out the duties of this Chapter.

(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 said Chapter, including provisions for the re-examination and correction of returns and payments.

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 his 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.

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**§201.16 INVESTIGATION POWERS OF THE FINANCE DIRECTOR**

The Finance Director, or any authorized employee, is hereby authorized to examine the books, papers, records and Federal 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 purposes of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this Chapter, and every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Finance Director, or his duly authorized agent, the means, facilities, and opportunity for making such examinations and investigations as are hereby authorized.

The Finance Director is each 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 and for this purpose may compel the production of books, papers, records and Federal Income Tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

**§201.17 TAX INFORMATION CONFIDENTIAL**

Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this Chapter shall be confidential, except for official 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 Tax Commissioner of the State of Ohio and the duly authorized income tax administrator 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 City officials. Any person divulging such information, except as hereinbefore authorized, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500.00) or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense.

**§201.18 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 lawsuits 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 Limitations.

(C) Civil actions to recover municipal income taxes, penalties and interest on municipal income taxes shall be brought within the time limitations of Ohio Revised Code § 718.12. However, in those cases in which the Commissioner of the 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 Tax Administrator shall be one year from the date of the final determination of the federal tax liability. *(Per Ordinance No. 114-2009)*

(D) Amounts of less than one dollar (\$1.00) shall not be collected. *(Per Ordinance No. 114-2009)*

#### §201.19 AUTHORITY TO ARRANGE INSTALLMENT PAYMENTS

The Finance Director is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Finance Director that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under this Chapter.

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 C.O. §§ 201.13 and 201.22 of this Chapter shall apply.

#### §201.20 CREDITS

(A) Every individual taxpayer who resides in the City and received net profits, salaries, wages, commissions or other compensation for work done or services performed or rendered outside of the City, if it be made to appear that he has paid a municipal income tax or excise tax based on income, on such net profits, salaries, wages, commissions or compensation in another municipality, shall be allowed a credit for the amount so paid by him or in his behalf in such other municipality, this credit to be applied only to the extent of the tax assessed by this Chapter, by reason of such net profits, salaries, wages, commissions or compensation earned in such other municipality where such tax is paid.

(B) Every individual taxpayer who resides in the City, and is taxed on the net profits of a pass-through entity pursuant to UACO 201.02(G), shall be allowed a credit for taxes paid by the pass-through entity to another municipal corporation if the pass-through entity does not conduct business in the City. The amount of the credit shall equal the lesser of the following amounts: *(Per Ordinance No. 114-2009)*

- (1) The owner's proportionate share of the amount, if any, of tax paid by the pass-through entity to another municipal corporation in this state; *(Per Ordinance No. 114-2009)*
- (2) The owner's proportionate share of the amount of tax that would be imposed on the pass-through entity by the City if the pass-through entity conducted business in the City. *(Per Ordinance No. 114-2009)*
- (C) A refundable credit shall be allowed against the income tax imposed by the City for each qualifying loss sustained by the taxpayer during the taxable year related to a nonqualified deferred compensation plan. The availability and amount of the credit shall be determined pursuant to Ohio Revised Code § 718.021. *(Per Ordinance No. 114-2009)*

#### §201.21 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 provisions:

"Said \_\_\_\_\_ hereby further agrees to withhold all City income taxes due or payable under the provisions of Chapter 201 of the Codified Ordinances of the City of Upper Arlington, Ohio, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such City income taxes due under said Chapter for services performed under this contract."

#### §201.22 INTEREST AND PENALTIES

(A) All taxes imposed by 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 five tenths percent (1.5%) per month or fraction thereof, and the taxpayers upon whom said taxes are imposed by this Chapter shall be liable in addition thereto, to a penalty of one and five tenths percent (1.5%) per month or ten percent (10%) of the amount of the unpaid tax, whichever is greater. Except in the case of fraud, the penalty shall not exceed fifty percent (50%) of the unpaid tax.

(B) 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, provided an amended return is filed and the additional tax is paid within three (3) months after final determination of the federal tax liability.

(C) The penalty shall not be assessed against a taxpayer for the late payment or nonpayment of estimated tax liability in either of the following circumstances: *(Per Ordinance No. 114-2009)*

(1) The taxpayer is an individual who resides in the City but was not domiciled there on the first day of January of the current calendar year; or *(Per Ordinance No. 114-2009)*

(2) The taxpayer remitted an amount at least equal to one hundred percent of the taxpayer's tax liability for the preceding year as shown on the return filed by the taxpayer for the preceding year; provided that the return for the preceding year reflected a twelve month period and the taxpayer filed a return for the preceding year. *(Per Ordinance No. 114-2009)*

#### §201.23 INTEREST ON UNPAID WITHHELD TAXES

All taxes deducted by an employer or required to be deducted and withheld by an employer and remaining unpaid after they become due pursuant to C.O. § 201.11(A)(1), (2) or (3) shall bear interest on the amount of such unpaid taxes at the rate of one and five tenths percent (1.5%) per month or fraction thereof and in addition a penalty of five percent (5%) per month or fraction thereof or ten percent (10%) of the amount of the unpaid taxes, whichever is greater. Except in the case of fraud, the penalty shall not exceed fifty percent (50%) of the unpaid tax.

#### §201.24 PENALTY FOR FAILURE TO WITHHOLD OR EVASION

Any person required to withhold the tax who fails to withhold the tax or pay over the tax, or attempts in any manner to evade or defeat the tax or the payment thereof, shall pay a penalty equal to the total amount of the tax evaded, not withheld, or not paid over. No other penalty shall be applied to any offense to which this penalty is applied.

#### §201.25 LATE FEE FOR NOT FILING

(A) Any person who fails, neglects or refuses to make any return or declaration required by this Chapter shall be subject to the levy and imposition of a Fifty dollar (\$50.00) late fee. *(Per Ordinance No. 114-2009)*

(B) The late fee shall be in addition to any interest or penalty that may be imposed pursuant to C.O. §§ 201.22 or 201.99. *(Per Ordinance No. 114-2009)*

(C) The Finance Director may waive the late fee for good cause shown. *(Per Ordinance No. 114-2009)*

## §201.26 ALLOCATION OF FUNDS

The funds collected under the provisions of this Chapter shall be applied for the following purpose and in the following order, to wit:

- (A) Such part thereof as shall be necessary to defray all costs of collecting the taxes levied by this Chapter and enforcing the provisions hereof.
- (B) Such part thereof as Council may appropriate to the General Fund for the purpose of paying the cost of general municipal operations.
- (C) Such part thereof as Council may appropriate for the purpose of paying the cost of maintenance of, and the purchase of new equipment, including motorized equipment.
- (D) Such part thereof as the Council may appropriate for the purpose of paying the cost of the acquisition, construction, repair and/or maintenance of streets and/or other permanent improvements.
- (E) (1) In any event, at least twenty percent (20%) of all monies collected under this Chapter, shall be deposited in the Capital Asset Management Fund and shall be dedicated to capital improvements, the maintenance and repair of streets and other physical properties, and the payment of principal and interest on debt issued by the City for such purposes.

Interest and principal due on bonds and notes issued for the purposes described in the preceding sentence in excess of the one percent (1%) limitation as authorized by Article XII, Section 2, of the Constitution of the State of Ohio, shall be first paid from said Fund before any payment may be made on interest or principal due on other notes or bonds.

Provided, however, that in any year when monies are used to pay interest or principal on bonds or notes other than those issued in excess of the one percent (1%) limitation, as authorized by Article XII, Section 2, of the Constitution of the State of Ohio, the additional monies accruing to the General Fund thereby shall be used only for permanent improvements as defined in Ohio Revised Code § 133.01.

No monies derived from the previously mentioned twenty percent (20%) of all monies collected under this Chapter shall be used for any purpose other than capital improvements, maintenance and repair of streets and other physical properties, and the payment of principal and interest on debt issued by the City for such purposes.

(2) Provided, further, that additional monies, meaning monies in excess of the minimum twenty percent (20%) of income tax revenues required to be deposited in the Capital Asset Management Fund pursuant to division (E)(1) of this section, may be deposited in the Capital Asset Management Fund and may be appropriated to pay for permanent improvements, as defined in Ohio Revised Code § 133.01, to pay principal and interest on debt issued by the City for such permanent improvements, and to pay costs of permanent improvements, as described in Ohio Revised Code § 133.15. Additional monies may also be appropriated to defray the cost of engineering plans and specifications.

(3) Except with regard to interest and principal due on bonds and notes issued in excess of the one percent (1%) limitation, as authorized by Article XII, Section 2, of the Constitution of the State of Ohio, no monies from the Fund shall be expended without special authorization of City Council.

§201.27      RIGHT TO APPEAL *(Per Ordinance No. 114-2009)*

(A) Any person who is aggrieved by a decision of the Tax Administrator and who has filed with the City the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Tax Appeals established pursuant to C.O. Chapter 156 by filing a written request with the City Clerk.

(B) The request shall state why the decision is incorrect or unlawful and must be filed within thirty days after Tax Administrator issues the decision. Failure to timely file the request shall result in dismissal of the appeal.

(C) The City Clerk shall provide the person filing the request with a copy of the Board of Tax Appeals rules governing the procedures. The City Clerk shall promptly notify the Board and the Tax Administrator that a request has been filed.

(D) Whenever the Tax Administrator issues a decision regarding a municipal income tax obligation that is subject to appeal as provided in Ohio Revised Code § 718.11, the Tax Administrator shall notify the taxpayer in writing of the taxpayer's right to appeal the decision and the requirements of this section.

§201.99      ENUMERATION OF VIOLATIONS AND PENALTIES

(A) No person shall fail, neglect or refuse to make any return or declaration imposed by this Chapter.

(B) No employer shall fail, neglect or refuse to deduct and withhold the taxes or pay the taxes imposed by this Chapter.

(C) No taxpayer shall fail, neglect or refuse to pay the tax, interest and penalties imposed by this Chapter.

(D) No person shall refuse to permit the Finance Director, or his duly authorized agent or employee, to examine the bonds, records and papers of a taxpayer or fraudulent return.

(E) No person shall attempt to do anything whatever to evade payment of the whole or any part of the tax under this Chapter.

(F) Whoever violates any provisions of this section is guilty of a misdemeanor of the first degree as defined in Ohio Revised Code Chapter 2929 for each offense. *(Per Ordinance No. 114-2009)*

(G) Violations of this section are intended to be strict liability offenses. The failure of an employer or taxpayer to receive or produce a return or declaration form, shall not excuse the person from making a return or declaration or paying the tax levied under this Chapter. *(Per Ordinance No. 114-2009)*

(H) All prosecutions under this Chapter shall be commenced within the time limits provided in Ohio Revised Code § 718.12. *(Ordinance No. 5-2008)*