

REQUESTED BY: CITY MANAGER, BILL KOCHER

DATE OF FIRST READING: 7-1-2014 WAIVE RULES?        YES  NO

FINAL ACTION DATE: 7-15-2014 VOTE:  YES        NO

SUSPENSION OF TWO READING RULE:

YES	NO
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ADOPTION OF ORDINANCE:

YES	NO
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DENISE LINGO  
 JAMES WOLF  
 JENNIFER MOODY  
 GERALDINE BRANDY  
 ROBERT PARSONS  
 JEANNE GEORGE  
 JUDY PETERSEN  
 TOTALS

ORDINANCE NO. 14-1708

**AN ORDINANCE SUBMITTING AN INCOME TAX INCREASE FROM 1.5% TO 2.0% TO THE MT. HEALTHY VOTERS AND DECLARING AN EMERGENCY**

**Whereas**, the Council of the City of Mt. Healthy has determined that an increase in the earnings tax percentage from 1.5% to 2% is necessary to provide police protection services in the city,

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MT. HEALTHY, STATE OF OHIO THAT:

**Section 1.** The Council hereby instructs that this Ordinance shall be filed with the Hamilton County Board of Elections more than 90 days prior to the November 4, 2014 general election. The Board of Elections is hereby directed to include in the November 4, 2014 general election the issue of whether the Mt. Healthy Income Tax percentage levy on income shall be increased from 1.5% to 2%.

**Section 2.** The date of the general election at which the ballot language shall be included is November 4, 2014.

**Section 3.** The following suggested ballot language is hereby submitted to the Board of Elections and the Ohio Secretary of State for consideration:

"Shall the Ordinance providing an increase in the percentage levy on income from 1.5% to 2% for the specific purpose of providing police protection services be passed. The .5% increase shall only be used for police protection services, including without limitation salaries, equipment, vehicles and communication. The tax increase shall be effective on and after January 1, 2015."

       FOR THE TAX INCREASE  
       AGAINST THE TAX INCREASE

**Section 4.** In the event of an affirmative vote by a majority of Mt. Healthy voters at the election, the additional proceeds generated by this tax increase shall only be used for the specified purpose of providing police protection services, including without limitation salaries, equipment, vehicles and communication.

**Section 5.** In the event of an affirmative vote, the tax increase shall be effective from and after January 1, 2015.

**Section 6.** The suggested ballot language above may be amended or altered at the discretion of the Hamilton County Board of Elections or the Ohio Secretary of State.

**Section 7.** This Ordinance is an emergency measure necessary for the immediate preservation of the health, safety and welfare of the City of Mt. Healthy and shall be in full force and effect immediately upon passage. The reason for the emergency is in order to meet the filing deadline for the November 4, 2014 general election.

Passed this 19 day of July, 2014.

Stan Butts  
President of Council

Attest: Melanie E  
Clerk of Council

Approved this 19 day of July, 2014.

Joseph J. Rottling  
Mayor

Approved as to form:

Stephen S. Wolf  
Law Director



this chapter in the amount of the tax so paid by him or in his behalf to such other municipality, not to exceed 1.60%.

**Section 3.** That existing Section 39.040(A) is hereby repealed.

**Section 4.** That this Ordinance shall only be effective upon the passage of the Income Tax increase (1.5% to 2%) to be voted upon in the general election November 4, 2014. Should the income Tax increase fail, then this Ordinance shall be null and void and shall not take effect. Should the Income Tax increase pass, this Ordinance shall be in full force and effect beginning January 1, 2015.

Passed this 21 day of October, 2014.

Ron Buttner  
President of Council

Attest: Melanie M  
Clerk of Council

Approved this 21 day of October, 2014.

Joseph T. Koetting  
Mayor

Approved as to form:

Regina S. Wolf  
Law Director

[Print](#)

## Mt. Healthy, Ohio -- Code of Ordinances

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**CHAPTER 39: MUNICIPAL INCOME TAX**

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## Section

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## GENERAL PROVISIONS

### § 39.001 PURPOSE.

To provide funds for municipal purposes, there shall be and is hereby levied a tax on salaries, qualifying wages, commissions, and other compensation, and on net profits and other taxable income as herein provided.

('74 Code, § 93.01) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### § 39.002 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ADJUSTED FEDERAL TAXABLE INCOME.*** 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 R.C. § 5745.03 or to the net profit from a sole proprietorship.

***ASSOCIATION.*** A partnership, limited partnership, S corporation joint venture, or any other form of unincorporated enterprise, owned by two or more persons.

***BOARD OF REVIEW.*** The Board created by and constituted as provided for in §§ 39.105 through 39.107.

***BUSINESS.*** An enterprise, activity, profession, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation, or any other entity, including but not limited to the renting or leasing of property, real, personal or mixed.

***CITY or MUNICIPALITY.*** The City of Mt. Healthy, Ohio.

***CORPORATION.*** A corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, foreign country, or dependency.

**DOMICILE.** A principle residence that the taxpayer intends to use for an indefinite time and to which whenever he is absent he intends to return. A taxpayer has only one domicile even though he may have more than one residence.

**EMPLOYEE.** One who works for wages, salary, commissions, or other types of compensation in the services of any employer.

**EMPLOYER.** An individual, partnership, association, corporation, governmental body, unit, or agency, or any other entity, whether or not organized for profit, that employs one or more persons on a salary, wage, commission, or other compensation basis.

**FISCAL YEAR.** An accounting period of 12 months ending on any day other than December 31.

**FORM 2106.** Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

**GENERIC FORM.** An electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income. Any municipality that requires taxpayers to file income tax returns, reports, or other documents shall accept for filing a generic form of such a return, report, or document if the generic form, once completed and filed, contains all the information required to be submitted with the municipality's prescribed returns, reports, or documents.

**GROSS RECEIPTS.** Total income of taxpayers from whatever source derived.

**INCOME FROM A PASS-THROUGH ENTITY.** Partnership income of partners, membership interests of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership shares of income from other pass-through entities.

**INTANGIBLE INCOME.** Income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in R.C. Chapter 5701, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. **INTANGIBLE INCOME** does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.

**INTERNAL REVENUE CODE.** The Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.

**INTERNET.** The international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork know as the World Wide Web.

**JOINT ECONOMIC DEVELOPMENT DISTRICT.** Districts created under R.C. §§ 715.70 through 715.83, as amended from time to time.

**LIMITED LIABILITY COMPANY.** A limited liability company formed under R.C. Chapter 1705 or under the laws of another state.

**MUNICIPALITY.** A municipal corporation including the City of Mt. Healthy.

**NET PROFITS.** The net gain from all operations including those pertaining to capital gains and losses of a business, profession, or enterprise after provision for all ordinary and necessary expenses, except taxes imposed by this chapter, and federal and other taxes based on income, paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, and, in the case of an association, without deduction of salaries paid to partners or the owners.

**NONQUALIFIED DEFERRED COMPENSATION PLAN.** A compensation plan described in I.R.C. § 3121(v)(2)(C).

**NONRESIDENT.** A person, whether an individual, association, corporation, or other entity, domiciled outside the city.

**NONRESIDENT INCORPORATED BUSINESS ENTITY.** An incorporated business entity not having an office or place of business within the city.

**NONRESIDENT UNINCORPORATED BUSINESS ENTITY.** An unincorporated business entity not having an office or place of business within the city.

**OTHER PAYER.** Any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual.

**OWNER.** A partner of a partnership, a member of a limited liability company, a shareholder of an S corporation, or other person with an ownership interest in a pass-through entity.

**OWNER'S PROPORTIONATE SHARE.** With respect to each owner of a pass-through entity, the ratio of (a) the owner's income from the pass-through entity that is subject to taxation by the municipal corporation, to (b) the total income from that entity of all owners whose income from the entity is subject to taxation by that municipal corporation.

**PASS-THROUGH ENTITY.** A partnership, limited liability company, S corporation, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.

**PERSON.** Includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity.

**PLACE OF BUSINESS.** Any bona fide office (other than a mere statutory office), factory, warehouse, or other space which is occupied and used by the taxpayer in carrying on any business activity, individually or through one or more of his employees regularly in attendance.

**PRINCIPAL PLACE OF BUSINESS.** In the case of an employer having headquarters' activities at a place of business within a taxing municipality, the place of business at which the headquarters is situated. In the case of any employer not having its headquarters' activities at a place of business within a taxing municipality, the term means the largest place of business located in a taxing municipality.

**QUALIFIED PLAN.** A retirement plan satisfying the requirements under I.R.C. § 401, as amended.

**QUALIFYING WAGES.** Wages, as defined in I.R.C. § 3121(a), without regard to any wage limitations, adjusted in accordance with R.C. § 718.03(A).

**RESIDENT.** A person, whether an individual, association, corporation, or other entity, domiciled in the city.

**RETURN PREPARER.** Any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.

**RULES AND REGULATIONS.** The rules and regulations as set forth in this chapter.

**SCHEDULE C.** Internal Revenue Service Schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

**SCHEDULE E.** Internal Revenue Service Schedule E filed by a taxpayer pursuant to the Internal Revenue Code.

**SCHEDULE F.** Internal Revenue Service Schedule F filed by a taxpayer pursuant to the Internal Revenue Code.

**S CORPORATION.** A corporation that has made an election under I.R.C. subtitle A, chapter 1, subchapter S for its taxable year.

**TAX COMMISSIONER.** The person appointed to administer the municipality's income tax ordinance and to direct the operation of the Municipal Income Tax Department or the person executing the duties of the Tax Commissioner.

**TAX YEAR.** The calendar year, or the fiscal year on the basis of which net profits are to be computed under this chapter, 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.

**TAXABLE INCOME.** Qualifying wages paid by an employer or employers, compensation for personal services, other income defined by statute as taxable, and/or adjusted federal taxable income from the operation of a business, profession, or other enterprise or activity adjusted in accordance with the provisions of this chapter.

**TAXPAYER.** A person subject to a tax on income levied by a municipal corporation. **TAXPAYER** does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but **TAXPAYER** includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.

('74 Code, § 93.02) (Ord. 384-A, passed 4-1-71; Am. Ord. 90-914, passed 2-20-90; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.003 FILING OF NEW AND VACATING TENANT OCCUPANTS.**

(A) *Filing of new tenant occupants.* Within 30 days after a new tenant occupies rental property of any kind within the city, all property owners of rental property who rent to tenants of apartments, rooms, trailer park, or other property shall file with the Tax Commissioner of the city a report showing the names, addresses, telephone numbers, if available, and place of employment of each such

tenant who occupies an apartment, a room in a rooming house, space in a trailer park, or other rental property within the corporate limits of the city.

('74 Code § 93.03)

(B) *Filing of vacant tenants.* Within 30 days after a tenant vacates an apartment, room, trailer park, or other rental property located within the city, the property owner of such vacated rental property shall file with the Tax Commissioner of the city a report showing the date of vacating the rental property and identify each such vacating tenant.

('74 Code § 93.03)

(C) *Capital gains.* Capital gains from the sale, exchange or other disposition of depreciable property shall be taxable to the extent of the aggregate amounts of the depreciation taken on such property for the city income tax purpose.

(D) Any property owner who fails to make the report of tenants of the premises under his or her control, as required by subsections (A) or (B) above, shall be fined \$50 per unreported tenant.

(Ord. 496-A, passed 5-6-75; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05; Am. Ord. 12-1632, passed 2-21-12) Penalty, see § 39.999

#### **§ 39.004 ALLOCATION OF FUNDS.**

The Council shall provide by proper legislation a breakdown of the revenues from this chapter according to needs for operating expenses, capital improvements, and debt retirement.

('74 Code, § 93.90) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

#### **§ 39.005 SAVING CLAUSE.**

This chapter shall not apply to any person, firm or corporation, or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for. Any sentence, clause, section, or part of this chapter or any tax against or exception granted any individual or any of the several groups of persons or forms of income specified herein if found to be unconstitutional or 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 declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, or part hereof, not be included therein.

('74 Code, § 93.91) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

#### **§ 39.006 INTEREST AND PENALTIES.**

(A) *Interest.* All taxes imposed and monies withheld or required to be withheld by employers under the provisions of this chapter, remaining unpaid after they become due, shall bear interest at the rate of 1.5% per month.

(B) *Penalties.* In addition to interest as provided in division (A) above, penalties for failure to pay taxes and to withhold and remit taxes pursuant to the provisions of this chapter are imposed as follows:

(1) In the case of taxpayers failing to pay the full amount of tax due or failing to file a tax return when required to do so by this chapter, a penalty of \$75 shall be imposed.

(2) In the event that an employer shall fail to withhold or fail to remit to the Tax Commissioner the taxes withheld from employees, a penalty of \$50 shall be imposed.

(3) In the case of taxpayers failing to pay after a minimum of three attempts by the Tax Department to comply, a warrant block will be placed on the taxpayer's driver's license, and a processing fee of \$15 will be applied to the balance due for the submission of information to the BMV.

(C) *Legal procedures.* Further legal action may be enforced to uphold this chapter as hereby provided.

(D) *Exceptions.* A penalty shall not be assessed or an additional tax assessment made by the Tax Commissioner when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Tax Commissioner; and 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.

(E) *Abatement by Board of Review.* On an appeal from the refusal of the Tax Commissioner to recommend abatement of penalty and interest, the Board of Review may abate such penalty or interest, or both.

('74 Code, § 93.98) (Ord. 384-A, passed 4-1-71; Am. Ord. 83-756, passed 12-6-83; Am. Ord. 90-914, passed 2-20-90; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05; Am. Ord. 08-1549, passed 12-16-08; Am. Ord. 12-1632, passed 2-21-12; Am. Ord. 12-1643, passed 7-17-12)

## IMPOSITION OF TAX

### § 39.020 BASIS OF IMPOSITION.

(A) All residents must register with the Tax Department upon moving into the city.

(B) All taxpayers having income subject to income taxation under this chapter shall file an annual tax return whether or not tax is due. Subject to provisions of § 39.005, an annual tax, for the purposes specified in § 39.001, shall be levied at the rate of 1.5% per annum.

(1) On all qualifying wages, commissions, other compensation, and other taxable income earned or received by residents of the municipality.

(2) On all qualifying wages, commissions, other compensation, and other taxable income earned or received by nonresidents for work done or services performed or rendered in the municipality.

(3) (a) On the portion attributable to the municipality of the net profits earned by all resident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered, and business or other activities conducted, in the municipality.

(b) On the portion of the distributive share of the net profits earned by a resident owner of a resident unincorporated business entity or pass-through entity not attributable to the municipality and not levied against such unincorporated business entity or pass-through entity.

(4) (a) On the portion attributable to the municipality of the net profits by all nonresident unincorporated businesses, pass-through entities, professions, or other activities, derived from work done or services performed or rendered and business or other activities conducted in the municipality, whether or not such unincorporated business entity has an office or place of business in the municipality.

(b) On the portion of the distributive share of the net profits earned by a resident owner of a nonresident unincorporated business entity or pass-through entity not attributable to the municipality and not levied against such unincorporated business entity or pass-through entity.

(5) On the portion attributable to the municipality of the net profits earned by all corporations that are not pass-through entities from work done or services performed or rendered and business or other activities conducted in the municipality, whether or not such corporations have an office or place of business in the municipality.

(6) On a resident partner's or owner's share of the net profits earned during the effective period of this chapter of all corporations derived from sales made, work done, services performed or rendered, or business or other activities conducted in the municipality, whether or not such corporations have an office or place of business in the municipality.

(7) On all income received as gambling winnings as reported on IRS Form W-2G, Form 5754 and/or any other form required by the Internal Revenue Service that reports winnings from gambling, prizes and lottery winnings.

('74 Code, § 93.05) (Ord. 384-A, passed 4-1-71; Am. Ord. 562-A, passed 6-20-78; Am. Ord. 83-756, passed 12-6-83; Am. Ord. 90-914, passed 2-20-90; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.021 ALLOCATION OF NET PROFITS.**

(A) This section does not apply to taxpayers that are subject to and required to file reports under R.C. Chapter 5745. Except as otherwise provided in this section, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be

considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation in the same proportion as the average ratio of the following.

(B) Multiply the entire net profits of the business by a business allocation apportionment percentage formula to be determined by:

(1) (a) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in such municipal corporation 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.

(b) As used in the preceding division (a), **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 such municipal corporation 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 by the municipal corporation under R.C. § 718.011.

(3) Gross receipts of the business or profession from sales made and services performed during the taxable period in such municipal corporation to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

(4) Adding together the percentages determined in accordance with divisions (B)(1), (2), and (3) hereof, or such of the aforesaid percentages as are applicable to the particular taxpayer, and dividing the total so obtained by the number of percentages used in deriving said total.

(C) A factor is applicable even though it may be apportioned entirely in or outside the municipality.

(D) Provided, however, that in the event a just and equitable result cannot be obtained under the business apportionment percentage formula provided for herein, the Tax Commissioner, upon application of the taxpayer, shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

(E) As used in this section, **SALES MADE IN A MUNICIPAL CORPORATION** means:

(1) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes if shipped or delivered from a stock of goods within such municipal corporation;

(2) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes even though transported from a point outside such municipal corporation if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion; and

(3) All sales of tangible personal property shipped from a place within such municipal corporation to purchasers outside such municipal corporation 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.

(F) Except as otherwise provided in this section, net profit from rental activity not constituting a business or profession shall be subject to tax only by the municipal corporation in which the property generating the net profit is located.

(G) This section does not apply to individuals who are residents of the municipality and, except as otherwise provided in R.C. § 718.01, the municipality may impose a tax on all income earned by residents of the municipality to the extent allowed by the United States Constitution.

(‘74 Code, § 93.06) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

***Statutory reference:***

*Similar provisions, see R.C. § 718.02*

**§ 39.022 OPERATING LOSS CARRY-FORWARD.**

(A) The portion of a net operating loss sustained in any taxable year, apportioned to the municipality, may be applied against the portion of the profit of succeeding tax years apportioned to the municipality until exhausted, but in no event for more than the three taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

(B) The portion of a net operating loss sustained shall be apportioned to the municipality in the same manner as provided herein for apportioning net profits to the municipality.

(C) The Tax Commissioner shall provide by rules and regulations the manner in which such net operating loss carry-forward shall be determined.

(D) The net operating loss of a taxpayer that loses its legal identity, by any means such as merger or consolidation, shall not be allowed as a carry-forward loss deduction to the surviving or new taxpayer.

(E) The net operating loss sustained by a business or profession is not deductible from employee earnings, but may be carried forward. However, if a taxpayer is engaged in two or more taxable business activities to be included in the same return, the net loss of one unincorporated business activity (except any portion of a loss reportable for municipal income tax purposes to another municipality) may be used to offset the profits of another for purposes of arriving at overall net profits.

(‘74 Code, § 93.07) (Ord. 384-A, passed 4-1-71; Am. Ord. 90-914, passed 2-20-90; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

**§ 39.023 CONSOLIDATED RETURNS.**

(A) A consolidated return may be filed by a group of corporations who are affiliated through stock ownership if that affiliated group filed for the same tax period a consolidated return for federal income tax purposes pursuant to I.R.C. § 1501. A consolidated return must include all companies that are so affiliated.

(B) Once a consolidated return has been filed for any taxable year, consolidated returns shall continue to be filed in subsequent years unless the applicable requirements of the rules and regulations for discontinuing the filing of consolidated returns have been met.

('74 Code, § 93.08) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.024 EXCEPTIONS.**

The provisions of this chapter shall not be construed as levying a tax upon the following:

(A) Proceeds from welfare benefits, unemployment insurance benefits, pensions, Social Security benefits, and qualified retirement plans as defined by the Internal Revenue Service;

(B) Proceeds of insurance, annuities, workers' compensation insurance, permanent disability benefits, compensation for damages for personal injury and like reimbursements, not including damages for loss of profits and wages;

(C) Compensation attributable to a plan or program described in I.R.C. § 125;

(D) Dues, contributions and similar payments received by charitable, religious, educational organizations, or labor unions, trade or professional associations, lodges and similar organizations;

(E) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations and income of a decedent's estate during the period of administration (except such income from the operation of a business);

(F) Alimony;

(G) Compensation for damage to property by way of insurance or otherwise;

(H) Interest and dividends from intangible property;

(I) 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 (R.C. § 718.01);

(J) Income of any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in R.C. § 718.01 to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities;

(K) Any association or organization falling in the category listed in the preceding paragraph receiving income from non-exempt real estate, tangible or intangible personal property, or business activities of a type ordinarily conducted for profit by taxpayers operating for profit shall not be excluded hereunder;

(L) In the event any association or organization receives taxable income as provided in the preceding paragraph from real or personal property ownership or income producing business located both within and without the corporate limits of the municipality, it shall calculate its income apportioned to the municipality under the method or methods provided above;

(M) If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from municipal income tax;

(N) The rental value of a home furnished to a minister of the gospel as part of his compensation, or the rental allowance paid to a minister of the gospel as part of his compensation, to the extent used by him to rent or provide a home pursuant to I.R.C. § 107;

(O) Compensation paid under R.C. §§ 3501.28 or 3501.36 to a person serving as a precinct official, to the extent that such compensation does not exceed \$1,000 annually. Such compensation in excess of \$1,000 may be subjected to taxation. The payer of such compensation is not required to withhold municipal tax from that compensation;

(P) Compensation paid to an employee of a transit authority, regional transit authority, or a regional transit commission created under R.C. Chapter 306 for operating a transit bus or other motor vehicle for the authority or commission in or through the municipality, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such tax by reason of residence or domicile in the municipality, or the headquarters of the authority or commission is located within the municipality;

(Q) The municipality shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the municipality on 12 or fewer days in a calendar year unless one of the following applies:

(1) The individual is an employee of another person, the principal place of business of the individual's employer is located in another municipality in Ohio that imposes a tax applying to compensation paid to the individual for services paid on those days, and the individual is not liable to that other municipality for tax on the compensation paid for such services; or

(2) The individual is a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such promoter, all as may be reasonably defined by the municipality;

(R) The income of a public utility, when that public utility is subject to the tax levied under R.C. §§ 5727.24 or 5727.30, except a municipal corporation may tax the following, subject to R.C. Chapter 5745:

(1) The income of an electric company or combined company; and

(2) The income of a telephone company. As used in this division (R), **COMBINED COMPANY**, **ELECTRIC COMPANY**, and **TELEPHONE COMPANY** have the same meanings as in R.C. § 5727.01; and

(S) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in I.R.C. § 3121 (a) or net earnings from self-employment as defined in I.R.C. § 1402(a), to the extent such distributive

share would not be allocated or apportioned to this state under R.C. § 5733.05(B)(1) and (2) if the S corporation were a corporation subject to the taxes imposed under R.C. Chapter 5733.

(T) Generally, the above-noted items in this section are the only forms of income not subject to the tax. Any other income, benefits, or other forms of compensation shall be taxable.

(‘74 Code, § 93.09) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.025 EFFECTIVE PERIOD.**

The tax imposed by this chapter shall be levied, collected and paid with respect to all income and net profits, subject to the tax, earned on or after April 1, 1971.

(‘74 Code, § 93.10) (Ord. 384-A, passed 4-1-71; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.026 TWELVE DAY OCCASIONAL ENTRY RULE.**

The city shall not tax the compensation of an individual if all the following apply:

(A) The individual does not reside in the city.

(B) The compensation is paid for personal services performed by the individual within the municipality on 12 or fewer days during the calendar year.

(C) In the case of an individual who is an employee, the principal place of business of the individual’s employer is located outside the municipality and the individual pays tax on compensation described in division (D) of this section to the city, if any, in which the employer’s principal place of business is located, and no portion of that tax is refunded to the individual.

(D) The 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 municipality.

(Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

## **RETURN AND PAYMENT OF TAX**

### **§ 39.035 DATES AND EXEMPTIONS.**

(A) **Mandatory filing.** On or before April 15 of each year, every resident subject to the provisions of this chapter shall, except as hereinafter provided, make and file with the Tax Commissioner a municipal tax return on a form prescribed by and acceptable to the Tax Commissioner, whether or not a tax is due. 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 fifteenth day of the fourth month following the end of such fiscal year or period. The Tax Commissioner is hereby authorized to

provide by regulation that the return of an employer or employers, showing the amount of municipal tax deducted by said employer or employers from the qualifying wages, commissions, or other compensation, and other taxable income of a nonresident employee, and paid by him or them to the Tax Commissioner, may be accepted as the return required of a nonresident employee whose sole income, subject to tax under this chapter, is such qualifying wages, commissions, or other compensation, and other taxable income.

(B) A husband and wife may file either separate returns or a joint return for municipal purposes, even though one of the spouses has neither taxable income nor deductions included on the municipal return, regardless of whether their federal and state returns were filed separately or jointly. If a joint city return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.

(C) The return shall be filed with the Tax Commissioner on a form or forms furnished by or obtainable upon request from the Tax Commissioner; or on a generic form, if the generic form, when completed and filed, contains all of the information required to be submitted with the municipality's prescribed return and, if the taxpayer or return preparer filing the generic form otherwise complies with this chapter governing the filing of returns.

('74 Code, § 93.20) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.036 RETURNS AND CONTENTS THEREOF.**

(A) The return shall set forth:

(1) The aggregate amounts of qualifying wages, commissions, other compensation received, allocated, apportioned or set aside, other income defined by statute as taxable, and gross income from any 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;

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

(3) Such other pertinent statements, information returns, copies of federal or state tax returns and/or schedules, or other information as the Tax Commissioner may require, including a statement that the figures used in the return are the figures used for federal income tax, adjusted to set forth only such income as is taxable under the provisions of this chapter.

(B) (1) Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of a municipal income tax return by filing a copy of the taxpayer's federal extension request with the municipal tax division. Any taxpayer not required to file a federal income tax return may request an extension for filing a municipal income tax return in writing. The request for extension must be filed on or before the original due date for the annual return. The extended due date of the municipal income tax return 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.

(2) The Tax Commissioner may deny a taxpayer's request for extension if the taxpayer:

(a) Fails to timely file the request;

(b) Fails to file a copy of the federal extension request (if applicable);

(c) Owes the municipality any delinquent income tax, penalty, interest or other charge for the late payment or nonpayment of income tax; or

(d) Has failed to file any required income tax return, report, or other related document for a prior tax period.

(3) The granting of an extension for filing a municipal tax return does not extend the due date as provided in this section for payment of the tax; hence, penalty and interest may apply to any unpaid tax during the period of extension at the rate set out by § 39.006. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the extension period provided all other filing and payment requirements of this chapter have been met. Any extension by the Tax Commissioner shall be granted upon the condition that declaration filing and payment requirements have been fulfilled; however, if, upon further examination it then becomes evident that declaration filing and payment requirements have not been fulfilled, penalty and interest may be assessed in full and in the same manner as though no extension had been granted.

('74 Code, § 93.21) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.037 GENERIC FORMS.**

The city shall accept a generic form of any return, report, or document required to be filed if the generic form, once completed and filed, contains all of the information required to be submitted with the city's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances of the municipality governing the filing of returns, reports or documents.

(Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.038 PAYMENT WITH RETURNS.**

(A) The taxpayer making a return shall at the time of the filing thereof pay to the Tax Commissioner the amount of taxes shown as due thereon; however, where tax has been withheld at the source, pursuant to the provisions of § 39.055; or where any portion of said tax shall have been paid by the taxpayer, pursuant to the provisions of § 39.070; or where an income tax, creditable against the city tax pursuant to § 39.040 has been paid to another municipality, credit for the amount so paid 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 said return. All tax returns and payments of taxes due shall be received by the Tax Department no later than the date due.

(B) A taxpayer who has overpaid the amount of tax to which the municipality 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 \$1 shall be collected or refunded. No refunds shall be made of amounts less than \$10 except in the case of an individual or business

taxpayer who is filing a final return as a result of moving out of the city or terminating business activities within the city.

(C) Any taxpayer who issues a check or other negotiable instrument in payment of an obligation under this chapter, which is later dishonored by the payor-taxpayer's financial institution for any reason, may be required to pay a processing fee of \$25 in addition to the interest and penalties provided for late payment of taxes hereunder. This processing fee is not the city's exclusive remedy and does not preclude the city from pursuing prosecution of the taxpayer under the appropriate, then-current provisions of state statutes.

('74 Code, § 93.23) (Ord. 384-A, passed 4-1-71; Am. Ord. 90-914, passed 2-20-90; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.039 AMENDED RETURNS.**

(A) Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and limitations contained in §§ 39.040 and 39.041. Amended returns shall be on a form obtainable on request from the Tax Commissioner.

(B) Within three months from the final determination of any federal tax liability affecting the taxpayer's city tax liability, such taxpayer shall make and file an amended city return, showing income subject to the tax based on such final determination of federal tax liability, and pay any additional tax shown thereon, or make claim for refund of any overpayment.

(C) Information returns, schedules and statements required to support tax returns which are incomplete without such information shall be filed 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 a violation of this chapter. Provided, however, that the taxpayer shall have ten days after notification by the Tax Commissioner, or his authorized representative, to file the items required by this section.

('74 Code, § 93.24) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.040 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY; CREDITS AND LIMITATIONS THEREOF.**

(A) Every individual taxpayer who resides in the municipality and who receives salaries, wages, commissions, or other compensation or net profits from sales made, work done, or services performed or rendered outside of the municipality, if it be made to appear that he has paid a municipal income tax on such income, taxable under this chapter, to another municipality, shall be allowed a credit against the tax imposed by this chapter in the amount of the tax so paid by him or in his behalf to such other municipality, not to exceed 1.25%.

('74 Code, § 93.70)

(B) Notwithstanding the provisions contained in § 39.040, or any other provisions inconsistent herewith, a claim for a refund or credit under this section shall be made in such a manner as the Tax

Commissioner may by regulation provide. No such claim for refund or credit shall be allowed unless made on or before the date of filing the taxpayer's final return, unless such taxpayer's employer files with the Tax Commissioner a list showing the tax withheld from such taxpayer's wages, salaries, or commissions for other municipalities.

('74 Code, § 93.71)

(Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.041 TIME LIMITATION ON SUITS, REFUNDS.**

(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. No additional assessment shall be made after three years from the time of payment of any tax due hereunder; provided there shall be no period of limitation on an additional assessment in case of a return that omits gross income in excess of 25% of that required to be reported, or in the case of filing a false or fraudulent return with intent to evade the tax, or in the case of a failure to file a return. 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 Tax Commissioner shall be extended one year from the time of the final determination of the federal tax liability. ('74 Code, § 83.75)

(B) Claims for refund of municipal income taxes must be brought within three years after the tax was due or the return was filed, whichever is later.

(Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

#### ***Statutory reference:***

*Refunds, see R.C. § 718.06*

## **COLLECTION AT SOURCE**

### **§ 39.055 WITHHOLDING BY EMPLOYER.**

(A) Each employer within, or doing business within, the municipality, who employs one or more persons on a salary, wage, commission, or other compensation basis, shall deduct, when such salary, wage, commission or other compensation is paid, allocated, or set aside, the tax at the rate provided in § 39.020 on the qualifying wages due by such employer to each such employee and shall, on or before the fifteenth day of the month following such withholding, make a return and payment.

(B) An employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued.

(C) (1) An employee is not relieved from liability for a tax by the failure of the employer to withhold the tax as required by a municipal corporation or by the employer's exemption from the requirement to withhold the tax.

(2) The failure of an employer to remit to the municipal corporation the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax withheld.

(D) Compensation deferred before the effective date of this amendment is not subject to any municipal corporation income tax or municipal income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.

(E) So long as taxes withheld by an employer for the municipality during the measurement period, payments may be made quarterly on or before the fifteenth day of the month following the end of each quarter, subject to the approval of the Tax Commissioner. The Tax Commissioner may revoke the approval of quarterly filing and payments whenever the Tax Commissioner has reason to believe that the conditions for granting such authorization have changed, were judged incorrectly, were not met, or when it is in the best interest of the municipality to do so. Notice of withdrawal shall be made in writing and, in such case, the employer must begin to file in accordance with this section.

('74 Code, § 93.30) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.056 EMPLOYER CONSIDERED AS TRUSTEE.**

Each employer in collecting said tax shall be deemed to hold the same, until payment is made by such employer to the municipality, as a trustee for the benefit of the municipality, and any such tax collected by such employer from his employees shall, until the same is paid to the municipality, be deemed a trust fund in the hands of such employer. Each employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such tax, in fact, has been withheld.

('74 Code, § 93.31) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.057 CORPORATE OFFICERS PERSONAL LIABILITY.**

Any person who is required to withhold tax from qualifying wages shall pay all such tax to the municipality in accordance with the provisions of this section. In the event taxes withheld from the qualifying wages of employees are not paid to the municipality in accordance with the provisions of this section, all officers, members, managers, employees, and trustees having control or supervision of or charged with the responsibility of filing the return and making payment are jointly and severally personally liable for the tax not returned or paid to the municipality as well as any related interest and penalties, and are also liable under the provisions of § 39.006. The dissolution, termination, or bankruptcy of a corporation, limited liability company, or business trust does not discharge an officer's, member's, manager's, employee's, or trustee's liability for a failure of the corporation, limited liability company, or business trust to file returns or pay said taxes.

('74 Code, § 93.32) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.058 EMPLOYEES' LISTINGS.**

(A) Each employer shall file a withholding tax reconciliation showing the sum total of all compensation paid all employees, the portion of which, if any, was not subject to withholding along with an explanation for same, and the portion of which was subject to withholding, together with the amount of such withholdings remitted. Such return shall include information concerning each employee from whom the municipal tax was withheld, showing the name, address, zip code and Social Security number of each such employee, the total amount of compensation paid during the year and the amount of municipal tax withheld. If the total tax withheld from any employee included tax withheld and remitted to another municipality, the amount of same shall be separately shown on the return of information to the municipality concerning each employee. The withholding tax reconciliation shall be filed by each employer on or before February 28 following the end of such calendar year.

(B) In addition to the wage reporting requirements of this section, any person required by the Internal Revenue Service to report on Form 1099- Misc. payments to individuals not treated as employees for services performed shall also report such payments to the municipality when the services were performed in the municipality. The information may be submitted on a listing, and shall include the name, address, and Social Security number, or federal identification number, and the amount of the payments made. Federal form(s) 1099 may be submitted in lieu of such listing. The information shall be filed annually on or before February 28 following the end of such calendar year.

('74 Code, § 93.33) (Ord. 384-A, passed 4-1-71; Am. Ord. 83-756, passed 12-6-83; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.059 DOMESTIC SERVANTS.**

No person shall be required to withhold the tax on the qualifying wages, commissions, or other compensation, and other taxable income paid domestic servants employed exclusively in or about such person's residence. However, domestic servants shall be responsible for filing and paying their own returns and taxes.

('74 Code, § 93.34) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

## **DECLARATIONS**

### **§ 39.070 REQUIREMENT FOR FILING.**

Every person who anticipates any taxable income which is not subject to § 39.020, or who engages in any business, profession, enterprise, or activity subject to the tax imposed by § 39.020, 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 qualifying wages from which the tax will be withheld and remitted to this municipality in accordance with § 39.055, such person need not file a declaration.

('74 Code, § 93.40) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.071 DATES FOR FILING.**

(A) The declaration required by § 39.070 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 following from the date the taxpayer becomes subject to tax for the first time.

(B) Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration on or before the fifteenth day of the fourth month following the start of each fiscal year or period.

('74 Code, § 93.41) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.072 FORMS; CREDIT FOR TAX WITHHELD OR PAID ANOTHER MUNICIPALITY.**

(A) The declaration shall be filed on a form furnished by or obtainable from the Tax Commissioner or an acceptable generic form, and credit shall be taken for the municipal tax to be withheld from any portion of such income. In accordance with the provisions of this chapter, credit may be taken for tax to be withheld and remitted to another taxing municipality.

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

(C) For taxpayers who are individuals, such declaration of estimated tax to be paid the municipality shall be accompanied by a payment of at least 22.5% of the estimated annual 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.

(D) For taxpayers that are not individuals, such declaration of estimated tax to be paid the municipality shall be accompanied by a payment of at least 22.5% of the estimated annual tax and at least a similar amount shall be paid on or before the fifteenth day of the sixth, ninth, and twelfth months after the beginning of the taxable year.

(E) The mere submission of a declaration estimating a tax liability shall not constitute filing unless accompanied by the required payment.

('74 Code, § 93.42) (Ord. 384-A, passed 4-1-71; Am. Ord. 90-914, passed 2-20-90; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.073 AMENDED DECLARATION.**

(A) A declaration may be amended at any time.

(B) In the event that 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.

('74 Code, § 93.43) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.074 ANNUAL RETURN REQUIRED.**

(A) On or before the fifteenth day of the fourth month following the end of the calendar or fiscal year, an annual return shall be filed, and any balance which may be due the municipality shall be paid therewith in accordance with the provisions of § 39.037.

(B) Each employer within, or doing business within, the municipality, who employs one or more persons on a salary, wage, commission, or other compensation basis, shall deduct at the time of payment of such salaries, wages, commissions, or other compensation due by the employer to each employee, and shall, on or before the last day of April, July, October, and January of each year, after the effective date of this chapter, make a return and pay to the Tax Commissioner the amount of taxes so deducted during the preceding calendar quarter. The return shall be on a form or forms prescribed by or acceptable to the Tax Commissioner, and shall be subject to the rules and regulations prescribed therefor by the Tax Commissioner.

('74 Code, § 93.44) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

## **DUTIES OF THE TAX COMMISSIONER**

### **§ 39.085 COLLECTION AND MAINTENANCE RESPONSIBILITY.**

(A) There is created an Income Tax Bureau in the Treasurer's office for the administration of the provisions of this chapter. Such Bureau shall consist of a Tax Commissioner and such clerical and secretarial personnel as may be permitted by Council. The Tax Commissioner and all such additional personnel shall be appointed by the Treasurer.

(B) It shall be the duty of the Tax Commissioner to collect and receive the tax imposed by this chapter in the manner prescribed therein, and to keep an accurate record thereof, and to report all monies so received.

(C) It shall be the duty of the Tax Commissioner to enforce payment of all income taxes owing the municipality, to keep accurate records for a minimum of five years, showing the amount due from each taxpayer required to file a declaration or make any return, including a return of taxes withheld, and to show the dates and amounts of payments thereof.

(‘74 Code, § 93.50) (Ord. 384-A, passed 4-1-71; Am. Ord. 81-662, passed 1-6-81; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.086 ENFORCEMENT AUTHORITY.**

The Tax Commissioner is charged with the enforcement of the provisions of this chapter, and is empowered, subject to the approval of the Board of Review, to adopt, promulgate, and enforce rules and regulations authorized or required by this chapter relating to any matter or thing pertaining to the collection and payment of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.

(‘74 Code, § 93.51) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.087 DETERMINATION OF TAXES.**

In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Commissioner may determine the amount of tax appearing to be due the municipality from the taxpayer, and may send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

(‘74 Code, § 93.52) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.088 COMPROMISE AUTHORITY.**

Subject to the consent of the Board of Review or pursuant to regulations approved by the Board of Review, the Tax Commissioner shall have the power to compromise any liability imposed by this chapter.

(‘74 Code, § 93.53) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.089 COLLECTION AND DEPOSIT OF INCOME REVENUES.**

In enforcing the provisions of this chapter the Tax Commissioner shall be responsible to, and under the control of, the Treasurer. The Tax Commissioner and all other members of the Income Tax Bureau shall be employees of the Treasurer’s office and shall assist the Treasurer in matters relating to income tax. The Treasurer shall have the ultimate responsibility for the collection and deposit of income tax revenues and the performance of the duties herein assigned to the Tax Commissioner.

(‘74 Code, § 93.54) (Ord. 81-662, passed 1-6-81; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.090 TAXPAYER'S RECORDS; EXAMINATION POWERS OF THE TAX COMMISSIONER.**

(A) The Tax Commissioner, or any of his authorized agents, is authorized to examine the books, papers, records, and federal income tax returns of any employer or taxpayer, or any person subject to, or whom the Tax Commissioner believes subject to, the provisions of this chapter, for the purpose of verifying the accuracy of any withholdings due under this chapter. Every such employer, supposed employer, taxpayer, or supposed taxpayer is directed and required to furnish, on written request of the Tax Commissioner, or his duly authorized agent or employees, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(B) The Tax Commissioner is authorized to order any person, presumed to have knowledge of the facts, to appear at the office of the Tax Commissioner, and to examine such person, under oath, concerning any income which was or should have been returned for taxation or withheld, or any transaction tending to affect such income. For this purpose, he 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.

('74 Code, § 93.61)

(C) The refusal to produce books, papers, records, and federal income tax returns, or the refusal to submit to such examination by any employer or person subject, or presumed to be subject, to the tax or by any 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 Tax Commissioner authorized hereby, shall be deemed a violation of this chapter punishable as provided in § 39.999.

('74 Code, § 93.62)

(D) Every taxpayer shall retain all records necessary to compute his tax liability for a period of five years from the date his return is filed or the taxes required to be withheld are paid.

('74 Code, § 93.63)

(Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.091 CONFIDENTIAL NATURE OF INFORMATION.**

Any information gained as a result of any returns, investigations, hearings, or verifications required or authorized by this chapter shall be confidential, and no disclosure thereof shall be made except to municipal, county, state, or federal taxing agencies, or, except for official purposes, or except in accordance with proper judicial order. Each disclosure shall constitute a separate offense. In addition to the penalty provided in § 39.999, any employee of the municipality who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

('74 Code, § 93.64) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

## **BOARD OF REVIEW**

### **§ 39.105 COMPOSITION.**

A Board of Review consisting of three persons, appointed by the Mayor, is created. Board members shall receive such compensation as Council may determine.

('74 Code, § 93.80) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.106 PROCEDURE.**

A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. All hearings by the Board shall be conducted privately unless the taxpayer requests a public hearing. The provisions of §§ 39.090 and 39.091 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.

('74 Code, § 93.81) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.107 APPEALS.**

Any person dissatisfied with any ruling or decision of the Tax Commissioner which is made under the authority conferred by this chapter may appeal therefrom to the Board of Review within 30 days from the announcement of such ruling or decision by the Tax Commissioner, and the Board shall have jurisdiction to affirm, reverse, or modify any such ruling or decision, or any part thereof.

('74 Code, § 93.82) (Ord. 384-A, passed 4-1-71; Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

### **§ 39.999 PENALTY.**

(A) Any person who shall:

- (1) Fail, neglect, or refuse to make any return or declaration required by this chapter;
- (2) Knowingly make an incomplete, false, or fraudulent return;
- (3) Willfully fail, neglect, or refuse to pay the tax, penalties, or interest imposed by this chapter;
- (4) Fail, neglect, or refuse to withhold the tax from his employees and remit such withholding tax to the Tax Commissioner;

(5) Refuse to permit the Tax Commissioner or any duly authorized agent or employee to examine his or his employer's books, records, papers, or federal income tax returns;

(6) Fail to appear before the Tax Commissioner and to produce his or his employer's books, records, papers, or federal income tax returns, upon order or subpoena of the Tax Commissioner;

(7) Refuse to disclose to the Tax Commissioner any information with respect to such person's or such person's employer's income or net profits;

(8) Willfully give to an employer by an employee false information as to his true name, correct Social Security number and residence address, or the failure of such employee to promptly notify an employer of any change in residence address and date thereof;

(9) Failure on the part of any employer to maintain proper records of employees' residence addresses, total wages paid and municipal tax withheld, or to knowingly give the Tax Commissioner false information;

(10) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Commissioner;

(11) Willfully fail or willfully refuse to make any payment on the estimated tax for any year or part of any tax year as required by § 39.070;

(12) Fail to cause the tax withheld from the qualifying wages of the employees pursuant to this chapter to be paid to the municipality in accordance with the provisions of § 39.055; or

(13) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties, or interest imposed by this chapter; for which violation no penalty is otherwise provided, is guilty of a minor misdemeanor on a first offense and shall be fined not more than \$100; on a second offense within two years after the first offense, such person is guilty of a misdemeanor of the third degree and shall be fined not more than \$500 or imprisoned not more than 60 days, or both, for each offense; on each subsequent violation within two years after the first offense such person is guilty of a misdemeanor of the third degree, and punished as provided for herein.

(B) Civil actions to recover municipal income taxes and penalties and interest on municipal income taxes shall be brought within three years after the tax was due or the return was filed, whichever is later. Prosecutions for an offense made punishable under a municipal ordinance imposing an income tax shall be commenced within three years after the commission of the offense, provided that in the case of 25% or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.

(R.C. § 718.06(A), (B))

(C) The failure of any employer, taxpayer, or person to receive or procure a return, declaration, or other required form shall not excuse him from making any information, return or declaration, from filing such form, or from paying the tax.

(D) The term "person" as used in this section shall, in addition to the meaning prescribed in § 39.002, include in the case of an association or corporation not having any partner, member, or officer within the municipality, any employee or agent of such association or corporation who can be found within the corporate limits of the municipality.

('74 Code, § 93.99) (Ord. 384-A, passed 4-1-71; Am. Ord. 83-756, passed 12-6-83)

(E) Whoever violates § 39.003 shall, on conviction, be fined not more than \$50.

('74 Code, §§ 93.03, 93.04) (Ord. 496-A, passed 5-6-75)

(F) Any person divulging information in violation of § 39.091 shall be punished as provided in § 10.99.

('74 Code, § 93.64) (Ord. 384-A, passed 4-1-71)

(Am. Ord. 01-1348, passed 1-16-01; Am. Ord. 05-1469, passed 12-21-05)

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