

ORDINANCE NO. 5744

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, OHIO, ALL OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1 - PURPOSE

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

Section 2 - DEFINITIONS

- A. As used in this Chapter the following words shall have the meanings ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning.
1. "Association" means a partnership, limited entity, S corporation or any other form of unincorporated enterprise, owned by one or more persons.
 2. "Board of Appeals" means the Board created by and constituted as provided for in this Ordinance.
 3. "Business" means 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.
 4. "Calendar Year"- An accounting period of twelve months (12) or less ending on December 31.
 5. "Corporation" means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency.
 6. "Day" means any part of any shift of any scheduled work time period.
 7. "Domicile" means a principal 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.
 8. "Employee" means one who works for wages, salary, commission or other types of compensation in the services of an employer.
 9. "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profits, who or that employs one or more persons on a salary, wage, commission or other compensation basis.

10. "Finance Director/delegate" means the individual charged with the responsibility of managing the fiscal affairs of the Municipality, including collection of all tax imposed by this Ordinance.
11. "Fiscal year" means an accounting period of twelve (12) months or less ending on any day other than December 31.
12. "Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code and substantiated by required paper work.
13. "Generic form" means an electronic or paper form designed for reporting estimated municipal income taxes, annual municipal income tax liability, withholding liability/reconciliation, and/or for filing a refund claim 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 of the information required to be submitted with the Municipality's prescribed returns, reports, or documents.
14. "Gross receipts" means total income of taxpayers/owners from whatever source derived.
15. "Income from a pass-through entity" means 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.
16. "Intangible income" means 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 Chapter 5701 of the Ohio Revised Code, 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.
17. "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
18. "Internet" means the international computer network of both Federal and nonfederal interoperable packet switched data networks, including the graphical sub network known as the World Wide Web.
19. "Joint Economic Development District" means districts created under the Ohio Revised Code sections 715.70 through 715.83, as amended from time to time.
20. "Limited Liability Company" means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.
21. "Municipality" means the City of Miamisburg.

22. "Net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than amounts described in division (F) of section 04, required to be reported on schedule C, schedule E, or schedule F.
23. "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.
24. "Nonresident" means an individual domiciled outside the Municipality.
25. "Nonresident incorporated business entity" means an incorporated business entity not having an office or place of business within the Municipality.
26. "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the Municipality.
27. "Other payer" means 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.
28. "Owner" means 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.
29. "Pass-through entity" means 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.
30. "Person" includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity.
31. "Place of business" means 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 regular employees regularly in attendance.
32. "Principal place of business" means 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.
33. "Qualified plan" means a retirement plan satisfying the requirements under section 401 of the Internal Revenue Code as amended.
34. "Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with section 718.03(A) of the Ohio Revised Code.
35. "Resident" means an individual domiciled in the Municipality.

36. "Resident incorporated business entity" means an incorporated business entity whose office; place of operations or business situs is within the Municipality.
 37. "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the Municipality.
 38. "Return preparer" means 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.
 39. "Schedule C" means Internal Revenue Service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.
 40. "Schedule E" means Internal Revenue Service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.
 41. "Schedule F" means Internal Revenue Service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.
 42. "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.
 43. "Finance Director" means 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 Administrator by direction of the Finance Director.
 44. "Taxable income" means 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.
 45. "Taxable year" means the corresponding tax-reporting period as prescribed for the taxpayer under the Internal Revenue Code.
 46. "Taxing Municipality" means a Municipality levying a tax on income earned by nonresidents working within such Municipality or on income earned by its residents.
 47. "Taxpayer" means a person subject to a tax on income levied by a municipal corporation.
- B. The singular shall include the plural, the masculine shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates.

Section 3 – Income Tax Department

A division is hereby created within the office of the Finance Director of the City of Miamisburg, and shall hereafter be referred to as the Income Tax Department. The City Manager shall appoint an Income Tax Administrator, upon the recommendation of the Finance Director, pursuant to Section 504 of the Charter of the City of Miamisburg. The Finance Director/delegate shall be charged with administration and operation of the Income Tax Department and this Ordinance, under the direction of the Finance Director.

Section 4- IMPOSITION OF TAX

- A. Basis of Imposition. To provide funds for the purpose of general municipal operations, hereby is levied a tax at the rate of one and three quarter's percent (1.75%) upon the following:
1. All salaries, wages, including sick, vacation, severance and any pay as part of an employee buyout or wage continuation plan, commissions and other compensation earned, received, accrued or in any other way set apart unto residents of the Municipality.
 - a. **On all income derived anywhere from prizes, awards, gaming, wagering, gambling, lotteries, or schemes of chance by a resident (\$5,000 diminimus) as permitted by Ohio law including, but not limited to, reporting on IRS form W-2G, form 5754 and/or other form required by the IRS for reporting of such income.*
 2. All salaries, wages, including sick, vacation, severance and any pay as part of an employee buyout or wage continuation plan, commissions and other compensation earned, received, accrued or in any other way set apart unto non-residents for work done or services performed or rendered in the Municipality.
 3. On the portion attributable to the Municipality of the net profits earned by all resident unincorporated businesses, professions or other activities, derived from work done or services performed or rendered, and business or other activities conducted in the Municipality. On the portion of the distributive share of the net profits earned by a resident owner of a resident unincorporated business entity not attributable to the Municipality and not levied against such unincorporated business entity.
 4. On the portion attributable to operations within the City of the net profits of all non-resident associations, corporate entities, unincorporated businesses, professions or other entities, derived from sales made, work done or services performed or rendered or business or other activities conducted in the City, whether or not such association or other unincorporated entity has an office or place of business in the City. The tax imposed on the non-resident associations or other non-resident unincorporated entities owned by two or more persons is upon the entities rather than the individual owners of members thereof. Losses from the operation of such activities, required to file as a separate entity, may not be used to offset wages, salaries, or other types of employees' earnings or other compensation.
- B. Businesses Both In and Outside the Municipal Boundaries. This section does not apply to taxpayers that are subject to and required to file reports under Chapter 5745, of the Ohio Revised Code. Except as otherwise provided in division (D) of 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:

1. Multiply the entire net profits of the business by a business apportionment percentage to be determined by:

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.

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;

b. 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 section 718.011 of the Ohio Revised Code;

c. 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.

d. Adding together the percentages determined in accordance with subsections B. 1. a. b. and c. 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 such total.

.1 A factor is applicable even though it may be apportioned entirely in or outside the Municipality.

.2 Provided however, that in the event a just and equitable result cannot be obtained under the formula provided for herein, the Finance Director/delegate, upon application of the taxpayer, shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

C. As used in division (B) of this section, "sales made in a municipal corporation" mean:

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;

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.

D. Net Operation Loss (NOL)

1. The Municipality does not allow a net operating loss carryback or carryforward.
2. Nothing in Chapter 718.01 of the Ohio Revised Code requires a municipal corporation to allow a net operating loss.

E. Consolidated Returns

1. 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 section 1501 of the Internal Revenue Code. A consolidated return must include all companies that are so affiliated.
2. Once a consolidated return has been filed for any taxable year, consolidated returns shall continue to be filed in subsequent years.
3. In the case of a corporation that carries 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 other activity within the City constituting a portion only of its total business, the Finance Director/delegate may require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City. If the Finance Director/delegate finds net profits are not properly allocated to the City by reasons of transactions with stockholders or with other corporations related by stock reasons 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 Municipality.

F. Exclusions

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

1. Proceeds from welfare benefits, unemployment insurance benefits, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service.
2. Proceeds of insurance, annuities, workers' compensation insurance, permanent disability benefits, compensation for damages for personal injury and like reimbursements.

3. Dues, contributions and similar payments received by charitable, religious, educational organizations, or labor unions, trade or professional associations, lodges and similar organizations.
4. Gains from involuntary conversion, 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).
5. Alimony.
6. Compensation for damage to property by way of insurance or otherwise.
7. Interest and dividends from intangible property.
8. 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 (ORC 718.01).
9. Income of any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio Revised Code 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.
10. 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.
11. 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 in this Ordinance.
12. If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from Municipal income tax.
13. 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 section 107 of the Internal Revenue Code.
14. Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually. Such compensation in excess of one thousand dollars may be subjected to taxation. The payer of such compensation is not required to withhold Municipal tax from that compensation.
15. Compensation paid to an employee of a transit authority, regional transit authority, or a regional transit commission created under Chapter 306 of the Ohio Revised Code 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.

16. The Municipality shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the Municipality on twelve (12) or fewer days in a calendar year unless one of the following applies:
 - a. 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.
 - b. 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.
17. The income of a public utility, when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code, except a municipal corporation may tax the following, subject to Chapter 5745. of the Ohio Revised Code:
 - a. The income of an electric company or combined company;
 - b. The income of a telephone company.

As used in division (F)(17) of this section, "combined company", "electric company", and "telephone company" have the same meanings as in section 5727.01 of the Ohio Revised Code.
18. An S corporation shareholder's distributive share of net profits or losses of the S corporation .
19. Earnings and income in Miamisburg of all persons under 18 years of age, whether residents or non-residents.
20. 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.

**Note: as amended by Ordinance No. 6111 – dated February 17, 2009*

Section 5 - EFFECTIVE PERIOD

Any taxes levied by previous Ordinance 2464 shall remain in full force and effective except as modified herein. All subsequent tax ordinances remain applicable to specified time periods as approved and filed. Ordinance No. 5744 to take effect January 1, 2004.

Section 6 - RETURN AND PAYMENT OF TAX

- A. Each person who engages in business or other activity or whose qualifying wage, commissions, other compensation, and other taxable income is subject to the tax

imposed by this Tax Code, shall, whether or not a tax be due thereon, make and file a return on or before April 15 of the year following the effective date of this Tax Code, and on or before April 15 of each year thereafter. 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 (15th) day of the fourth (4th) month following the end of such fiscal year or period. The Municipality 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 salaries, wages, commissions or other compensation of an employee, and paid by him or them to the Municipality may be accepted as the return required of any employee whose sole income, subject to tax under this Tax Code, is such qualifying wage, commissions, other compensation, and other taxable income (may exclude residents of the Municipality).

- 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 individually.
- C. The return shall be filed with the Municipality on a form or forms furnished by or obtainable upon request from the Municipality; 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 the Tax Code governing the filing of returns.
- D. 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 said tax; and
 - 2. The amount of the tax imposed by this Tax Code 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 Municipality 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.
- E.
 - 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. If the request is granted, the extended due date of the municipal income tax return shall be as provided in ORC 718.

2. The Municipality may deny a taxpayer's request for extension if the taxpayer:
 - a. fails to timely file the request; or
 - b. fails to file a copy of the federal extension request, (if applicable); or
 - 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. 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 the Tax Code have been met. Any extension by the Municipality 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.

F. PAYMENTS WITH RETURNS

1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Municipality the amount of taxes shown as due. However, credit shall be allowed for:
 - a. Any portion of the tax so due which shall have been deducted at the source pursuant to the provisions of section 07; and
 - b. Any portion of said tax which shall have been paid by the taxpayer pursuant to the provisions of section 08; and
 - c. Credit to the extent allowed by section 18 for tax paid to another Municipality.

2. Subject to the limitations contained in section 12 of this Tax Code, any taxpayer who has overpaid the amount of tax to which the Municipality is entitled under the provisions of this Tax Code 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) shall be collected or refunded.

G. AMENDED RETURNS

1. Where necessary, an amended return shall 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/or limitations contained in this Ordinance. The Municipality shall provide by regulation the format in which such amended return shall be filed. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

2. 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 Municipal return showing income subject to the Municipal 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.
- H. 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 Tax Code. Provided, however, that the taxpayer shall have ten (10) days after notification by the Finance Director/delegate, or his authorized representative, to file the items required by this paragraph.

Section - 7 COLLECTION AT SOURCE

- A. Each employer within or doing business within the Municipality who employs one or more individuals on a salary, wage, commission or other compensation basis, shall deduct at the time of payment of such salary, wage, commission or other compensation, the tax at the rate of one and three quarters percent (1.75%) on the gross salaries, wages, commissions or other compensations due by the employer to such employee and shall, following the schedules as specified in this section, make a return showing the amount of taxes so deducted and a record of payment showing that all taxes deducted during the periods required have been paid to the Municipality in accordance with the payment schedule prescribed by subsection E hereof.
- B. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld. Every employer or officer of a corporation is deemed to be a trustee for this Municipality in collecting and holding the tax required under this Ordinance to be withheld and the funds so collected by such withholdings are deemed to be trust funds. The officer or employee having control or supervision or charged with the responsibility of filing the return and making payment is personally liable for failure to file the return or pay the tax due as required by this section. The officer or employee shall be personally liable for the tax he failed to return or pay as well as any related interest and penalties. The dissolution of a corporation does not discharge an officer's or employee's liability for a prior failure of the corporation to pay the tax due.
- C. 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.
- D.
 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.

- E. Employers shall pay to the Municipality all income tax 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:
 - a. The total taxes deducted in the prior calendar year were \$12,000 or more, or;
 - b. The amount of taxes deducted for any month in the preceding quarter exceeded \$1000.00.
Such payment shall be paid to the City within five (5) banking Days after the fifteenth (15th) 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 \$12,000 but more than \$1199.00, or if the taxes withheld during any month for the preceding quarter exceeded \$100.00. Such payments shall be paid to the City on or before the fifteenth (15th) of the month following the month subject to the withholding requirements of this Ordinance.
 3. All employers not required to make semi-monthly or monthly payments of taxes withheld under (1) and (2) of this section shall make quarterly payments no later than the last day of the month following the end of each calendar quarter, with the following exceptions:
 - a. Every employer doing business within the Municipality on a temporary basis shall pay to the Municipality all income taxes withheld or required to be deducted and withheld on a monthly basis. Such payment shall be paid to the Municipality on or before the 15th day of the month following the month subject to withholding. An employer is "doing business within the City on a temporary basis" when the employer maintains a place of business in the City or does business within the City for a period which the employer does not expect to exceed one year.
 - b. A twelve (12) day occasional entry rule applies to any individual except professional entertainers and professional athletes.
- F. Employer Considered as Trustee. Each employer in collecting such 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.
- G. 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 section 13 hereof. 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.

- H. Withholding Return; List of Employees. 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.
- I. 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.
- J. Failure to file any required documentation in a timely manner as prescribed by this section will be subject to late filing penalty assessment as prescribed in Section 11 of this Ordinance.
- K. The Finance Director may require, by regulation, that withholding tax payments be remitted by electronic funds transfer.
- L. Domestic Servants. No person shall be required to withhold the tax on the qualifying wages, commissions, other compensation, and other taxable income paid domestic servants employed exclusively in or about such person's residence. However, such domestic servants shall be responsible for filing and paying their own returns and taxes.

SECTION 8 - DECLARATIONS

- A. Requirement for Filing.

Every person who anticipates any taxable income which is not subject to withholding or who engages in any business, profession, enterprise or activity subject to the tax imposed, 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, such person need not file a declaration.

B. Dates for Filing

1. Such declaration shall be filed on or before April 15 of each year during the life of this Chapter, or on or before the fifteenth (15th) day of the fourth (4th) month following the date the taxpayer becomes subject to tax for the first time.
2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration on or before the fifteenth (15th) day of the fourth (4th) month following the start of each fiscal year or period.
3. Subsequent quarters due as prescribed by ORC 718.

C. Forms: Credit for Tax Withheld or Paid Another Community

1. Such declaration shall be filed upon a form furnished by or obtainable from the Municipality, 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 Ordinance, credit may be taken for tax to be withheld and remitted to another taxing Municipality.
2. 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.
3. For taxpayers who are individuals, such declaration of estimated tax to be paid the Municipality shall be accompanied by a payment of at least twenty-two and one-half percent (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.
4. 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 twenty-two and one-half percent (22.5%) of the estimated annual tax and at least a similar amount shall be paid on or before the fifteenth (15th) day of the sixth, ninth and twelfth months after the beginning of the taxable year.
5. The mere submission of a declaration estimating a tax liability shall not constitute filing unless accompanied by the required payment.

D. Amended Declaration.

1. A declaration may be amended at any time.
2. 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.

E. Annual Return Required.

On or before the fifteenth day of the fourth month 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 this Ordinance.

SECTION 9- APPOINTMENT AND DUTIES OF FINANCE DIRECTOR/DELEGATE

- A. 1. It shall be the duty of the Finance Director/delegate to collect and receive the tax imposed by this Chapter in the manner prescribed therein, to keep an accurate record thereof, and to report all monies so received.
2. It shall be the duty of the Finance Director/delegate to enforce payment of all income taxes owing the Municipality, to keep accurate records for a minimum of six (6) 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.
- B. The Finance Director/delegate is hereby charged with the enforcement of the provisions of this Chapter, and is hereby empowered, subject to the approval of the Board of Appeals, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this Chapter, including provisions for the re-examination and correction of returns.
- C. 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 Finance Director/delegate 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.
- D. Subject to the consent of a majority of the Board of Appeals, the Finance Director/delegate shall have the power to compromise any liability imposed by this Tax Code.
- E. Upon the demonstration and documentation of good cause, the Finance Director/delegate shall have the power to compromise penalty and interest liabilities imposed by this Chapter, consistent with this Chapter and the Rules and Regulations.

**SECTION 10 - INVESTIGATIVE POWERS OF FINANCE DIRECTOR/DELEGATE;
PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION**

- A. The Finance Director/delegate, or any of his authorized agents, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer, taxpayer, or any person subject to, or whom the Finance Director/delegate believes is subject to, the provisions of this Chapter for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax or withholdings due under this Chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request of the Finance Director/delegate, or his duly authorized agent or

employee, the means, facilities and opportunities for making such examinations and investigations as are hereby authorized.

- B. The Finance Director/delegate is hereby authorized to order any person, presumed to have knowledge of the facts, to appear at the office of the Finance Director/delegate and to examine such person, under oath, concerning any income which was or should have been reported for taxation, or withheld, 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.
- C. The refusal to produce books, papers, records or 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 Finance Director/delegate authorized hereby, shall be deemed a violation of this Chapter punishable as provided in section 13.
- D. Every taxpayer shall retain all records necessary to compute his tax liability for a period of six (6) years from the date his return is filed or the taxes, required to be withheld are paid.
- E. Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by this Chapter shall be confidential and no person shall disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the municipal corporation as authorized by this Chapter. The Finance Director/delegate of the municipal corporation may furnish copies of returns filed under this Chapter to the Internal Revenue Service, the State Tax Commissioner, and in the case of non-resident employees to the taxpayer's city of residence.
- F. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00) or imprisonment for not more than six (6) months, or both.
- G. In addition to the above penalty, 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.

SECTION 11- INTEREST AND PENALTIES

- A. All taxes imposed by this Ordinance and remaining unpaid after they become due shall bear interest, in addition to the unpaid tax at the rate of $\frac{3}{4}$ % per month.
- B. In addition to the interest as provided in paragraph A hereof, penalties based on the unpaid tax are hereby imposed as follows:
 - 1. For failure to pay the taxes due – other than taxes withheld, 1% per month or 10% of the amount of the unpaid tax, whichever is greater. Except in the case of fraud, the penalty cannot exceed one-half the tax due.

2. For failure to remit taxes withheld from employees:
 - 10% Within 30 days
 - 20% More than 30 days late, less than 60 days late
 - 25% Late by 60 days or more
3. For failure to file tax returns, informational reports, or any filing as required by this Ordinance:
 - \$25.00 – Not more than 120 days late
 - \$50.00 - Late by 120 days or moreFilings shall be deemed to be timely filed if postmarked by the due date.
Postage meter imprints are not considered to be postmarked date.

- C. A penalty shall not be assessed on any additional tax assessment made by the Income Tax Department when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Income Tax Department, 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 the final determination of the Federal tax liability.
- D. A fee as determined by the City Council will be charged for each check returned to the Income Tax Department by a financial institution as unpaid, for any reason whatsoever.
- E. Upon recommendation of the Finance Director/delegate, the Board of Appeals may rebate penalty or interest, or both, or upon appeal from the refusal of the Finance Director/delegate to recommend abatement of penalty and interest concerning an item of income or expense, the Board may nevertheless abate penalty or interest or both.

SECTION 12 - COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

- 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 (3) years from the time the tax was due or the return was filed, whichever is later; provided however, there shall be no period of limitation on an additional assessment in a case of a return that omits gross income in excess of twenty-five per cent (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 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 Finance Director/delegate shall be extended one (1) year from the time of the final determination of the federal tax liability.
- B. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made or the return was due, or within three (3) months after final determination of the federal tax liability, whichever is later; with the exception of tax withheld/paid on a non-qualified plan which becomes uncollectible (no statute).
- C. Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment, with the following exception: No

interest shall be allowed on any overpayment that is refunded within ninety (90) days after the final filing date of the annual return or ninety (90) days after the complete return is filed, whichever is later. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the rate of interest set forth in Section 11.

- D. **All taxes imposed by this chapter shall be collectible by civil suit together with any interest and penalties, and attorneys' reasonable fees incurred by the city with regard to that litigation; any legal services rendered leading up to litigation and any legal services rendered in connection with collection efforts whether or not litigation results.*

**Note: As amended by Ordinance No. 6014 – dated October 2, 2007*

SECTION 13- VIOLATIONS AND PENALTIES

A. Any person who shall:

1. Fail, neglect or refuse to make any return or declaration required by this Chapter; or
2. Knowingly make an incomplete, false or fraudulent return; or
3. Willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this Chapter; or
4. Fail, neglect or refuse to withhold the tax from his employees and/or remit such withholding tax to the Tax Department; or
5. Refuse to permit the Finance Director/delegate or any duly authorized agent or employee to examine his or his employer's books, records, papers, or federal income tax returns; or
6. Fail to appear before the Finance Director/delegate and to produce his or his employer's books, records, papers or federal income tax returns upon order or subpoena of the Finance Director/delegate; or
7. Refuse to disclose to the Finance Director/delegate any information with respect to such person's or such person's employer's income or net profits; or
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; or
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 Finance Director/delegate false information; or
10. Fail to comply with the provisions of this Chapter or any order or subpoena of the Finance Director/delegate; or

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 section 08; or
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 section 07; 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 one hundred dollars (\$100.00); 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 five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both, for each offense; on each subsequent tax code 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.

D. Statute of Limitations

1. Civil actions to recover Municipal income taxes and penalties and interest on Municipal income taxes shall be brought within three (3) years after the tax was due or the return was filed, whichever is later.
 2. Prosecutions for an offense made punishable under this Chapter shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense. (ORC 718.12)
- E. 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, return or declaration, from filing such form, or from paying the tax.
- F. The term "person" as used in this section shall, in addition to the meaning prescribed in section 01 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.

SECTION 14 - BOARD OF APPEALS

- A. A Board of Appeals consisting to three citizens as appointed by the City Council is hereby created.
- B. A secretary shall be appointed to serve the board.
- C. A majority of the members shall constitute a quorum. The Board of Appeals shall adopt its own procedural rules and shall keep a record of its transactions. The Board of Appeals may adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the administration, operation and enforcement of the provisions of this Ordinance.

- D. All hearings by the Board of Appeals may be conducted privately and the provisions of Section 10 with reference to the confidential character of information required to be disclosed by the Ordinance shall apply to such matters as may be heard before the Board of Appeals.
- E. Any person dissatisfied with any ruling or decision of the Income Tax Department which is made under the authority conferred by this Ordinance may appeal in writing therefrom to the Board of Appeals within thirty (30) days from the announcement of such ruling or decision by the Income Tax Department and the Board of Appeals shall, on hearing such ruling or decision, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.
- F. The Board of Appeals must schedule a hearing within 45 days of the receipt of the appeal.
- G. The Board of Appeals has ninety (90) days from the hearing to issue their decision and fifteen (15) additional days to notify the taxpayer(s).
- H. The Board may affirm, reverse, or modify the Finance Director/delegates decision or any part of that decision. The Board shall issue a decision on the appeal within ninety (90) days after the Board's final hearing on the appeal, and send notice of its final decision by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the decision. The taxpayer or the Finance Director/delegate may appeal the board's decision as provided in section 5717.011 of the Ohio Revised Code.

SECTION 15 - INFORMATION BY LANDLORDS

- A. Within thirty (30) days after a new tenant occupies rental property of any kind within the Municipality, all owners of rental property who rent to tenants of apartments, rooms and other rental accommodations shall file with the Tax Department a report showing the name, address and telephone number, if available, of each such tenant who occupies an apartment, room or other rental property within the Municipality.
- B. Within thirty (30) days after a tenant vacates an apartment, room or other rental property located within the Municipality, the owner of such vacated rental property shall file with the Tax Department a report showing the date of vacation from the rental property and a forwarding address.

SECTION 16 - ALLOCATION OF FUNDS

- A. The funds collected under the provisions of this Ordinance shall be deposited in the below listed Municipal Income Tax Funds and said funds shall be dispersed in the following order, to-wit:
 - 1. City Income Tax Fund "A" shall receive the monies from the one percent (1%) Municipal Income Tax and the cost of administering and enforcing the provisions thereof. Annually the foregoing costs shall be allocated on a proportionate basis to the City Income Tax Funds "B" and "C".

The net available income tax receipts shall be allocated to the General Fund and the Capital Improvement Fund as determined annually by the City Council upon passage of the Annual Appropriation Ordinance.

2. City Income Tax Fund "B" shall receive the monies from the one-half percent (1/2%) Municipal Income Tax and shall absorb annually its proportionate share of costs as indicated in subsection 1.

The net available income tax receipts shall be allocated to the proper funds for expanded police protection and emergency medical services and a continuation of the Capital Improvements Program, Community Development Program and Park and Recreation Program with an emphasis on Senior Citizen and Youth Activities.

3. City Income Tax Fund "C" shall receive the monies from the one-quarter percent (1/4%) Municipal Income Tax and shall absorb annually its proportionate share of costs as indicated in subsection 1.

The net available income tax receipts shall be allocated to the proper funds to institute treatment of the public water supply, including but not limited to rust removal and to provide for improvements of the Miamisburg Water Plants.

SECTION 17- DUTY TO RETAIN RECORDS

Every taxpayer shall retain all records necessary to compute tax liability for a period of six (6) years from the date the return is filed, or the taxes required to be withheld are paid.

SECTION 18- CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY OR JOINT ECONOMIC DEVELOPMENT DISTRICT

- A. Where a resident of the Municipality is subject to a municipal income tax in another municipality, he shall not pay a total municipal income tax on the other income greater than the tax imposed at the higher rate.
- B. Every individual taxpayer who resides in the Municipality who receives net profits, salaries, wages, commissions or other personal service compensation for work done or services performed or rendered outside of the Municipality, if it appears that he has paid a municipal income tax on the same income taxable under this Chapter to another Municipality, shall be allowed a credit against the tax imposed by this Chapter of the amount so paid by him or on his behalf to such other municipality. The credit shall not exceed the tax assessed by this Chapter on such income earned in such other municipality or municipalities where such tax is paid.
- C. The Municipality shall grant a credit against the tax imposed by this Chapter to every taxpayer who works in a joint economic development zone created under section 715.691 or a joint economic development district created under section 715.70, 715.71, or 715.72 of the Ohio Revised Code. The credit shall not exceed the tax assessed by this Chapter on such income earned in such joint economic development zone or joint economic development district where such tax is paid.
- D. Except as provided in division (E) of this section, if tax or withholding is paid to a municipal corporation on income or wages, and if a second municipal corporation imposes a tax on that income or wages after the time period allowed for a refund of the tax or withholding paid to the first municipal corporation, the second municipal

corporation shall allow a nonrefundable credit, against the tax or withholding the second Municipality claims is due with respect to such income or wages, equal to the tax or withholding paid to the first municipal corporation with respect to such income or wages.

- E. If the tax rate in the second municipal corporation is less than the tax rate in the first municipal corporation, then the credit described in division (D) of this section shall be calculated using the tax rate in effect in the second municipal corporation.
- F. A claim for refund or credit under this section shall be made in such manner as the Finance Director/delegate may by regulation provide.

SECTION 19 - REQUIREMENTS FOR JOINT ECONOMIC DEVELOPMENT DISTRICTS

Specific provisions of this Chapter may be modified as they apply to Joint Economic Development Districts if the modifications are passed by Council in an ordinance which either specifically approves a Joint Economic Development District contract or specifically amends this Chapter.

SECTION 20 - SAVINGS 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. If 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 is 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 hereby declared to be the intention of Council of the Municipality that this Chapter would have been adopted had such unconstitutional, illegal or invalid sentence or part thereof, not been included therein.

SECTION 21

This Ordinance shall take effect from and after the earliest period allowed by law.

Passed: _____ Attested: _____
Judith E. Barney, Clerk of Council

Approved: _____
Richard C. Church, Jr., Mayor