

Taxation
Chap. 000 Income Tax. (Earnings Tax)

CHAPTER 000
Income Tax

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000.01 PURPOSE

To provide funds for general municipal operations, equipment and permanent improvements and to enable a relief of non-continuing voted municipal property taxes, there shall be, and is hereby levied, a tax on salaries, wages, commissions and other compensation and on net profits as hereinafter provided.

000.02 DEFINITIONS

As used in this chapter, the following words shall have the meaning ascribed to them in this section, except as and if the context clearly indicates of requires a different meaning. The singular shall include the plural, the masculine shall include the feminine and the neuter.

(a) "Adjusted Federal Taxable Income" means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(1) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

(2) Add an amount equal to five per cent of intangible income deducted under division (A)(1)(a) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;

(3) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(4) A. Except as provided in division (4)B of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

B. Division (4)A of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

(5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

(6) In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

(7) If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except:

A. Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and

B. Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

Nothing in division (A)(1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

Nothing in this chapter shall be construed as limiting or removing the ability of any municipal corporation to administer, audit, and enforce the provisions of its municipal income

tax. The determination of corporate income tax will be based on the “adjusted federal taxable income” rather than net profits.

(b) “Association” means a partnership, limited partnership or any other form of unincorporated enterprise, owned by one or more persons.

(c) “Board of Tax Appeals” means the Board created by and constituted as provided in Section 000.13.

(d) “Business” means an enterprise, profession, undertaking or other activity 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 rental or leasing of property real, personal or mix.

(e) “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 county or dependency.

(f) “Employee” means one who works for wages, salary, commission or other type of compensation in the service of an employer.

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

(h) “Fiscal year” means an accounting period of twelve months or less ending on any day other than December 31.

(i) “Gross receipts” means the total income from any source whatsoever required to be included in the return.

(j) “Income from a Pass-through Entity” means partnership income of partners, membership interest 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.

(k) “Income Tax Administrator” (also referred to as Administrator) means the person or agency assigned or contracted with by the City of Beavercreek Manager under authority from City of Beavercreek Council to carry out the collection and related administration of the tax.

(l) “Limited liability company” or “LLC” means a limited liability company formed under Chapter 1705 of the Ohio Revised Code.

(m) “Net profits” means adjusted federal taxable income for a corporation and individual profits required to be reported on schedule C, schedule E, or Schedule F for individual taxpayers.

(n) “Nonqualified Deferred Compensation Plan” means a compensation plan described in Section 3121(v)(2)(c) of the Internal Revenue Code.

(o) “Nonresident” means any individual who is not a resident as herein defined.

(p) “Nonresident corporation” means an incorporated business entity not having a place of business within the City of Beavercreek.

(q) “Nonresident unincorporated business entity” means an unincorporated business entity not having a place of business within the City of Beavercreek.

(r) “Other activity” means any undertaking, not otherwise specifically defined here, which is normally entered into for profit, including, but not limited to, rental of real and personal property and a business conducted by a trust or guardianship estate.

(s) “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.

(t) “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 in a pass through entity.

(u) “Owner’s Proportionate Share” with respect to each owner of a pass-through entity, means the ratio of: (1) the owner’s income from the pass through entity that is subject to taxation by the City of Beavercreek to; (2) the total income from that entity of all owners whose income from the entity is subject to taxation by the City of Beavercreek.

(v) “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.

(w) “Person” means every natural person, firms, companies, business trusts, estates, trusts, partnerships, LLC, associations, corporations, governmental entities, and any other entity. Whenever used in any section prescribing and imposing a penalty, the term “person” includes an officer or employee of a corporation, or a member or employee of an association, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs.

(x) “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.

(y) “Principal Place of Business” means, in the case of an employer having headquarters or activities at a place of business within the City of Beavercreek, 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 the City of Beavercreek, the term means the largest place of business within the City of Beavercreek.

(z) “Resident” means an individual domiciled in the Municipality of the City of Beavercreek, Ohio.

(aa) “Resident unincorporated business entity” means an unincorporated business entity having a place of business within the City of Beavercreek.

(bb) “Qualifying Wages” means wages as defined in section 312(a) of the Internal Revenue Code without regard to any wage limitations, adjusted in accordance with section 718 (a) of the Ohio Revised Code.

(cc) “Resident Incorporated Business Entity” means an incorporated business entity whose office, place or operations or business is within the City of Beavercreek.

(dd) “Taxable income” means qualifying wages paid by an employer or employers, compensation for personal services, other income defined by statute and/or adjusted federal taxable income from the operation of a business, profession, or other enterprise or activity adjusted in accordance with the provision of this Chapter.

(ee) “Taxable year” means the calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made. Unless approved by the Administrator, the taxable year of a wage earner shall be a calendar year.

(ff) “Taxpayer” means a person subject to a tax on income levied by the City of Beavercreek. Taxpayer does not include a person that is disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but taxpayer does includes any other person who owns the disregarded entity or qualifying subchapter S.

000.03 IMPOSITION OF TAX

(a) Subject to the provisions of Section 000.15, an annual tax for the purpose specified in Section 000.01 shall be imposed beginning January 1, 2005 at the rate of one and one-half percent (1 ½ %) per annum upon the following:

(1) On all qualifying wages, commissions and other compensation received during the effective period of this chapter by residents of the City of Beavercreek.

(2) On all qualifying wages, commissions and other compensation received during the effective period of this chapter by nonresidents for work done or services performed or rendered in the City of Beavercreek.

(3) A. On the portion attributable to the City of Beavercreek of the net profits earned and accrued or received during the effective period of this chapter of all resident associations, pass through entities or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City of Beavercreek.

B. On the portion of the distributive share of the net profits earned and accrued or received during the effective period of this chapter of a resident partner or owner of a resident pass through entity not attributable to the City of Beavercreek upon which the tax was not paid by the entity.

(4) A. On the portion attributable to the City of Beavercreek of the net profits earned and accrued or received during the effective period of this chapter of all nonresident associations, pass through entities or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City of Beavercreek, whether or not such association or other pass through entity has an office or place of business in the City of Beavercreek.

B. On the portion of the distributive share of the net profits earned and accrued or received during the effective period of this chapter of a resident partner or owner of a nonresident association or other pass through entity not attributable to the City of Beavercreek on which the tax was not paid by the entity.

(5) On all net profits based on Federal Taxable Income.

(6) 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.

(b) The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the City of Beavercreek, in the absence of actual records thereof, shall be determined as follows:

(1) Multiply the entire net profits by a business apportionment percentage to the average ration of:

A. The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City of Beavercreek during the taxable period to the average original cost of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

B. Wages, salaries and other compensation paid or accrued during the taxable portion to persons employed in the business or profession for services performed in the City of

Beavercreek to wages, salaries and other compensation paid or accrued during the same period to persons employed in the business or profession, wherever their services are preformed.

C. Gross receipts of the business or profession from sales made and services performed during the taxable period in the City of Beavercreek to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

In the event that the forgoing apportionment formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such result.

(c) As used in division (b) hereof, “sales made in the City of Beavercreek” means:

(1) All sales of tangible personal property which is delivered within the City of Beavercreek regardless of where title passes if shipped or delivered from a stock of goods within the City of Beavercreek.

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

(3) All sales of tangible personal property which is shipped from a place within the City of Beavercreek to purchasers outside City of Beavercreek 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) Except as otherwise provided for in division (e) of this section, the net profit from rental activity not constituting a business or profession shall be subject to tax only if the property is located in the City of Beavercreek.

(e) This section does not apply to individuals who are residents of the City of Beavercreek and except as otherwise provided in Section 718.01 of the ORC, City of Beavercreek may impose a tax on all income earned by residents of the City of Beavercreek to the extent allowed by the U.S. Constitution.

(d) Consolidated Returns

(1) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Administrator.

(2) Allocation of income and deductions between related taxpayer; 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 activity within the City of Beavercreek constituting a portion only of its total business, the Administrator may require such additional

information as he may deem necessary to ascertain whether net profits are properly allocated to the City of Beavercreek. If the Administrator finds net profits are not properly allocated to the City of Beavercreek by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the City of Beavercreek.

(e) Exceptions. The tax provided herein shall not be levied upon:

(1) Exemptions provided by state law including, but not limited to, pay or allowances of active members of the Armed Forces of the United States and members of the reserve component including the Ohio National Guard, or the income of religious, fraternal, charitable, scientific, literary or education institutions to the extent that such income is derived from tax exempt real-estate, tax exempt tangible or intangible property or tax exempt activities, interest and dividends, and capital gains and losses.

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

(3) Proceeds of insurance paid by reason of the death of the insured; pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.

(4) Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by a bona fide charitable, religious or educational organization and association.

(5) Personal earnings of all persons under eighteen years of age.

(6) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio from which the City of Beavercreek is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business).

(7) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States constitution or any act of Congress limiting the power of the States or their political subdivisions to impose net income taxes on income derived from interstate commerce.

(8) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City of Beavercreek to impose net income taxes.

(9) Employee compensation that is not “qualifying wage” as defined in Section 718.03 of the Ohio Revised Code.

000.04 EFFECTIVE DATE

Such tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation earned and shall be levied with respect to the net profits of the businesses, professions or other activities earned and accrued or received from and after January 1, 2005.

000.05 RETURN AND PAYMENT OF TAX

(a) Each person who engages in business or other activity or whose qualifying wage, commission or other compensation is subject to the tax imposed by this chapter, shall, whether or not a tax be due thereon, make and file a return on or before April 15 of the year following the effective date of this chapter, 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 15th day of the fourth month following the end of such fiscal year or period. The Administrator is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by such employer or employers from the qualifying wages, commissions or other compensation of an employee, and paid by him or them to the Administrator may be accepted as the return required of any employee whose sole income, subject to tax under this chapter, is such salaries, wages, commissions or other compensation.

(b) The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from the Administrator setting forth:

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

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

(3) Such other pertinent statements, information, returns or other information as the Administrator may require.

(c)(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 due date for filing a return is extended for six (6) months from the original due date of such 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 Administrator 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 at the rate set out by section 000.10. 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 Tax Administrator 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.

(d) (1) The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown as due thereon; provided, however, that 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 000.06 of this chapter;
- B. Any portion of such tax which shall have been paid by the taxpayer pursuant to the provisions of Section 000.07; and
- C. Credit to the extent allowed by Section 000.15 for tax paid to another municipality.

(2) Subject to the limitations contained in Section 000.11, any taxpayer who has overpaid the amount of tax to which the City of Beavercreek 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.

(e) Amended Returns

(1) 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/or limitations contained in Section 000.11. Such amended 000.07 returns shall be on a form obtainable upon request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return without the approval of the Administrator.

(2) Within three months from the final determination of any Federal tax liability affecting the taxpayer's of the City of Beavercreek tax liability, such taxpayer shall make and file an amended City of Beavercreek return showing income subject to the City of Beavercreek 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.

(f) 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 deemed to be a violation of this chapter. Provided, however, that the taxpayer shall have ten days after notification by the Administrator, or his authorized representative, to file the items required by this subsection.

000.06 COLLECTION AT SOURCE

(a) (1) Each employer shall at the time of the payment of any qualifying wage, commission or other compensation, deduct the tax of one and one-half percent (1.5%) beginning January 1, 2005, of the gross salaries, wages, commissions or other compensation due by the employer to his employees who are subject to the provisions of this chapter. In making such deduction at the time of payment, the employer shall compute the tax to the nearest full cent so that mills of five or more shall be increased to the next full cent and mills of less than five shall be dropped. No person shall be entitled to a refund merely because such rounding off of the tax results in an apparent overpayment based on his total earnings. Each employer shall, on or before the last day of each month, make a return and pay to the Administrator the tax withheld during the preceding month. Provided, however, the Administrator shall have the authority to approve the filing of returns and payment of the tax withheld on a quarterly basis. In such case, the employer shall, on or before the last day of each month following the calendar quarters ending March 31, June 30, September 30, December 31, make a return and pay to the Administrator the tax withheld during the preceding calendar quarter. Such approval for quarterly filings and payments may be withdrawn by the Administrator when it is to the best interest of the City of Beavercreek to do so. The Administrator shall provide by regulation, the manner in which such approval is to be granted or withdrawn.

(2) The employee shall be liable for the payment of the tax required to be deducted and withheld whether or not such tax has in fact been withheld.

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

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

(d) On or before January 31 of each year beginning with the year 2006, each employer shall file a withholding return on a form prescribed by and obtainable upon request from the Administrator, setting forth the names and addresses of all employees from whose compensation the tax was withheld during the preceding calendar year and the amount of tax withheld from his employees and such other information as may be required by the rules and regulations adopted by the Administrator.

000.07 DECLARATIONS

(a) Every person who anticipates the receipt of any taxable income which is not subject to Section 000.06, or engages in any business profession, enterprise or activity subject to the tax imposed by Section 000.03, shall file a declaration setting forth such person's estimated taxable income together with any estimated tax due thereon, if any; provided, however, if a person's income is wholly from wages from which the tax will be withheld and remitted to the City of Beavercreek in accordance with Section 000.06, such person need not file a declaration.

(b) (1) Such declaration shall be filed on or before April 15 or each year during the life of this chapter, or within four months after the date the taxpayer becomes subject to the provisions of this chapter.

(2) Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the 15th day of the fourth month following the beginning of each fiscal year or period.

(c) (1) Such declaration shall be filed upon a form furnished by or obtainable upon request from the Administrator, provided, however, credit shall be taken for the City of Beavercreek tax to be withheld from any portion of such income to determine the estimated tax due. In accordance with the provisions of Section 000.15, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality.

(2) The original declaration, or any subsequent amendment thereof, may be amended at any time,

(3) An amended declaration must be filed on or before January 31 of the following year, or in the case of a taxpayer on a fiscal year, on or before the date fixed by the regulation of the Administrator if it appears that the original declaration made for such taxable year underestimated the taxpayer's income by thirty per cent (30%) or more. At such time a payment

which, together with prior payments, is sufficient to pay the taxpayer's entire estimated liability shall be made. If upon the filing of the return required by Section 000.05, it appears that the taxpayer did not pay seventy percent (70%) of his tax liability, as shown on such return, on or before January 31, or the date fixed by regulations, whichever is applicable, the difference between seventy percent (70%) of such taxpayer's tax liability and the amount of estimated tax actually paid on or before January 31, or the date fixed by regulation, whichever is applicable, shall be subject to the interest and penalty provisions of Section 000.10.

(d) (1) Such declaration of net estimated tax to be paid City of Beavercreek shall be accompanied by a payment of at least twenty-five per cent (25%) or the estimated annual tax, less credit, and at least a similar amount shall be paid on or before the last day of the seventh, tenth, thirteenth months after the beginning of the taxable year. Provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(2) Provided further, however, that the last quarterly payment of estimated tax need not be made if the taxpayer files his final return and pays the balance of the tax due thereon within forty-five days following the end of his taxable year.

(e) On or before the last day of the fourth month of the calendar or fiscal year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City of Beavercreek shall be paid therewith in accordance with the provisions of Section 000.05.

000.08 DUTIES AND POWERS OF THE ADMINISTRATOR OF TAXATION.

(a) (1) It shall be the duty of the Administrator to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; to keep an accurate record thereof; and to report daily all moneys as received.

(2) It shall be the duty of the Administrator to enforce payment of all taxes owing the City of Beavercreek, to keep accurate records for a minimum of five (5) years showing the amount due from each taxpayer required to file a declaration and/or make any returns, including taxes withheld, and to show the dates and amounts of payments thereof.

(b) The Administrator is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of Council by motion, to adopt and promulgate and to enforce rules and regulations relating to any matter of thing pertaining to the collection of taxes and administration and enforcement of the provisions of this chapter, including provisions for the reexamination and correction of returns.

(c) In any case where a taxpayer or employer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may assess the amount of tax appearing to be due, together with interest and penalties thereon, if any, in the following manner:

(1) General provisions

A. If the Administrator determines that any taxpayer subject to the provisions of this chapter has a tax liability for which he has failed to file a return or has filed an incorrect return and has failed to pay the full amount of tax due, the Administrator shall issue a proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon.

1. Such proposed assessment shall be served upon the taxpayer in person or by mailing to his last known address. Proof of mailing furnished by the U. S. Post Office shall be presumptive proof of receipt thereof by the addressee.

2. A taxpayer may, within fifteen (15) days after the date proposed assessment was served or mailed, file a written protest with the Administrator. Within fifteen (15) days after receipt of the protest, the Administrator shall give the protestant an opportunity to be heard; provided further that the Administrator may extend the date of hearing for good cause shown. After the hearing the Administrator shall withdraw the assessment or he shall adjust or reaffirm the assessment and it shall then become final. If no protest is filed as herein provided, such proposed assessment shall become final fifteen (15) days after being served.

B. After a proposed assessment becomes final, notice of such final assessment shall be issued and shall be served in the same manner as a proposed assessment.

1. A taxpayer shall have fifteen (15) days after the date the final assessment was served or mailed within which to file written notice of appeal with the Board of Tax Appeals. Such written notice of appeal shall be filed in a sealed envelope plainly marked: "Appeal to Board of Tax Appeals" and mailed or delivered to the Administrator who shall, within five (5) days after receipt thereof, deliver such appeal to the Chair of the Board of Tax Appeals, or, if the Chair is not available, to the Vice-Chair.

2. The Board of Tax Appeals, upon receipt of a notice of appeal, shall within fifteen (15) days notify the Administrator thereof who shall forward within fifteen (15) days to the Board a certified transcript of all actions taken by him with respect to such final assessment. Such transcript shall be open to inspection by the appellant and his counsel.

3. Any taxpayer against whom a final assessment has been issued and who has filed notice of appeal shall be granted a hearing by the Board of Tax Appeals. At such a hearing the appellant and the Administrator shall be given opportunity to present evidence relating to the final assessment. After the conclusion of such hearing, the Board of Tax Appeals shall affirm, reverse, or modify the final assessment and shall furnish a copy of its decision in respect thereof to the appellant and the Administrator. The appellant's copy of such decision shall be served upon him in the same manner as herein provided for the serving of assessments.

C. When any taxpayer subject to the provisions of this chapter has filed a return indicating the amount of tax due and has failed to pay such tax to the Administrator as required

by this chapter, the Administrator need not issue an assessment, but may proceed under the provisions of Sections 000.11 and 000.12.

(2) Provisions affecting employers

A. If the Administrator determines that an employer subject to the provision of this chapter has failed to file a return for tax withheld and has failed to pay to the Administrator the full amount of such taxes, the Administrator shall issue a proposed assessment showing the full amount of such taxes, together with any penalties and interest that may have accrued thereon, and the provision of subsections (c)(1)A. and B. hereof shall apply.

B. If the Administrator determines that an employer subject to the provisions of this chapter has failed to withhold tax, the Administrator shall issue a proposed assessment showing tax due, together with any penalties and interest that may have accrued thereon, and the provisions of subsections (c)(1)A. and B. hereof shall then apply.

C. When an employer subject to the provisions of this chapter has filed a return indicating the amount of tax withheld and has failed to pay such tax to the Administrator as required by this chapter, the Administrator may proceed under the provisions of Sections 000.11 and 000.12 and need not issue an assessment as provided in subsections (c)(1)A. and B. hereof.

(d) (1) Any taxpayer or employer who has not filed a notice of Appeal to the Board of Tax Appeals from a final assessment issued against him shall pay the amount thereof within fifteen (15) days after service of such final assessment.

(2) Any taxpayer or employer who has filed a notice of appeal to the Board of Tax Appeals from a final assessment issued against him shall pay the amount determined to be due by the Board of Tax Appeals within fifteen (15) days after service of his copy of the decision of the Board.

(e) The Administrator shall have the authority, when requested by the taxpayer and for good cause shown, to extend the time of making and filing any return whenever he deems it necessary so to do, but not to exceed a period of six (6) months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax return.

(f) When an application for deferred payment of tax due is filed by a taxpayer, the Administrator may authorize partial payments of unpaid taxes when, in his judgment, the taxpayer is unable, due to hardship conditions, to pay the full amount of the tax when due, and when, in his judgment, such deferred payments are the best means of accomplishing the intent of this chapter. Provided, however, that the Administrator shall not authorize extension of time for the payment of such taxes due for more than six months beyond the date of the filing of the application.

000.09 INVESTIGATIVE POWERS OF THE ADMINISTRATOR; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION

(a) The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and copies of Federal income tax returns of any employer of any taxpayer or person subject to, or whom the Administrator believes is subject to the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish within ten (10) days following written request by the Administrator, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(b) The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and copies of the 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 and copies of Federal income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be a 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 Administrator authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 000.12

(d) Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposes, or except when ordered by a court of competent jurisdiction. Any person divulging such information in violation of the chapter, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the City of Beavercreek who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(e) Every taxpayer shall retain all records necessary to compute his tax liability for a period of five (5) years from the date his return is filed, or the withholding taxes are paid.

000.10 INTEREST AND PENALTIES

(a) All taxes imposed and all moneys withheld or required to be withheld by employers, under the provisions of the chapter and remaining unpaid ten (10) after they become due shall bear interest at the rate of one-half of one percent (1½%) per month or fraction thereof.

(b) In addition to the interest as provided in subsection (a) hereof, penalties based on the unpaid tax are hereby imposed as follows:

(1) For failure to pay taxes due, other than taxes withheld; one percent (1%) per month or fraction thereof.

(2) For failure to remit taxes withheld from employees; three percent (3%) per month or fraction thereof, or ten percent (10%), whichever is greater.

(3) Where the taxpayer has failed to file a declaration on which he has estimated and paid a tax equal to or greater than the tax paid for the previous year, or has failed to file a declaration on which he has estimated and paid tax equal to or greater than seventy percent (70%) of the actual tax for the year, or has failed to file a final return and pay the total tax on or before the end of the month following the end of his taxable year; ten percent (10%) of the difference between seventy percent (70%) of the actual tax for the year and the amount paid through withholding or declaration.

(4) Except in the case of fraud, the penalty shall not exceed fifty percent (50%) of the unpaid tax.

(5) Twenty-five dollars (\$25.00) shall be assessed as an administrative charge for those taxpayers failing to timely file the annual return or failing to pay the taxes due.

(c) Exceptions: A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator 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.

(d) Upon recommendation of the Administrator, the Board of Tax Appeals may abate penalty or interest, or both.

(e) Provided, however, that in no case shall penalty and interest charges be levied when the total of such penalty and interest amounts to less than one dollar (\$1.00).

(f) Any person required to withhold the tax who knowingly fails to withhold such tax, or pay over such tax or knowingly attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the

total amount of the tax evaded, or not withheld, or not paid over. No other penalty under this section shall be applied to any offense to which this penalty is applied.

(g) Interest but no penalty will be assessed where an extension has been granted by the Administrator and the final tax paid within the period as extended.

000.11 COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS

(a) In addition to any criminal penalties which may be imposed pursuant to Section 000.12, all taxes imposed by Section 000.03 shall be collectible, together with any interest and penalties thereon, by civil suit. Except in the case of fraud, omission of twenty-five percent (25%) or more of income subject to this tax, or failure to file a return, an additional assessment shall not be made after three (3) years from the time the return was due or filed whichever is later, provided, however, in those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitation, the period within which an additional assessment may be made by the Administrator shall be one 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 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.

(c) Additional amounts of less than one dollar (\$1.00) shall not be refunded or assessed unless such assessment results from income which the taxpayer has failed to report.

000.12 VIOLATIONS

(a) No person shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (2) Make any incomplete, false or fraudulent return;
- (3) Knowingly fail or refuse to pay the tax, penalties or interest imposed by this chapter;
- (4) Knowingly fail or refuse to withhold the tax from his employees and remit such withholding to the Administrator;
- (5) Refuse to permit the Administrator or any duly authorized agent or employee to examine his or his employer's books, records, papers and copies of Federal income tax returns relating to the income or net profits of a taxpayer;
- (6) Fail to appear before the Administrator and to produce his or his employer's books, records, papers or copies of Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator;

(7) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer;

(8) Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator;

(9) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

(b) (1) Any person subject to the provisions of Section 000.01 through Section 000.17 inclusive, who has failed to file or has filed an incorrect return or has failed to pay the full amount of tax due, shall not be deemed to have committed any offense punishable under the provisions of this section until the assessment issued against him under the provisions of Section 000.08 has become due and payable.

(2) Any person who has filed a return under the provisions of Section 000.01 through Section 000.17 inclusive, indicating the amount of tax due, and has failed to pay such tax, together with any penalties or interest that may have accrued thereon, shall not be deemed to have committed an offense of having knowingly failed to pay the tax, penalties or interest due as provided in subsection (a)(3) hereof, until the date of the filing of such return.

(c) The term "person" as used in this section shall, in addition to the meaning prescribed in Section 000.01, include in the case of an association or corporation not having any partner, member or officer within the City of Beavercreek, any employee or agent of such association or corporation who can be found within the corporate limits of the City of Beavercreek.

(d) All prosecutions under this section must be commenced within the time limit as now or hereafter may be provided by the applicable sections of the Ohio Revised Code for the prosecution of violations of Municipal income tax ordinances.

(e) The failure of any employer or 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 forms, or from paying the tax.

000.13 BOARD OF TAX APPEALS

(a) A Board of Tax Appeals, consisting of a chair and four other individuals, each to be appointed by Council, and to serve staggered terms of three (3) years, is hereby created. 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 transaction. Any hearing by the Board shall, at the request of the taxpayer, be conducted privately and the provisions of Section 000.09 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.

(b) The Board, shall hear and pass on appeals from any ruling or decision of the Administrator, and, at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.

(c) As provided in Section 000.08, any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter may appeal therefrom to the Board of Tax Appeals and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.

000.14 ALLOCATION OF FUNDS

The funds collected under the provisions of this chapter shall be paid into the Income Tax Fund and applied to the following purposes:

(a) Administration. Such part thereof as shall be necessary to defray all costs of collecting the tax levied by this chapter and the cost of administering and enforcing the provisions hereof shall first be allocated to the Income Tax Administration Fund.

(b) Allocation. Subject to any and all limitations provided by State law, the City of Beavercreek Charter, or the City of Beavercreek Codified Code of Ordinances, the net proceeds after cost of administration, enforcement, credits, and refunds shall be applied to the following separate accounts to be kept by the Finance Director, as herein designated:

(1) The first forty percent (40%) of such net proceeds shall be transferred to the Police Fund for police operations and administration; police/fire communication, homeland security activities and other public safety activities;

(2) The second thirty percent (30%) of such net proceeds shall be transferred to the Street Fund for public works operations, street improvements, storm water control and improvements, street maintenance, and snow and ice control;

(3) The third thirty percent (30%) of such net proceeds shall be transferred by Council based on the budgeted needs of the City of Beavercreek to the following funds:

(a) Capital Improvement Fund for general capital improvements, construction of new streets, traffic control improvements, parkland acquisition, support for cultural facilities and support for senior citizens' facilities.

(b) Debt Service Fund for the payment of the City of Beavercreek debt as required by law.

(c) The General Fund for the general operation of the City of Beavercreek.

000.15 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY

(a) Every individual taxpayer who resides in the City of Beavercreek who receives net profits, salaries, wages, commission or other personal service compensations for work done or services rendered outside City of Beavercreek, if it be made to appear 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. Such credit shall be equal to one hundred percent (100%) of the amount obtained by multiplying the lower of the tax rate of such other municipality or of the Municipality of the City of Beavercreek by the income of the individual which is taxable to such other municipality. . The credit shall not exceed the tax assessed by the chapter on such income earned in such other municipality or municipalities where such tax is paid.

(b) A claim for refund or credit under this section shall be made in such manner by the Administrator as provided by regulation.

000.16 SAVINGS CLAUSE

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

000.17 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER

(a) This chapter shall continue effective insofar as the levy of taxes is concerned until amended or repealed, and insofar as the collection of taxes levied hereunder and actions proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of such taxes levied in the aforesaid period are fully paid and any and al suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Sections 000.11 and 000.12.

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Section 000.05 and Section 000.06 as though the same were continuing.

000.18 AMENDMENT OF ORDINANCE

Substantive amendments to this Ordinance shall be voted on by the electors of the City of Beavercreek of the City of Beavercreek. The City of Beavercreek Council shall adopt an

ordinance no later than June 1st with the proposed amendments to be submitted to the voters in the General Election in November of that same year.

000.98 RELIEF OF PROPERTY TAXES

(a) Provided this income tax code is approved, Council is prohibited by this mandate to propose for a period of ten (10) years from January 1, 2005, new City of Beavercreek of the City of Beavercreek property tax levies.

000.99 PENALTY

Whoever violates any provision of Section 000.12 shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months or both for each offense.

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