

## **ORDINANCE NO. 06-49 AC CMS**

### **AN ORDINANCE AMENDING CHAPTER 181 OF THE CODIFIED ORDINANCES OF THE CITY OF OBERLIN WHICH PROVIDES FOR A MUNICIPAL INCOME TAX AND RESCINDING CHAPTER 182 OF THE CODIFIED ORDINANCES WHICH ESTABLISHED INCOME TAX RULES AND REGULATIONS**

**WHEREAS, in 1967, pursuant to Ohio Revised Code Chapter 718, the City of Oberlin established a municipal income tax; and**

**WHEREAS, said income tax provisions are in need of updating to correspond with changes in State law and to make them more consistent with the income tax provisions of other municipalities that participate in the Regional Income Tax Agency (RITA); and**

**WHEREAS, the City also desires to rescind Income Tax Rules and Regulations as provided for in Chapter 182 of the Codified Ordinances and adopt those of RITA.**

**NOW THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of all members elected thereto concurring:**

**SECTION 1. That Chapter 181 of the Codified Ordinances of the City of Oberlin is hereby amended to read as set forth in Exhibit A attached hereto and incorporated herein by reference.**

**SECTION 2. That Chapter 182 of the Codified Ordinances of the City of Oberlin titled "Income Tax Rules and Regulations" is hereby rescinded, and the Income Tax Rules and Regulations of RITA, including amendments that may from time to time be made, are hereby adopted as those of the City of Oberlin.**

**SECTION 3. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.**

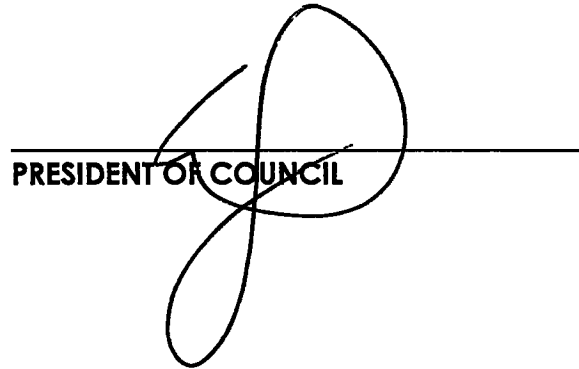
**SECTION 4. That this ordinance shall be in full force and effect at the earliest period allowed by law.**

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**PASSED:**      1<sup>st</sup> Reading – May 15, 2006  
                    2<sup>nd</sup> Reading – June 5, 2006  
                    3<sup>rd</sup> Reading – June 19, 2006 (Effective in 30 days)

**ATTEST:**

  
\_\_\_\_\_  
**CLERK OF COUNCIL**

  
\_\_\_\_\_  
**PRESIDENT OF COUNCIL**

**POSTED: June 20, 2006**

**EFFECTIVE DATE: July 19, 2006**

α:/ORD06-49AmendChp181

# City of *Oberlin*

69 South Main Street, Oberlin, Ohio 44074

To: Honorable President, Council, and Council Appointees  
From: Sal Talarico, Finance Director  
Subject: Income Tax Code Update  
Date: April 28, 2006

As I have mentioned in previous updates to Council we have been working on updating our Income Tax code with the help of a consultant, who also provides services to the Regional Income Tax Agency (RITA). I'd like to thank Mr. Severs for his assistance throughout the process. I would like to present, for first reading, the updated tax code at the City Council meeting of May 15<sup>th</sup>. Council will receive a strike-through version of the Income tax code as well as a clean copy.

One issue that I would like to address with City Council at the upcoming meeting, May 1, 2006 during the Finance Director's report, is whether or not you would like to have lottery, and other games of chance, included as taxable for City income tax purposes. As you know many City's added lottery language to their income tax codes after a multi-million dollar winner avoided having to pay tax to the Cleveland suburb because it was not mentioned in their code. City Council, at the time, considered the issue and determined not to include lottery, or other games of chance in our tax code.

As you can see from the attachment, of other RITA Cities, about half tax lottery. I recommend to Council that we tax lottery, and other games of chance, for winnings of \$100,000 or more. This way we are not taxing small winnings, and if someone were lucky enough to win a larger amount, the aspect of paying municipal income taxes would be more palatable, e.g. for a \$100,000 winner the tax would be \$1,900. Certainly lottery and other winnings should not be considered a recurring type of revenue, but when it happens it can finance a one-time community improvement project. For example, if we had a \$3,000,000 winner, the City would collect \$57,000, leaving the winner with \$2,943,000 to pay other taxes, expenses, etc., still a very handsome prize. The City would have \$57,000 to renovate a park, build a pavilion, or add to the bike path. And part of the amount (\$6,000) due to the wastewater income tax fund would go towards reducing the debt for the wastewater improvements.

I will ask City Council to either, 1) accept my recommendation to include, in our tax code, lottery, and other games of chance for winnings of \$100,000 or more – see attached proposed language, 2) amend the \$100,000 amount noted or, 3) ask that I not include lottery, and games of chance, in the tax code update that will come to you for first reading on May 15<sup>th</sup>.

I appreciate your guidance on this matter, if you have any questions please call.

e. File

*"Ohio's Best College Town"*

—OHIO Magazine

**RITA Cities - regarding taxing lottery and other games of chance**

N = Do not tax lottery, etc.

Y = Tax lottery, etc., all amounts

Those with a dollar amount tax the amounts indicated or greater

<b>CITY</b>	<b>LOTTERY</b>
1 Arlington Heights	N
2 Ashville	N
3 Aurora	N
4 Avon	\$4,000,000
5 Avon Lake	Y
6 Bay Village	N
7 Beachwood	100,000
8 Beachwood East JEDD	N
9 Beachwood West JEDD	N
10 Bedford Heights	Y
11 Bentleyville	N
12 Berea	100,000
13 Bexley	Y
14 Boston Heights	N
15 Brady Lake	N
16 Brecksville	5,000
17 Broadview Heights	10,000
18 Brooklyn Heights	100,000
19 Campbell	5,000
20 Cecil	N
21 Cedarville	N
22 Centerburg	Y
23 Chagrin Falls	N
24 Circleville	Y
25 Clayton	N
26 Cuyahoga Heights	N
27 East Cleveland	Y
28 Elyria	N
29 Elyria TWP CITY JEDD	N
30 Fairport Harbor	Y
31 Fairview Park	1,000
32 Fremont	Y
33 Fort Jennings	N
34 Galena	Y
35 Galion	Y
36 Garfield Heights	Y
37 Girard	over 5,000
38 Glenwillow	Y
39 Grandview Heights	N
40 Grove City	N
41 Haskins	N
42 Highland Heights	1,000,000
43 Hudson	Y
44 Independence	N

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<b>CITY</b>	<b>LOTTERY</b>
45 Jewett	N
46 Kirtland	Y
47 Lagrange	N
48 Lakemore	N
49 Lakewood	Y
50 Lockland	Y
51 Lyndhurst	5,000,000
52 Macedonia	Y
53 Maineville	Y
54 Maple Heights	Y
55 Martins Ferry	Y
56 Mayfield Heights	N
57 Mayfield Village	Y
58 Mechanicsburg	N
59 Middleburg Heights	Y
60 Milan	Y
61 Milford Center	Y
62 Minerva Park	N
63 Mogadore	N
64 Moreland Hills	N
65 Mount Sterling	Y
66 New Albany	N
67 New Bloomington	N
68 Newburgh Heights	N
69 Newtown	N
70 North Lewisburg	N
71 North Olmsted	N
72 North Royalton	N
73 Oakwood Village	N
74 Oberlin	N
75 Olmsted Falls	Y
76 Olmsted JEDD	N
77 Orange	600
78 Orange Chag HighJEDD	N
79 Ottawa	N
80 Pepper Pike	Y
81 Plain City	N
82 Plymouth	N
83 Powell	N
84 Reminderville	Y
85 Remiderv\Twins Twp JEDD	N
86 Reynoldsburg	Y
87 Richmond Heights	Y
88 Richwood	N

**RITA Cities - regarding taxing lottery and other games of chance**

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Those with a dollar amount tax the amounts indicated or greater

CITY	LOTTERY
89 Ridgeway	N
90 Riverside	Y
91 Sabina	N
92 Saint Paris	N
93 Salineville	N
94 Sandusky	Y
95 Seven Hills	N
96 Shaker Heights	600
97 Shawnee Hills	N
98 Sheffield Lake	Y
99 Sheffield Village	Y
100 Sherwood	Y
101 Silver Lake	Y
102 South Euclid	5,000
103 South Solon	N
104 Steubenville	N
105 Streetsboro	N
106 Strongsville	600
107 Sunbury	Y
108 Toronto	N
109 University Heights	Y
110 Upper Arlington	Y
111 Urbancrest	N
112 Valley View	N
113 Vermilion	N
114 Wakeman	N
115 Walton Hills	N
116 Wellston	over 5,000
117 Wellsville	Y
118 Westlake	N
119 Willowick	Y
120 Wintersville	N
121 Woodmere	N
122 Worthington	Y
123 Yellow Springs	Y

Note: 59 of the 123 (or 48%) tax some or all lottery winnings

16 of the 59 have threshold before winnings are taxed

***PROPOSED LANGUAGE***

**FOR FURTHER CLARIFICATION "INCOME" INCLUDES, BUT IS NOT LIMITED TO, LOTTERY, GAMBLING WINNINGS, SPORTS WINNINGS, AND GAMES OF CHANCE IN A COMBINED AMOUNT PER YEAR OF ONE HUNDRED THOUSAND DOLLARS \$100,000.00 OR MORE. IN NO CIRCUMSTANCE SHALL DEDUCTIONS BE ALLOWED AGAINST LOTTERY, GAMBLING AND SPORTS WINNINGS, AND GAMES OF CHANCE. HOWEVER, DEDUCTIONS SHALL BE ALLOWED AGAINST GAMBLING AND SPORTS WINNINGS IF THE TAXPAYER IS CONSIDERED A PROFESSIONAL GAMBLER FOR FEDERAL INCOME TAX PURPOSES.**

**TITLE NINE - Taxation**  
**Chap. 181. Municipal Income Tax.**

**CHAPTER 181**  
**Municipal Income Tax**

- 181.01 Definitions.**
- 181.02 Purpose; imposition of tax.**
- 181.03 Effective period.**
- 181.04 Return and payment of tax.**
- 181.05 Collection at source.**
- 181.06 Declarations.**
- 181.07 Credit for tax paid to  
other municipalities.**
- 181.08 Duties of the Finance Director  
and City Treasurer.**
- 181.09 Investigative powers of the Finance Director**
- 181.10 Interest and penalties.**
- 181.11 Collection of unpaid taxes; Refunds**
- 181.12 Violations; penalty.**
- 181.13 Allocation of funds.**
- 181.14 Board of Review.**
- 181.15 Savings clause.**
- 181.16 Exemptions.**
- 181.17 Collection of tax after termination of chapter**
- 181.18 Rules and Regulations**

**181.01 DEFINITIONS.**

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

“Adjusted federal taxable income” means a “C” corporation’s federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute “Adjusted Federal Taxable Income” as if the pass-through entity was a “C” corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.

“Association” means a partnership, limited partnership, including Chapter S Corporations as defined in the federal tax code, 26 U.S.C. 1361, limited liability company, or any other form of unincorporated enterprise, owned by one or more persons.

“Board of Review” means the Board created by and constituted as provided in Section 181.14.



“Business” means an enterprise activity, profession, or undertaking of any nature conducted for profit, whether by an individual, partnership, limited partnership, corporation, association or any other entity.

“City Treasurer” means the City Treasurer of the City of Oberlin or the Treasurer’s designee.

“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, foreign country or dependency.

“Domicile” means the permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

“Employee” means an individual whose earnings are subject to the withholding of Federal Income Tax or Social Security Tax, and/or an individual who works for income, qualifying wages, salary, commissions or other types of compensation in the services and under the control of any employer.

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

“Finance Director” means the Finance Director of the City of Oberlin, or the Finance Director’s designee.

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

“Generic Form” means an electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or separate requests for refunds, that contain all the information required on Oberlin’s regular tax return and estimated payment forms, and are in a similar format that will allow processing of the generic forms altering Oberlin’s procedures for processing forms.

“Gross receipts” means the total revenue derived from sales, work done, or service rendered.

“Income” means all monies, subject to limitations imposed by ORC Chapter 718, derived from any source whatsoever, including but not limited to:

A. All income, qualifying wages, commissions, other compensation and other income from whatever source received by residents of Oberlin.

B. All salaries, wages, commissions, other compensation and other income from whatever source received by nonresidents for work done or services performed or rendered or activities conducted in Oberlin.

The portion attributable to the city of the net profits of all unincorporated businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in Oberlin.

“Net profits” means, for taxable years prior to 2004, the net gain from the operation of a business, profession, rental income or enterprise after provision for all cost and expense incurred in the conduct thereof, including reasonable allowance for depreciation, depletion, amortization and reasonable additions to reserve for bad debts, either paid or accrued in accordance with recognized

principles of accounting applicable to the method of accounting (i.e., either cash or accrual) regularly employed without deduction of federal taxes based on income, and without deducting taxes imposed by this chapter. (For taxable years 2004 and later, see "adjusted federal taxable income".)

"Nonresident" means an individual domiciled outside the City of Oberlin.

"Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the City of Oberlin.

"Other entity" means any person or unincorporated body not previously named or defined and includes fiduciaries located within the City of Oberlin.

"Person" means every natural person, partnership, limited partnership, corporation, fiduciary or association. Whenever used in any clauses prescribing and imposing a penalty, the term "person" as applied to any association, shall mean the partners or members thereof, and as applied to corporation, the officers thereof.

"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 employees regularly in attendance.

"Qualifying wage" means Wages as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. "Qualifying wage" represents employees' income from which municipal tax shall be deducted by the employer, and any wages not considered a part of "qualifying wage" shall not be taxed by the Municipality. This definition is effective January 1, 2004, for taxable years 2004 and later.

"Resident" means an individual domiciled in the City of Oberlin.

"Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the Municipality.

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

"Taxpayer" means a person, whether an individual, partnership, limited partnership, corporation, association or other entity, required hereunder to file a return and/or to pay a tax hereunder.

The singular shall include the plural and the masculine shall include the feminine and the neuter.

#### **181.02 PURPOSE; IMPOSITION OF TAX.**

To provide funds for the purposes as shown in Section 181.13, there be and hereby is levied a tax at the rate of one and nine-tenths percent (1- 9/10%) upon the following:

- (a) On all income, qualifying wages, commissions, net rentals and other compensation earned and/or received during the effective period of this chapter by resident individuals of the City of Oberlin. For further clarification "income" includes, but is not limited to, lottery, gambling winnings, sports winnings, and

games of chance in a combined amount per year of one million dollars (\$1,000,000.00) or more. In no circumstance shall deductions be allowed against lottery, gambling and sports winnings, and games of chance. However, deductions shall be allowed against gambling and sports winnings if the taxpayer is considered a professional gambler for federal income tax purposes.

- (b) On all income, qualifying wages, commissions, net rentals and other compensation earned and/or received during the effective period of this chapter by nonresident individuals for work done or services performed in the City of Oberlin. Income earned and/or received as holiday, sick, and/or vacation pay is taxable to the City of Oberlin. Separation pay, termination pay, reduction-in-force pay, and other compensation paid as a result of an employee leaving the service of an employer shall be allocable only to the City of Oberlin. However, the City of Oberlin shall not tax the compensation of an individual if all of the following apply:
  - (1) The individual does not reside in the City of Oberlin.
  - (2) The compensation is paid for personal services performed by the individual in the City of Oberlin on twelve or fewer days during the calendar year. A day is a full day or any fractional part of a day.
  - (3) In the case of an individual who is an employee, the principal place of business of the individual's employer is located outside the City of Oberlin and the individual pays tax on compensation described in subsection (b) hereof to the City, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual.
  - (4) The individual is not a professional entertainer or professional athlete; the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the City of Oberlin.
- (c) On the net profits attributable to Oberlin, earned during the effective period of this chapter, of all resident unincorporated business, professions and other activities derived from work done or service and/or facilities rendered or performed and business or other activities conducted in the City of Oberlin.
- (d) On the portion of the distributive share of the net profit earned during the effective period of this chapter, of a resident individual, partner or owner of a resident unincorporated business entity attributable to Oberlin and not levied against such unincorporated business entity.
- (e) On the net profits attributable to Oberlin earned during the effective period of this chapter, of all nonresident unincorporated business, professions and other activities, derived from work done or services performed or rendered and business or other activities, conducted in the City of Oberlin.
- (f) On the portion of the distributive share of the net profit earned during the effective period of this chapter, of a resident individual, partnership or owner of a nonresident unincorporated business entity not attributable to Oberlin and not levied against such unincorporated business entity.
- (g) On the net profits earned during the effective period of this chapter, of all corporations derived from work done or services performed or rendered and business or other activities conducted in the City of Oberlin, whether or not such corporations have an office or place of business in the City of Oberlin.
- (h) Business Allocation Percentage Formula (Ohio R.C. 718.02).

- (1) Net profits from a business or profession conducted both within and without the boundaries of the City of Oberlin shall be considered as having a taxable situs in the City of Oberlin for the purpose of income taxation in the same proportion as the average ratio 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 Oberlin during the taxable period to the average original cost of all of the real tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated. As used in this subsection, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.
  - B. Wages, salaries and other compensation paid during the taxable period to persons employed in business or profession for services performed in the City of Oberlin to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed. Wages, salaries, and other compensation shall be included to the extent that they represent qualifying wages.
  - C. Gross receipts of the business or profession from sales made and services performed during the taxable period in the City of Oberlin to gross receipts from sales and services, wherever made or performed.

In the event that the allocation formula in 181.02(h)(1) does not produce an equitable result another basis may, under uniform regulations, be substituted so as to produce such result.

- (2) As used in subsection (h)(1), "sale made in the City of Oberlin" means:
  - A. All sales of tangible personal property which is delivered within the City of Oberlin regardless of where title passes if shipped or delivered from a stock of goods within such City;
  - B. All sales of tangible property which is delivered within the City of Oberlin regardless of where title passes even though transported from a point outside such City if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Oberlin and the sales result from such solicitation or promotion;
  - C. All sales of tangible personal property which is shipped from a place within the City of Oberlin to purchasers outside such City regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(i) Consolidated Returns.

- (1) Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the City of Oberlin. However, once the affiliated group has elected to file a consolidated return or a separate return with the City of Oberlin, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the City of Oberlin.
- (2) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, the Finance Director shall require such information, in addition to the return hereinafter provided for,

as he may deem necessary to ascertain whether net profits are properly allocated to the City of Oberlin. If the Commissioner finds net profits are not properly allocated to the City of Oberlin by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, he may require the filing of a consolidated return or adjust such transactions so as to produce a fair and proper allocation of net profits to the City of Oberlin.

#### **181.03 EFFECTIVE PERIOD.**

Said taxes shall be levied, collected and paid with respect to the income, qualifying wages, commissions and other compensation, and with respect to the net profits of persons, businesses, professions or other activities earned from January 1, 1999, at the rate of one and one-half percent (1-1/2%) per annum to and including the date of revocation of Ordinance No. 507 AC CMS; one-fifth of one percent (1/5%) additional tax from January 1, 1999 to December 31, 2008; one-fifth of one percent (1/5%) additional tax from January 1, 2005 to December 31, 2009.

#### **181.04 RETURN AND PAYMENT OF TAX.**

- (a) (1) Whether or not a tax is due, Each taxpayer whose earnings or profits are subject to the tax imposed by this chapter, shall, on or before April 15, 1968, and on April 30 thereafter for years prior to taxable year 2004, and on or before April 15th for taxable years 2004 and later, make and file a final return with the Finance Director on a form obtainable from the Finance Director, or on a generic form as defined in this chapter, setting forth the aggregate amount of income, salary, wages, or other compensation and net profits earned by him during the preceding year or period and subject to said tax, together with other pertinent information as the Finance Director may require. However, retirees having no income considered taxable for Oberlin income tax purposes may file, with the Finance Director, a written request for exemption from these filing requirements, and shall be exempt if the request is granted by the Finance Director. Such exemption shall be in effect until such time as the retiree receives income taxable for Oberlin income tax purposes, at which time the retiree shall be required to comply with all applicable provisions of this chapter.
  - (2) When the final return is made for a fiscal year or other period different from the calendar year, the return shall be made within 105 days from the end of said fiscal year or other period.
  - (3) Pertinent information may include, but not be limited to, copies of all W-2 forms, 1099 Miscellaneous Income Forms, page one of form 1040, Page One and Two of Form 1120, 1120S (including (K-1)), 2106, 1065, Schedule C (including cost of goods manufactured and/or sold), Schedule E, schedule F and any other Federal Schedules if applicable.
  - (4) Expenses reported in accordance with federal guidelines for federal form 2106 (Including the requirement that they equal at least 2% of taxable income) are deductible, but are subject to review and audit by Oberlin's Finance Department. The 2106 expenses must be apportioned to municipalities in the same manner to which the related income is apportioned.
- (b) The return shall also show the amount of the tax imposed on such earnings and profits. The taxpayer making the said return shall, at the time of the filing thereof, pay to the Finance Director the amount of taxes shown as due thereon. Provided, however, that where such portion of said tax shall have been paid by such taxpayer pursuant to the provisions of Section 181.05 and/or Section 181.06, credit for the amount so paid shall be deducted from the amount

shown to be due and only the balance, if any, shall be due and payable at the time of filing said final return.

(c) Upon written request of the taxpayer the Finance Director may extend the time for filing the annual return for a period of not more than six months or not more than thirty days beyond any extension requested of and granted by the Bureau of Internal Revenue for the filing of the Federal Income Tax Return. For taxable year 2004 the extended due date shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. for taxable years subsequent to 2004 the extended due date shall be the last day of the month to which the due date of the federal income tax return has been extended, if the annual return is filed through the Ohio Business Gateway. If not filed through the Ohio Business gateway the extended due date remains the last day of the month following the month to which the due date of the federal income tax return has been extended. The Finance Director may deny the extension if the taxpayer's income tax account with the City of Oberlin is delinquent in any way.

(d) The officer(s) or employee(s) of such employer having control or supervision or charged with the responsibility of withholding the tax and making the payment, shall be personally liable for failure to withhold or pay the tax, penalties, or interest due as required herein. The dissolution, bankruptcy or reorganization or other fundamental change of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to withhold the tax or pay taxes, penalties, or interest due.

(e) Any business, profession, association or corporation reporting a net loss is subject to the filing requirements of this ordinance.

(f) A loss from the operation of a business may not be used to offset the income on a taxpayer's W-2 Form.

(g) Effective for taxable years beginning on or after July 1, 2006, net operating losses may be carried forward for three (3) years. No portion of a net operating loss shall be carried back against net profits of a prior year. Losses shall not be allowed (in whole or in part) to be allocated to Oberlin as loss carry forward if the loss occurred during a time period in which gross receipts (in whole or in part) were not allocated and reported to Oberlin.

(h) 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 Sections 11 and 15. Such amended returns shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting (i.e., cash or accrual) 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 tax liability to the City of Oberlin, such taxpayer shall make and file an amended City of Oberlin tax return showing income subject to the City of Oberlin income tax based upon such final determination of federal tax liability, and pay an additional tax shown due thereon or make claim for refund of any overpayment.

#### **181.05 COLLECTION AT SOURCE.**

(a) Each employer within the City of Oberlin who employs within the City one or more persons on an income, salary, wage, commission or other compensation basis, excluding exempted income set forth in Section 181.16, shall deduct at the time of the payment of such income, salary, wage, commission or other compensation, the amount of tax levied under this chapter of income, salaries, wages, commissions or other compensations due by the said

employer to the said employee and shall make a return and pay to the City Treasurer the amount of taxes so deducted as follows:

- (1) Said returns shall be on a form or forms prescribed by the Finance Director, or on any acceptable generic form acceptable to the Finance Director.
- (2) If the taxes withheld by an employer for the City during the previous tax year averaged three hundred dollars (\$300) per month or more, the employer shall remit payment of the withheld taxes to Oberlin on or before the last day of the month following the month for which the taxes were withheld.
- (3) If the taxes withheld by an employer for Oberlin during the previous tax year averaged less than three hundred dollars (\$300) per month, payments may be remitted quarterly on or before the last day of the month following the end of the quarter for which the taxes were withheld. Authorization for any employer to remit taxes quarterly under this subsection may be withdrawn by the Finance Director, should the Finance Director determine that the employer is not in compliance with the withholding requirements and/or other requirements of this chapter.

(b) Such employer, in collecting said tax, shall be deemed to hold the same as trustee for the benefit of the City of Oberlin until payment is made by such employer to the City, and any such tax collected by an employer from the employer's employees, shall, until same is paid to the City of Oberlin, be deemed a trust fund in the hands of such employer. The Responsibility and liability of officers and employees herein shall be the same as the provisions of subsection 181.04(d).

(c) All employers that provide any contractual service within the City of Oberlin, and who employ subcontractors in conjunction with that service, shall provide the City of Oberlin the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax employer requirements under this chapter.

(d) On or before February 28<sup>th</sup> of each year, each employer shall file a withholding return setting forth the name, address, and social security number 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 Finance Director. All payments not subject to withholding shall be reported on a form required by the Finance Director.

(e) On or before February 28 of each year all individuals, businesses, employers, brokers or other who engage persons, either on a fee or commission basis or as independent contractors and not employees (those who are not subject to withholding) must provide the City of Oberlin Income Tax Department with copies of all 1099 Miscellaneous Income Forms and/or a list of names, addresses, Social Security numbers and a total amount of earnings, payments, bonuses, commissions and/or fees paid to each person.

(f) No person shall be required to withhold the tax on the wages or other compensation paid domestic employees that are employed exclusively in or about such person's residence. However, such domestic employees shall be responsible for filing returns and paying taxes (including estimated payments) in accordance with the provisions of this chapter.

#### **181.06 DECLARATIONS.**

(a) Every taxpayer who anticipates any income from which the full amount of City tax will not be withheld and/or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 181.05 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. However, if a taxpayer's annual income tax liability from which the tax will not be

fully withheld is less than three hundred dollars (\$300.00), such person need not file a declaration.

(b) Such declaration shall be filed upon a form prescribed by the Finance Director or on a generic form as defined in this chapter, which form may simply state that the figures used in making such declaration are the figures used in making the declaration of the estimate for the federal income tax, provided that it is understood that such figures may be modified according to the provisions of this chapter so that the declaration required by this section shall set forth only such income as is taxable under the provisions of this chapter.

(c) Such declaration shall be filed on or before April 15<sup>th</sup> during the life of this chapter. Those taxpayers reporting on a fiscal year basis shall file a declaration within 105 days after the beginning of each fiscal year.

- (1) Such declarations of estimated tax to be paid by taxpayers who are individuals shall be accompanied by a payment of at least one-fourth the estimated tax required to be paid by this section, and at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year; provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.
- (2) Such declarations of estimated tax to be paid by taxpayers who are corporations and associations shall be accompanied by a payment of at least one-fourth of the estimated tax required to be paid by this section, and at least a similar amount shall be paid on or before the fifteenth day of the sixth, ninth, and twelfth months of the taxable year. Provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(d) no penalties or interest shall be assessed, for not filing a declaration, on any resident taxpayer who was not domiciled in the City of Oberlin, Ohio, on the first day of January in the year in which they became subject to estimated payments, nor shall penalties or interest be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period and the taxpayer filed a return for that year, nor shall penalties or interest be assessed on estimated payments if the taxpayer has remitted an amount equal to ninety percent of the final tax liability for the tax year due on or before April 15<sup>th</sup> of the current year.

(e) Amended Declaration.

An amended declaration may be filed with the filing of any quarterly return provided, however, that in the case of an amended declaration being filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(f) Should it appear that such taxpayer has paid more than the amount of tax to which the City of Oberlin is entitled, a refund of the amount so overpaid shall be made, or same may be applied toward the declaration of tax for the ensuing year. Claims for refunds shall be made on forms prescribed by and obtainable from the Finance Director or on a generic form as defined in this chapter.

#### **181.07 CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES.**

Every individual taxpayer who resides in the City of Oberlin, but who receives net profits, income, salaries, wages, net rentals, commissions or other personal service compensation for work done or services performed or rendered outside of said City, if it be made to appear that he has paid a municipal income tax on such net profits, income, salary, wages, net rentals, commission or other compensation to another municipality, shall be allowed a credit against the



tax imposed by this chapter of the amount so paid by him or in his behalf to such other municipality. The credit shall not exceed the tax assessed by this chapter on such net profit, income, salary, wages, net rentals, commission or compensation earned in such other municipality or municipalities where such tax is paid.

#### **181.08 DUTIES OF THE FINANCE DIRECTOR AND CITY TREASURER.**

(a) It shall be the duty of the City Treasurer 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 all monies received. All cashiers handling tax monies shall be subject directly to the City Treasurer and shall give daily accountings to the City Treasurer.

(b) It shall be the duty of the Finance Director to enforce payments of all taxes owing to the City of Oberlin, to keep accurate records for a minimum of ~~five~~ six years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amount of payments thereof.

(c) The Finance Director is hereby charged with the enforcement of the provisions of this chapter and to enforce the rules and regulations relating to any matter or thing pertaining to the collection of the City income taxes and the administration and enforcement of the provisions of this chapter, including provisions for the examination and correction of returns and payments. Taxpayers are required to comply with the requirements of this chapter and any rules and regulations promulgated thereto.

(d) In any case where a taxpayer has failed to file a return or has filed a return which does not show proper amount of tax due, the Finance Director may determine the amount of tax appearing to be due the City of Oberlin from the taxpayer and shall send such taxpayer a written statement showing the amount of tax determined, together with interest and penalties thereon, if any. Such determination may be modified or amended based upon information or data subsequently secured by or made available to the Finance Director. If the taxpayer fails to respond to the assessment within 30 days the assessment shall become final and the tax, penalties, and interest assessed shall become due and payable and collectible as are other unpaid taxes.

(e) The Finance Director shall have the power to compromise any interest or penalty or both, imposed by this chapter.

(f) The Finance Department shall be charged with the administration and operation of this chapter, under the direction of the Finance Director. The Finance Director shall prescribe the form and method of accounts and reports for said department, as well as the forms for taxpayers' returns and declarations, and shall be charged with the internal examination and audit of all such accounts, and shall exhibit accurate records showing the amount received from each taxpayer, and the date of said receipt. The Finance Director shall also make a written report to Council annually of all monies collected hereunder during the preceding year.

#### **181.09 INVESTIGATIVE POWERS OF THE FINANCE DIRECTOR.**

(a) The Finance Director, or the Finance Director's duly authorized agent or employee, is hereby authorized to examine the books, papers, and records, including applicable tax records, of any employer, or any taxpayer or person subject to the tax, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due. within ten (10) calendar days following a written request by the Finance Director or the Finance Director's duly authorized agent or employee, every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish the Finance Director or the Finance Director's duly authorized agent or employee, the means, facilities, and opportunity for making such examination and investigation as are hereby authorized.

(b) The Finance Director, or the Finance Director's duly authorized agent or employee, is hereby authorized to examine any person, employer, or employee under oath, concerning any income which was or should have been returned for taxation, and for this purpose may compel the production of books, papers, and records, including applicable tax records, and the attendance of all persons before him, whether as parties or witnesses, wherever he believes such persons have knowledge of such income.

(c) The refusal of such examination by any employer, employee or persons subject or presumed to be subject to the tax shall be deemed a violation of this chapter.

(d) Tax returns and all audit papers and information connected therewith are confidential and shall be carefully preserved so that they shall not be available for inspection by anyone other than the proper agents of the City of Oberlin for official tax purposes.

(e) Any information gained as the result of the filing of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official tax purposes and except in accordance with proper judicial order. Any person divulging such information except for official purposes shall be subject to a fine or penalty of not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both. Each disclosure shall constitute a separate offense. In addition to the above penalties, any employee of the City of Oberlin who violates the provisions of the section relative to disclosures of confidential information shall be subject to disciplinary action, including possible dismissal, from the service of the City.

#### **181.10 INTEREST AND PENALTIES.**

(a) All taxes imposed by this chapter, including taxes withheld from wages by an employer and remaining unpaid after they have become due, shall bear interest on the amount of the unpaid tax at the rate of six percent (6%) per annum, and the taxpayers upon whom said taxes are imposed, and the employers required by this chapter to deduct, withhold and pay taxes imposed by this chapter shall be liable, in addition thereto, to a penalty of one-half of one percent of the amount of the unpaid tax for each month or fraction of a month, or five dollars (\$5.00) per month or fraction of a month, whichever is greater.

(b) In the case of a taxpayer who fails to file his or her return when due, and who is not otherwise exempt from the filing requirement, the Finance Director may impose an administrative penalty of twenty-five dollars (\$25.00) for the first untimely filing and fifty dollars (\$50.00) for each subsequent untimely filing, in addition to any other penalties which may otherwise be imposed.

(c) Upon recommendation of the Finance Director, the Board of Review may abate interest or penalties or both, and upon appeal from the refusal of the Finance Director to so recommend, the Board of Review may nevertheless abate interest or penalty, or both.

#### **181.11 COLLECTION OF UNPAID TAXES; REFUNDS.**

(a) All taxes imposed and administered by this chapter shall be collectable, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. All additional assessments shall be made and all civil actions to recover municipal income taxes and penalties and interest thereon shall be brought within three years after the tax was due or the return was filed, whichever is later. However, In the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover Municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later.

(b) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date on which such payment was made or the return was due, or

within three months after final determination of the Federal tax liability, whichever is later. However, the following shall apply regarding refunds of tax withheld from non-qualified deferred compensation plans (NDCP):

- (1) A taxpayer may be eligible for a refund if the taxpayer has suffered a loss from a NDCP. The loss will be considered sustained only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to the NDCP. Full loss is sustained if no distribution of money and property will be made by the NDCP.
- (2) A taxpayer who receives income as a result of payments from a NDCP, and that income is less than the amount of income deferred to the NDCP and upon which municipal tax was withheld, then a refund will be issued on the amount representing the difference between the deferred income that was taxed and the income received from the NDCP. If different tax rates applied to the tax years in which deferrals were made by the taxpayer, a weighted average of the different tax rates will be used to compute the refund amount.
- (3) Refunds shall be allowed only if the loss is attributable to the bankruptcy of the employer who had established the NDCP, or the employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified compensation.

(c) Income tax that has been deposited with the City of Oberlin, but should have been deposited with another municipality, is allowable by the City of Oberlin as a refund but is subject to the three-year limitation on refunds. Income tax that should have been deposited with the City of Oberlin, but was deposited with another municipality, shall be subject to recovery by the City of Oberlin. The City of Oberlin will allow a non-refundable credit for any amount owed the City of Oberlin that is in excess of the amount to be refunded by the other municipality, as long as the tax rate of the other municipality is the same or higher than the City of Oberlin tax rate. If the City of Oberlin tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the City of Oberlin.

(d) Amounts less than five dollars (\$5.00) shall not be refundable.

(e) Payments on delinquent amounts shall be applied in the following manner:

- (1) To unpaid penalty and interest assessments in the order in which such assessments became due.
- (2) To the taxes owed for any previous year in the order in which such taxes became due.
- (3) To the taxpayer's current estimated tax liability.

#### **181.12 VIOLATIONS; PENALTY.**

(a) The following shall be considered violations of this chapter:

- (1) Failing, neglecting or refusing to make any return or declaration required by this chapter; or
- (2) Making any incomplete, false or fraudulent return; or
- (3) Failing, neglecting or refusing to pay the tax, penalties, and interest imposed by this chapter; or
- (4) Failing, neglecting or refusing to withhold the tax from employees or to remit such withholding to the City Treasurer; or
- (5) Refusing to permit the Finance Director or any duly authorized agent or employee to examine books, records (including applicable tax records), and papers relating to the income or net profits of a taxpayer; or
- (6) Failing to appear before the Finance Director and to produce books, records (including applicable tax records), and papers relating to the income or net profits of a taxpayer under order or subpoena of the Finance

- Director; or
- (7) Refusing to disclose to the Finance Director any information with respect to the income or net profits of a taxpayer; or
  - (8) Failing to comply with the provisions of the chapter or any order or subpoena of the Finance Director authorized hereby; or
  - (9) Attempting to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

(b) Any person who violates any of the provisions of Section 181.12(a) above shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both, for each offense.

(c) All prosecutions under this chapter must be commenced within the time prescribed under Ohio R.C. 718.12.

(d) 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 or declaration, from filing such form, or from paying the tax.

#### **181.13 ALLOCATION OF FUNDS.**

The funds collected under the provisions of this chapter shall be deposited in the respective Funds and used for the following purposes, to wit:

- (a) Such part thereof as shall be necessary to defray all cost of collecting the taxes and the cost of administering and enforcing the provisions thereof.
- (b) A sum equal to the amount of taxes collected per year from the additional one-half percent (½%) in effect from January 1, 2004, shall be used for capital improvements and operating expenses.
- (c) A sum equal to the amount of taxes collected per year from the additional one-fifth of one percent (1/5%) in effect from January 1, 1999 through December 31, 2008 shall be used for capital improvements and debt retirement for the City of Oberlin Waste Water Treatment Plan.
- (d) A sum equal to the amount of taxes collected per year from the additional one-fifth of one percent (1/5%) in effect from January 1, 2005 through December 31, 2009, shall be used for the purpose of providing funds for operating and capital improvement expenses for the City of Oberlin.
- (e) The balance of such tax receipts collected shall be allocated to the General Fund of the City.

#### **181.14 BOARD OF REVIEW.**

(a) A Board of Review, consisting of five electors of the City of Oberlin, to be appointed in the same manner as other City committees, is hereby created. No member shall be appointed to the Board of Review who holds other public office or appointment. The members of the Board of Review shall serve without pay.

(b) A majority of the members of the Board of Review shall constitute a quorum. The Board of Review shall adopt its own procedural rules and shall keep a record of its transactions.

(c) All hearings of the Board of Review shall be conducted privately and the provisions of Section 181.09 hereof 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 of Review on appeal.

(d) Any person dissatisfied with any ruling or decision of the Finance Director which is made under the authority conferred by this chapter and who has filed the required returns or

other documents pertaining to the contested issue may appeal therefrom to the Board of Review within thirty days from the announcement of such ruling or decision by the Finance Director. The request shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board of Review shall, on hearing, have jurisdiction to affirm, or reverse, or modify such ruling or decision, or any part thereof. The Board must schedule a hearing within forty-five (45) calendar days of receiving the appeal. The Board must issue a written decision within ninety (90) days after the final hearing and send a notice of its decision by ordinary mail to the taxpayer within 15 days after issuing the decision.

(e) Any person dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to a court of competent jurisdiction within thirty calendar days from the announcement of such ruling or decision. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Review may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

(f) The Board of Review, as hereinbefore created, shall serve for a period of three years and thereafter successors for a like period shall be appointed in the same manner as the original appointment.

#### **181.15 SAVINGS CLAUSE.**

This chapter shall not apply to any person, firm, corporation, or to any other 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 any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall effect only such sentence, clause, section or part of this chapter and shall not affect or impair 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.

#### **181.16 EXEMPTIONS.**

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

- (a) The Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the National Guard.
- (b) Poor relief, pensions, social security, unemployment compensation (but not including supplemental unemployment compensation), and disability benefits from private industry or local, state or federal governments, or from charitable, religious or educational organizations.
- (c) Dues, contributions and similar payments received by charitable, religious, or educational or literary organizations or labor unions, lodges and similar organizations.
- (d) Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from casual entertainment, amusements, sports events and health and welfare activities conducted by bona fide charitable, religious and educational organizations and associations.
- (e) The income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities and only to the extent that the said income is exempt from federal income tax.
- (f) Gains from involuntary conversions, cancellation of indebtedness, items of income already taxed by the State of Ohio from which the City 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).
- (g) Earnings and income of all persons under 18 years of age, whether residents or nonresidents.

- (h) Compensation for personal injuries or for damages to property by way of insurance or otherwise, but this exception does not apply to compensation paid for lost salaries or wages or to compensation from punitive damages.
- (i) Compensation paid to a precinct election official, to the extent that such compensation does not exceed \$1,000 annually.
- (j) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained clergy's compensation. The clergy must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination, and must have authority to perform all sacraments of the religious body.
- (K) Income, 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, and/or is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of a municipality to impose net income taxes.

#### **181.17 COLLECTION AFTER TERMINATION OF CHAPTER.**

(a) This chapter shall continue in effect insofar as the levy of taxes is concerned until the same has been repealed. Insofar as the collection of taxes levied or enforcing any provision of this chapter are concerned, it shall continue in effect until all of such taxes levied in the aforesaid period are fully paid and all suits and prosecutions for the collection of such taxes, or for the punishment of violations of this chapter, shall have been fully terminated. The provisions of Section 181.17 (a) are subject to the limitations contained in Sections 181.11 and 181.12.

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

#### **181.18 RULES AND REGULATIONS.**

The City hereby adopts the Regional Income Tax Agency (RITA) Rules & Regulations, including amendments that may be made from time to time, for use as the City of Oberlin's Income Tax Rules and Regulations. In the event of a conflict with any provision(s) of the City of Oberlin Income Tax Ordinance and the RITA Rules & Regulations, the Ordinance will supersede.