

**ORDINANCE 2004-15**  
**BY**  
**MAYOR LARRY A. SHOCK**

**AN ORDINANCE AMENDING §36.20 THROUGH §36.99 OF THE NEW LEBANON CODE OF ORDINANCES PERTAINING TO THE MUNICIPALITY OF NEW LEBANON INCOME TAX.**

**WHEREAS**, the New Lebanon Income Tax Ordinance has not been amended since 1978; and

**WHEREAS**, the State of Ohio and the Internal Revenue Service have made numerous changes to their Income Tax Codes; and

**WHEREAS**, the Municipality of New Lebanon must comply with both the State of Ohio Revised Code Section 718 and the Internal Revenue Service tax codes; and

**WHEREAS**, in State of Ohio Revised Code Section 718 such changes will adopt a uniform definition of taxable income for net profits tax returns, adopts a uniform withholding base/employee compensation tax base, eliminates de minimis withholding safe harbor, establishes uniform due dates, federal extensions affect municipal tax due dates, changes where appeals can be filed, establishes Ohio business Gateway;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Municipality of New Lebanon, Ohio: that:

**SECTION 1.** That §36.20 through §36.99 of the New Lebanon Code of Ordinance be amended as follows:

**CHAPTER 36: MUNICIPAL FINANCE AND TAXATION**

Section

*Income Tax*

36.20	Purpose
36.21	Definitions
36.22	Imposition of tax
36.23	Effective period
36.24	Return and payment of tax
36.25	Collection at source
36.26	Declarations
36.27	Duties and powers of the Director of Finance and Records
36.28	Investigative powers of the Director; penalty for divulging confidential information
36.29	Interest and penalties
36.30	Collection of unpaid taxes and refund of overpayment
36.31	Board of Adjudication and Board of Tax Appeals
36.32	Collection of tax after termination of chapter
36.33	Allocation of funds
36.34	Credit for residents working in joint economic development districts
36.99	Penalty

***Cross-reference:***

*Annual audits, see Charter § 6.13*

***Appropriations***

*Appropriation budget, see Charter § 6.03*

*Annual appropriation ordinance, see Charter § 6.04*

*Budget as appropriation, see Charter § 6.05*

*Date of final adoption, see Charter § 6.06*

*Failure to adopt, see Charter § 6.06*

*Lapse of, see Charter § 6.08*

*Transfer of, see Charter § 6.07*

*Capital program, see Charter § 6.09*

*Competitive bidding, see Charter § 6.10*

*Emergency appropriations, see Charter § 6.11*

*Fees, see Charter § 6.12*

*Fiscal year, see Charter § 6.01*

*Preparation and submission of budget estimates, see Charter § 6.02*

*Taxation and finance generally, see Charter Art. VI*

*Zoning Code, see Ch. 152*

***INCOME TAX***

*Which reads as follows:*

**§ 36.20 PURPOSE.**

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension, and enlargement of municipal services and facilities, and capital improvements of the municipality, there is levied a tax on salaries, wages, commissions and other compensation, and on net profits.

*Is hereby amended to read:*

**§ 36.20 PURPOSE.**

**To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension, and enlargement of municipal services and facilities, and capital improvements, including debt service charged thereon; of the municipality, there is levied a tax on salaries, wages, commissions, gambling winnings and other compensation, and on net profits.**

('80 Code, § 93.01) (Ord. 741, passed 4-3-73)

***Statutory reference:***

*Municipal income tax, see R.C. Ch. 718*

**§ 36.21 DEFINITIONS.**

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

*Which reads as follows:*

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

*Is hereby amended to read:*

**ASSOCIATION.** A partnership, limited partnership, limited partnership association, professional association, partnership with limited liability, limited liability company, unincorporated association, business trust, real estate investment trust, joint venture, joint adventure, or any other form of unincorporated enterprise, owned by two or more persons.

**BOARD OF ADJUDICATION.** The Board created by and constituted as provided in § 36.31(A).

**BOARD OF TAX APPEALS.** The Board created by and constituted as provided in § 36.31(B).

*Which reads as follows:*

**BUSINESS.** An enterprise, activity, profession, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation, or any other entity.

*Is hereby amended to read:*

**BUSINESS.** An enterprise, profession, undertaking or other activity of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, association, corporation, trust or any other entity.

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

**DIRECTOR OF FINANCE AND RECORDS.** The Director of Finance and Records of the Municipality of New Lebanon, or the person executing the duties of the aforesaid Director of Finance and Records.

**EMPLOYEE.** One who works for wages, salary, commission, or other type of compensation in the service of an employer.

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

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

*Is hereby added:*

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

*Is hereby added:*

**GENERIC FORM.** An electronic or paper form designed for reporting estimated income taxes and annual income tax liability that is not prescribed by the Director of Finance and Records for the reporting of the income tax.

**GROSS RECEIPTS.** The total income from any source whatsoever required to be included in the return.

*Is hereby added:*

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

*Is hereby added:*

**INTANGIBLE INCOME.** Income of any of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in the Ohio Revised Code Chapter 5701.

*Is hereby added:*

**INTERNET.** The international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical sub-network now known as the world wide web.

*Is hereby added:*

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

*Which reads as follows:*

**NET PROFIT.** The net gain from the operation of a business, profession, enterprise, or other activity, excluding capital gains and losses, after provision for all ordinary and necessary expenses paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, adjusted to the requirements of this chapter.

*Is hereby amended to read:*

**NET PROFIT.** The net gain from the operation of a business, excluding capital gains and losses, after provision for all ordinary and necessary expenses paid or accrued in accordance with the

accounting system used by the taxpayer for federal income tax purposes, adjusted to the requirements of this chapter.

**NONRESIDENT.** Any individual who is not a resident as herein defined.

*Which reads as follows:*

**NONRESIDENT UNINCORPORATED BUSINESS ENTITY.** An unincorporated business entity not having a place of business within the Municipality of New Lebanon, Ohio.

*Is hereby amended to read:*

**NONRESIDENT UNINCORPORATED BUSINESS ENTITY.** A person other than a corporation not having a place of business within the municipality.

**OTHER ACTIVITY.** An undertaking, not otherwise specifically defined herein, 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.

*Is hereby added:*

**OTHER PAYER.** Any person that pays an individual any item included the taxable income of the individual, other than the individual's employer or that employer's agent.

*Is hereby added:*

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

*Is hereby added:*

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

*Is hereby added:*

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

*Which reads as follows:*

**PERSON.** Every natural person, partnership, fiduciary, association, or corporation. 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.

*Is hereby amended to read:*

**PERSON.** An individual (natural person), partnership, association, or corporation. Whenever used in any section prescribing and imposing a penalty, the term **PERSON** includes an officer or employee of a corporation, or a member, partner, or employee of an association, who, as such officer, employee, partner, or member, is under a duty to perform the act in respect of which the violation occurs.

*Which reads as follows:*

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

*Is hereby amended to read:*

**PLACE OF BUSINESS.** Any bona fide office (other than mere statutory office), factory, warehouse, or other space which is a period after activity and used by the taxpayer in carrying on a business activity.

**RESIDENT.** An individual domiciled in the Municipality of New Lebanon. Any person who maintains a place of abode within the municipality for a total of 183 days or more within any 12-month period shall be deemed a resident.

*Which reads as follows:*

**RESIDENT UNINCORPORATED BUSINESS ENTITY.** An unincorporated business entity having a place of business within the municipality.

*Is hereby amended to read:*

**RESIDENT UNINCORPORATED BUSINESS ENTITY.** A person other than a corporation having a place of business within the municipality.

*Is hereby added:*

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

*Is hereby added:*

**SCHEDULE C.** Internal Revenue Service Schedule C of Form 1040 filed by a taxpayer pursuant to the Internal Revenue Code.

**TAXABLE INCOME.** Gross wages, salaries, and other compensation paid by an employer or employers before any deductions, other than ordinary and necessary business expenses in the same manner as provided by the Internal Revenue Code, and/or net profits as herein defined. On all income received as

gambling winnings as reported to the Internal Revenue Service 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.

**TAXABLE YEAR.** The calendar year, or the fiscal year on 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 the return is required to be made. Unless approved by the Director of Finance and Records, the taxable year of a wage earner shall be a calendar year.

*Which reads as follows:*

**TAXPAYER.** A person, whether an individual, partnership, association, or any corporation or other entity, required hereunder to file a return or pay a tax. ('80 Code, § 93.02) (Ord. 741, passed 4-3-73)

*Is hereby amended to read:*

**TAXPAYER.** A person, whether an individual, association, corporation or other entity, required hereunder to file a return or pay a tax. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

#### **§ 36.22 IMPOSITION OF TAX.**

(A) An annual tax for the purposes specified in § 36.20 shall be imposed for the period beginning July 1, 1973, and running until this chapter is repealed, at the rate of 1% per annum on the following:

*Which reads as follows:*

(1) On all salaries, wages, commissions, and other compensation earned during the effective period of this chapter by residents of the municipality.

*Is hereby amended to read:*

**(1) On all salaries, wages, commissions and other compensation and all other income from whatever source which is permitted by Ohio law to be taxed, which is earned, received, accrued or otherwise set apart during the effective period of this chapter by residents of the Municipality of New Lebanon.**

*Which reads as follows:*

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

*Is hereby amended to read:*

**(2) On all salaries, wages, commissions and other compensation and all other income from whatever source which is permitted by Ohio law to be taxed, which is earned, received, accrued or otherwise set apart during the effective period of this chapter by nonresidents for work done or**

**services performed or rendered in the Municipality of New Lebanon.**

*Which reads as follows:*

(3) (a) On the portion attributable to the municipality, of the net profits earned or accrued during the effective period of this chapter of all resident associations, unincorporated businesses, professions, or other entities, derived from sales made, work done, services performed or rendered, and business or other activities conducted in the municipality.

*Is hereby amended to read:*

**(3) (a) On the portion attributable to the municipality, of the net profits earned and accrued or received during the effective period of this chapter of all resident associations, unincorporated businesses, professions, or other entities, derived from sales made, work done, services performed or rendered, and business or other activities conducted in the municipality.**

*Which reads as follows:*

(b) On that 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 unincorporated business entity, not attributable to the municipality, upon which the tax was not paid by the entity.

*Is hereby amended to read:*

**(b) On that 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, member, other beneficiary or distributee, or owner of a resident unincorporated business entity, not attributable to the municipality, upon which the tax was not paid by the entity.**

*Which reads as follows:*

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

*Is hereby amended to read:*

**(4) (a) On the portion attributable to the municipality of the net profits earned and accrued or received during the effective period of this chapter, of every non-residence unincorporated business entity derived from sales made, work done or services performed or rendered and business or other activities conducted in the Municipality, whether or not such unincorporated business entity has an office or place of business in the Municipality.**

*Which reads as follows:*

(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 non-resident association or other unincorporated business entity not attributable to the municipality, on which the tax was not paid by the entity.

*Is hereby amended to read:*

**(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, owner, member, other beneficiary or distributee or owner of a non-resident unincorporated business entity not attributable to the Municipality of New Lebanon on which the tax was not paid by the entity.**

(5) On the portion attributable to the municipality of the net profits earned and accrued or received during the effective period of this chapter of all corporations derived from sales made, work done, or services performed or rendered and business or other activities conducted in the municipality, whether or not the corporations have a place of business in the municipality.

*Is hereby added:*

**(6) If a taxpayer's taxable income includes income against which the taxpayer has taken a deduction for federal income tax purposes as reportable on the taxpayer's form 2106, the amount of the deduction for federal income tax purposes may be deducted from the Municipality of New Lebanon income tax base.**

*Is hereby added:*

**(7) An individual taxpayer that has a net profit from a sole proprietorship he or she conducts, the schedule C actually filed for federal purposes shall be filed by the taxpayer to determine his or her net income from that proprietorship, as part of the Municipality of New Lebanon income tax return.**

(B) This § 36.22(B) does not apply to electric companies or combined companies, or to electric light companies for which an election made under R.C. § 5745.031 is in effect.

(1) In the taxation of income that is subject to the municipal income tax, if the books and records of the taxpayer conducting a business or profession both within and without the boundaries of the municipality disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the municipality, then only such portion shall be considered as having a taxable situs in the municipality for purposes of the municipal income tax. In the absence of such records, net profit from a business or profession conducted both within and without the boundaries of the municipality shall be considered as having a taxable situs in the municipality for purposes of the municipal income tax in the same proportion as the average ratio of:

(a) The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in the municipality during the taxable period to the average net book value 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. As used in this division (1), 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;

*Which reads as follows:*

(b) Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the municipality to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the municipality under R.C. § 718.011;

*Is hereby amended to read:*

**(b) Wages, salaries, and other compensation paid or accrued during the taxable period to persons employed in the business or profession for services performed in the municipality 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 performed.**

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

(2) If the foregoing allocation formula does not produce an equitable result, another basis may be substituted, under uniform regulations, so as to produce an equitable result.

(3) As used in division (B)(1) of this section, the phrase ***SALES MADE IN THE MUNICIPALITY OF NEW LEBANON*** shall mean:

(a) All sales of tangible personal property delivered within the municipality regardless of where title passes, if shipped or delivered from a stock of goods within the municipality;

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

(c) All sales of tangible personal property shipped from a place within the municipality to purchasers outside the municipality, 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. (R.C. § 718.02)

(C) For the purpose of this section, the taxable base shall be determined in accordance with federal tax interpretations, when applicable, and with the accounting method used by the taxpayer for federal income taxes, adjusted to the requirements of this chapter.

(D) Consolidated returns.

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

(2) 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 municipality constituting a portion only of its total business, the Director of Finance and Records may require such additional information as he or she may deem necessary to ascertain whether net profits are properly allocated to the municipality. If the Director of Finance and Records finds net profits are not properly allocated to the municipality 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 or she shall make such allocation as he or she deems appropriate to produce a fair and proper allocation of net profits to the municipality.

(E) Exceptions. The tax provided for herein shall not be levied on:

*Which reads as follows:*

(1) Pay or allowances of active members of the Armed Forces of the United States, or the income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that this income is derived from tax exempt real estate, tax exempt tangible or intangible property, or tax exempt activities.

*Is hereby amended to read:*

**(1) The military pay or allowances of active members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard, or the income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that this income is derived from tax exempt real estate, tax exempt tangible or intangible property, or tax exempt activities.**

(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 they are conducted by bona fide charitable, religious, or educational organizations and associations.

*Which reads as follows:*

(5) Personal earnings of all persons under 16 years of age.

*Is hereby amended to read:*

**(5) Earnings and income of all persons under 16 years of age.**

*Which reads as follows:*

(6) Employment of newsboys, as such, under 18 years of age.

*Is hereby deleted.*

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

(8) 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 political subdivisions to impose net income taxes on income derived from interstate commerce.

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

*Which reads as follows:*

(10) A person 65 years of age or older who owns no more than one rental unit whose gross income is \$100 a month or less.

*Is hereby deleted.*

(11) Intangible income as defined by R.C. § 718.01(A)(4).

*Is hereby added:*

**(12) On and after January 1, 2003, items excluded from federal gross income pursuant to section 107 of the Internal Revenue Code.**

*Is hereby added:*

**(13) On and after January 1, 2001, compensation paid to a nonresident individual to the extent prohibited under section 718.011 of the Revised Code.**

*Is hereby added:*

**(14) Except as provided in division (H) of this section, an S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code, to the extent such distributive share would not be allocated or apportioned to this state under division (B)(1) and (2) of section 5733.05 of the Revised Code if the S corporation were a corporation subject to the taxes imposed under Chapter 5733. of the Revised Code.**

*Is hereby added:*

**(15) Employee compensation that is not “qualifying wages” as defined in section 718.03 of the Revised Code.**

*Is hereby added:*

**(16) On and after January 1, 2001, compensation paid to a nonresident individual for personal services performed by the individual in the municipal corporation on twelve or fewer days in a calendar year unless one of the following applies:**

*Is hereby added:*

**(a) The individual is an employee of another person; the principal place of business of the individual’s employer is located in another municipal corporation in this state that imposes a tax applying to compensation paid to the individual for services performed on those days; and the individual is not liable to that other municipal corporation for tax on the compensation paid for such purposes.**

*Is hereby added:*

**(b) The individual is 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 municipal corporation.**

('80 Code, § 93.03) (Ord. 741, passed 4-3-73; Am. Ord. 813, passed 5-18-76) Penalty, see § 36.99

***Statutory reference:***

*Items not subject to tax, see R.C. §§ 718.01 and 718.03*

*Municipal income tax, rate limitation without vote, see R.C. § 718.01*

### **§ 36.23 EFFECTIVE PERIOD.**

(A) This tax shall be levied, collected, and paid with respect to the salaries, wages, commissions, and other compensation received and shall be levied with respect to the net profits of businesses, professions, or other activities earned and accrued or received on and after July 1, 1973.

(B) Where the fiscal year of the business, profession, or other activity differs from the calendar year, the tax shall be applied to that part of the annual net profits for the fiscal year as shall be earned and accrued or received on and after July 1, 1973, to the close of the taxpayer's fiscal year.

('80 Code, § 93.04) (Ord. 741, passed 4-3-73)

### **§ 36.24 RETURN AND PAYMENT OF TAX.**

*Which reads as follows:*

(A) Each person who engages in business or other activity, within the municipality or who resides in the municipality, shall, whether or not a tax be due thereon, make and file a return on or before April 30 of the year following the effective date of this chapter, and on or before April 30 of each year thereafter.

When the return is made for a fiscal year or period, different from the calendar year, the return shall be filed within four months from the end of each fiscal year or period. The Director of Finance and Records is authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by the employer or employers from the salaries, wages, commissions, or other compensation of an employee, and paid by him, her or them to the Director of Finance and Records, 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.

*Is hereby amended to read:*

**(A) Each person and each resident who engages in business or other activity, within the municipality or who resides in the municipality, 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 period, different from the calendar year, the return shall be filed within four months from the end of each fiscal year or period. The Director of Finance and Records is authorized to provide by regulation that a generic return of an employer or employers, showing the amount of tax deducted by the employer or employers from the salaries, wages, commissions, or other compensation of an employee, and paid by him, her or them to the Director of Finance and Records, 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 Director of Finance and Records on a form or forms furnished by, or obtainable on request from, the Director setting forth:

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

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

(3) Other pertinent statements, information returns, or other information as the Director may require.

*Which reads as follows:*

(C) The Director of Finance and Records may extend the time for filing of the annual return on the request of the taxpayer for a period of not to exceed six 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. The Director may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due.

*Is hereby amended to read:*

**(C) The Director of Finance and Records may extend the time for filing of the annual return on the request of the taxpayer if the taxpayer has requested an extension for filing a federal income tax return. The taxpayer shall make request by filing a copy of the taxpayer's request for a federal filing extension. The request for extension shall be filed not later than the last day for filing the municipal**

**income tax return as prescribed by ordinance. 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. The Director of Finance and Records may deny a taxpayer's request for extension only if the taxpayer fails to timely file the request, fails to file a copy of the request for the federal extension, owes the municipality any delinquent income tax or any penalty, interest, assessment, or other charge for the late payment or nonpayment of income tax, or has failed to file any required income tax return, report, or other related document for a prior tax period. The granting of an extension for filing an income tax return does not extend the last date for paying the tax without penalty unless the Director of Finance and Records grants an extension of that date.**

(D) (1) The taxpayer making a return shall, at the time of the filing, pay to the Director the amount of taxes shown as due thereon. However, credit shall be allowed for:

(a) Any portion of the tax so due which shall have been deducted at the source pursuant to the provisions of § 36.25; and

(b) Any portion of the tax which shall have been paid by the taxpayer pursuant to the provisions of § 36.26; and

(2) Subject to the limitations contained in § 36.30, any taxpayer who has overpaid the amount of tax to which the municipality is entitled under the provision of this chapter, may have the overpayment applied against any subsequent liability hereunder, or, at his or her election indicated on the return, the overpayment, or part thereof, shall be refunded.

(E) (1) Amended returns. Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in § 36.30. The amended return shall be on a form obtainable on request from the Director. 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 Director.

(2) Within three months from the final determination of any federal tax liability affecting the taxpayer's municipal tax liability, the taxpayer shall make and file an amended municipal return showing income subject to the municipality based upon the 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. The failure to file these information returns, schedules, and statements shall be deemed to be a violation of this chapter. However, the taxpayer shall have ten days after notification by the Director of Finance and Records, or his or her authorized representative, to file the items required by this division. ('80 Code, § 93.05) (Ord. 741, passed 4-3-73; Am. Ord. 869, passed 2-21-78) Penalty, see § 36.99

### **§ 36.25 COLLECTION AT SOURCE.**

(A) (1) Each employer shall at the time of the payment of any salary, wage, commission, or other compensation, deduct the tax of 1% on and after July 1, 1973, of the gross salaries, wages, commissions, or other compensation due by the employer to his or her employees who are subject to the provisions of this chapter. In making the deductions 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 less than five shall be dropped. No person shall be entitled to a refund merely because the rounding off of the tax results in an apparent overpayment based on his or her total earnings. Each employer shall, on or before the last day of each month, make a return and pay to the Director of Finance and Records the tax withheld during the preceding month. However, the Director 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, and December 31, make a return and pay to the Director the tax withheld during the preceding calendar quarter. The approval for quarterly filings and payments may be withdrawn by the Director when it is to the best interest of the municipality to do so. The Director shall provide, by regulation, the manner in which the approval is to be granted or withdrawn.

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

(B) The employer in collecting the tax shall be deemed to hold it until payment is made by the employer to the municipality, as a Trustee for the benefit of the municipality, and any tax collected by the employer for his or her employees shall, until they are paid to the municipality, be deemed a trust fund in the hands of the employer.

(C) No person shall be required to withhold the tax on the wages or other compensation paid domestic servants employed by him or her exclusively in or about the person's residence, even though the residence is in the municipality, but the 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 1974, each employer shall file a withholding return in a form prescribed by and obtainable on request from the Director, 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 or her employees and other information as may be required by the rules and regulations adopted by the Director.

(E) Each employer, contractor, subcontractor, or business entity, either resident or nonresident, shall file a return listing each subcontractor, contractor, and laborer who has performed work within the taxable year and who would not be listed on the return set forth in division (A)(1).

*Is hereby added:*

**(F) For taxable years beginning after 2003, no municipal corporation shall require any employer or any agent of any employer or any other payer, to withhold tax with respect to any amount other than qualifying wages. Nothing in this section prohibits an employer from withholding tax on a basis greater than qualifying wages.**

*Is hereby added:*

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

*Is hereby added:*

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

*Is hereby added:*

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

*Is hereby added:*

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

('80 Code, § 93.06) (Ord. 741, passed 4-3-73; Am. Ord. 869, passed 2-21-78) Penalty, see § 36.99

## **§ 36.26 DECLARATIONS.**

(A) Every person who anticipates the receipt of any taxable income which is not subject to § 36.25, or who engages in any business, profession, enterprise, or activity subject to the tax imposed by § 36.22, shall file a declaration setting forth the person's estimated taxable income, together with any estimated tax due thereon, if any. However, if a person's income is wholly from wages from which the tax will be withheld and remitted to the municipality in accordance with § 36.25, the person need not file a declaration.

*Which reads as follows:*

(B) (1) Such declaration shall be filed on or before April 30 of 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.

*Is hereby amended to read:*

**(B) (1) Such declaration shall be filed on or before April 15 of each year during the life of this chapter, or within three and one half 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 within four months after the beginning of each fiscal year or period.

(C) (1) The declaration shall be filed on a form furnished by, or obtainable on request from, the Director of Finance and Records. However, credit shall be taken for the municipal tax to be withheld from any portion of such income to determine the estimated tax due.

(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 regulation of the Director, if it appears that the original declaration made for the taxable year underestimated the taxpayer's income by 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 on the filing of the return required by § 36.24 it appears that the taxpayer did not pay 70% of his or her tax liability, as shown on the return, on or before January 31, or the date fixed by regulation, whichever is applicable, the difference between 70% of the 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 § 36.29.

*Is hereby added:*

**(D) Beginning January 1, 2003, individual taxpayers seeking to remit a payment of estimated taxes shall remit such payments only as prescribed by divisions (D)(1) to (4) of this section, subject to divisions (E) and (G)(1) and (2) of this section:**

*Which reads as follows:*

(D) (1) The declaration of net estimated tax to be paid the municipality shall be accompanied by a payment of at least 1/4 of 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, and thirteenth months after the beginning of the taxable year. However, 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.

*Is hereby amended to read:*

**(D) (1) Not more than twenty-two and one-half per cent of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the fifteenth day of April or the day on which the annual tax return for the prior year is required to be filed disregarding any extension, as prescribed by ordinance or rule of the municipal corporation;**

*Which reads as follows:*

(2) However, the last quarterly payment of estimated tax need not be made if the taxpayer files his or her final return and pays the balance of the tax due thereon within 45 days following the end of his or her taxable year.

*Is hereby amended to read:*

**(2) Not more than forty-five per cent of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the thirty-first day of July;**

*Is hereby added:*

**(3) Not more than sixty-seven and one-half per cent of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the thirty-first day of October;**

*Is hereby added:*

**(4) Not more than ninety per cent of the taxpayer's estimated tax liability for the year referred to in division (B)(1), (2), and (3) of this section shall be required to have been remitted on or before the thirty-first day of January.**

*Which reads as follows:*

(E) On or before the last day of the fourth month of the calendar or fiscal year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the municipality shall be paid therewith in accordance with the provisions of § 36.24. ('80 Code, § 93.07) (Ord. 741, passed 4-3-73) Penalty, see § 36.99

*Is hereby amended to read:*

**(E) Any amount deducted and withheld for taxes from the compensation of an individual shall be considered as estimated taxes paid in equal amounts on each of the payment dates prescribed by division (B) of this section.**

*Is hereby added:*

**(F) Beginning January 1, 2003, taxpayers that are not individuals seeking to remit a payment of estimated taxes shall remit such payments only as prescribed by divisions (F)(1) to (4) of this section, subject to divisions (E) and (G)(2) of this section:**

*Is hereby added:*

**(1) Not more than twenty-two and one-half per cent of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the day on which the annual tax return for the prior year is required to be filed disregarding any extension or, in the case of a fiscal year taxpayer, the fifteenth day of the fourth month of the taxpayer's taxable year;**

*Is hereby added:*

**(2) Not more than forty-five per cent of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the fifteenth day of June or, in the case of a fiscal year taxpayer, the fifteenth day of the sixth month of the taxpayer' taxable year;**

*Is hereby added:*

**(3) Not more than sixty-seven and one-half per cent of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the fifteenth day of September or, in the case of a fiscal year taxpayer, the fifteenth day of the ninth month of the taxpayer's taxable year;**

*Is hereby added:*

**(4) Not more than ninety per cent of the taxpayer's estimated tax liability for the current**

year shall be required to have been remitted on or before the fifteenth day of December or, in the case of a fiscal year taxpayer, the fifteenth day of the twelfth month of the taxpayer's taxable year.

*Is hereby added:*

**(G) A municipal corporation shall not impose any penalty, interest, interest penalty, or other similar assessment or charge against a taxpayer for the late payment or nonpayment of estimated tax liability in either of the following circumstances:**

*Is hereby added:*

**(1) The taxpayer is an individual who resides in the municipal corporation but was not domiciled there on the first day of January of the current calendar year;**

*Is hereby added:*

**(2) The taxpayer has remitted, pursuant to division (B) or (D) of this section, an amount at least equal to one hundred per cent of the taxpayer's tax liability for the preceding year as shown on the return filed by the taxpayer for the preceding year, provided that the return for the preceding year reflected a twelve-month period and the taxpayer filed a return for the preceding year.**

*Which reads as follows:*

(H) On or before the last day of the fourth month of the calendar or fiscal year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the municipality shall be paid therewith in accordance with the provisions of § 36.24.

*Is hereby amended to read:*

**(H) On or before the fifteenth day of the fourth month of the calendar or fiscal year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the municipality shall be paid therewith in accordance with the provisions of § 36.24.**

('80 Code, § 93.07) (Ord. 741, passed 4-3-73) Penalty, see § 36.99

## **§ 36.27 DUTIES AND POWERS OF THE DIRECTOR OF FINANCE AND RECORDS.**

(A) (1) It shall be the duty of the Director of Finance and Records 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 so received.

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

*Which reads as follows:*

(B) The Director is 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 or 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.

*Is hereby amended to read:*

**(B) The Director shall make electronic versions of any rules of ordinances governing the income tax available to the public through the Internet, and shall comply with the provisions of Section 718.07 of the Ohio Revised Code.**

*Which reads as follows:*

(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 Director may assess the amount of tax thereof, if any, in the following manner.

*Is hereby amended to read:*

**(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 Director 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.

*Which reads as follows:*

(a) If the Director determines that any taxpayer subject to the provisions of this chapter has a tax liability for which he or she has filed no return, or has filed an incorrect return and has failed to pay the full amount of tax due, the Director shall issue a proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon.

*Is hereby amended to read:*

**(a) If the Director determines that any taxpayer subject to the provisions of this chapter has a tax liability for which he or she has filed no return, or has filed an incorrect return and has failed to pay the full amount of tax due, the Director shall issue a proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon and shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.**

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

*Which reads as follows:*

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

*Is hereby amended to read:*

**2. A taxpayer may, within 30 days after the date of the proposed assessment was served or mailed, file a written protest with the Director. Within 45 days after receipt of the protest, the Director shall give the protestant an opportunity to be heard. The Director may extend the date of hearing for good cause shown. After the hearing the Director shall withdraw the assessment or he or she shall adjust or reaffirm the assessment and it shall then become final. If no protest is filed as herein provided, the proposed assessment shall become final 15 days after being served.**

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

*Which reads as follows:*

1. A taxpayer shall have 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. The 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 Director who shall, within five days after receipt thereof, deliver the appeal to the Chairman of the Board of Tax Appeals, or, if the Chairman is not available, to the Vice-Chairman.

*Is hereby amended to read:*

**1. A taxpayer shall have 30 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. The 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 Director who shall, within five days after receipt thereof, deliver the appeal to the Chairman of the Board of Tax Appeals, or, if the Chairman is not available, to the Vice-Chairman.**

2. The Board of Tax Appeals, on receipt of a notice of appeal, shall within 15 days notify the Director thereof who shall forward within 15 days to the Board, a certified transcript of all actions taken by him or her with respect to the final assessment. This transcript shall be open to inspection by the appellant and his or her counsel.

*Which reads as follows:*

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

*Is hereby amended to read:*

**3. Any taxpayer against whom a final assessment has been issued and who has filed a notice of appeal shall be granted a hearing by the Board of Tax Appeals. At the hearing the appellant and the Director shall be given an opportunity to present evidence relating to the final assessment and the Board of Tax Appeals shall furnish a copy of its decision to the appellant and the Director. The appellant's copy of the decision shall be served upon him or her in the same manner as herein provided for the serving of assessments within 90 days after the conclusion of such hearing.**

(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 the tax to the Director as required by this chapter, the Director need not issue an assessment but may proceed under the provisions of §§ 36.30 and 36.31.

(2) Provisions affecting employers.

(a) If the Director determines that an employer subject to the provisions of this chapter has filed a return for tax withheld and has failed to pay to the Director the full amount of the taxes, the Director shall issue a proposed assessment showing the amount of tax due, together with any penalties and interest that may have accrued thereon, and the provisions of divisions (C)(1)(a) and (C)(1)(b) of this section shall then apply.

(b) If the Director determines that an employer subject to the provisions of this chapter has failed to withhold tax, the Director shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon, and the provisions of divisions (C)(1)(a) and (C)(1)(b) of this section 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 the tax to the Director as required by this chapter, the Director may proceed under the provisions of §§ 36.30 and 36.31 and need not issue an assessment as provided in § 36.27, divisions (C)(2)(a) and (C)(2)(b).

(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 or her shall pay the amount thereof within 15 days after service of the 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 or her shall pay the amount determined to be due by the Board of Tax Appeals within 15 days after service of his or her copy of the decision of the Board.

(E) The Director 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 or she deems it necessary to do so, but not to exceed a period of six 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 Director may authorize partial payments of unpaid taxes when, in his or her judgment, the taxpayer is unable, due to hardship conditions, to pay the full amount of the tax when due and when, in his or her judgment, such

deferred payments are the best means of accomplishing the intent of this chapter. However, the Director shall not authorize an extension of time for the payment of taxes due for more than six months beyond the date of the filing of the application.

('80 Code, § 93.08) (Ord. 741, passed 4-3-73) Penalty, see § 36.99

***Statutory reference:***

*Authority to appoint administrator of taxation, see R.C. § 733.85*

**§ 36.28 INVESTIGATIVE POWERS OF THE DIRECTOR; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.**

(A) (1) The Superintendent, or any authorized employee, is authorized to examine the books, papers, records, and copies of federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Director 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 days following a written request by the Director, or his or her duly authorized agent or employee, the means, facilities, and opportunity for making the examinations and investigations authorized.

(2) Every owner of two or more rental units and every owner and operator of a mobile home park is directed and required to furnish to the Director, or his or her duly authorized agent or employee, the yearly roster of the names of the persons residing in the rental units or mobile home park and shall also file a statement of any changes of the roster at the end of each month. The yearly statement shall be filed with the Director on, or before, January 30 of each year unless an extension of time is granted by the Director.

(B) The Director is authorized to order any person presumed to have knowledge of the facts to appear before him or her and may examine the person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect the income, and for this purpose may compel the production of books, papers, records, and copies of federal income tax returns and the attendance of all persons before him or her whether as parties or witnesses, whenever he or she believes the persons have knowledge of the income or information pertinent to the inquiry.

*Which reads as follows:*

(C) The refusal to produce books, papers, records, and copies of federal income tax returns, or the refusal to submit to the examination by an employer or person subject or presumed to be subject to the tax, or by any officer, agent, or employee of a person subject to the tax, or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Director authorized hereby shall be a violation of this chapter, punishable as provided in § 36.29.

*Is hereby amended to read:*

**(C) The refusal to produce books, papers, records, and copies of federal income tax returns, or the refusal to submit to the examination by an employer or person subject or presumed to be subject to the tax, or by any officer, agent, or employee of a person subject to the tax, or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Director authorized hereby shall be a violation of this chapter, punishable as provided in § 36.99**

(D) (1) Any information gained as the result of any returns, investigations, hearing, 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 this information in violation of this chapter shall, on conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than \$500 or imprisoned for not more than six months, or both. Each disclosure shall constitute a separate offense.

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

(E) Every taxpayer shall retain all records necessary to compute his or her tax liability for a period of five years from the date his or her return is filed, or the withholding taxes are paid. ('80 Code, § 93.09) (Ord. 741, passed 4-3-73; Am. Ord. 813, passed 5-18-76) Penalty, see § 36.99

### **§ 36.29 INTEREST AND PENALTIES.**

(A) All taxes imposed and moneys withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid ten days after they have become due shall bear interest at the rate of 1.5% per month or fraction thereof.

(B) In addition to interest as provided in division (A) above, penalties based on the unpaid tax are imposed as follows:

*Which reads as follows:*

(1) In the case of taxpayers failing to pay the full amount of the tax due, the penalty of the higher of \$25 or 4% per month, or fraction thereof.

*Is hereby amended to read:*

**(1) In the case of taxpayers failing to pay taxes, due, other than taxes withheld, the penalty of \$25 or 4% per month, or fraction thereof, whichever is greater.**

*Which reads as follows:*

(2) In the case of employers who fail to withhold and remit to the Director the taxes to be withheld from employees, a penalty of the higher of \$50 or 4% per month, or fraction thereof.

*Is hereby amended to read:*

**(2) In the case of employers failing to remit taxes withheld from employees: a penalty of \$50 or 4% per month, or fraction thereof, whichever is greater.**

*Which reads as follows:*

(3) Where the taxpayer has failed to file a declaration on which he or she has estimated and paid a tax equal to or greater than the tax paid for previous years, or has failed to file a declaration on which he or

she has estimated and paid tax equal to or greater than 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 or her taxable year: 10% of the difference between 70% of the actual tax for the year and the amount paid through withholding or declaration.

*Is hereby amended to read:*

**(3) Where the taxpayer has failed to file a declaration on which he or she has estimated and paid a tax equal to or greater than the tax paid for previous years, or has failed to file a declaration on which he or she has estimated and paid tax equal to or greater than 90% 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 or her taxable year: 10% of the difference between 90% of the actual tax for the year and the amount paid through withholding or declaration.**

*Which reads as follows:*

(C) Exceptions. A penalty shall not be assessed on an additional tax assessment made by the Director when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Director; and provided further, 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.

*Is hereby amended to read:*

**(C) Exceptions. A penalty shall not be assessed on an additional tax assessment made by the Director when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Director; and provided further, 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) On recommendation of the Director, the Board of Adjudication may abate penalty or interest, or both.

(E) Any person required to withhold the tax who knowingly fails to withhold the tax or pay over the tax or who knowingly attempts in any manner to evade or defeat the 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.

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

('80 Code, § 93.10) (Ord. 741, passed 4-3-73; Am. Ord. 813, passed 5-18-76; Am. Ord. 89-10, passed 12-19-89) Penalty, see § 36.99

### **§ 36.30 COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENT.**

(A) In addition to any criminal penalties which may be imposed pursuant to § 36.99, all taxes shall be collectible, together with any interest and penalties thereon, by civil suit. Except in the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, an additional assessment shall not be made after three years from the time the return was due or filed, whichever is later. However, in those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations, the period within which an additional assessment may be made by the Director 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 years from the date on which the payment was made or the return was due or within three months after final determination of the federal tax liability, whichever is later.

(C) Additional amounts of less than \$1 shall not be refunded or assessed unless the assessment results from income which the taxpayer has failed to report.

('80 Code, § 93.11) (Ord. 741, passed 4-3-73)

***Statutory reference:***

*Statute of limitations, interest on late refunds, see R.C. § 718.06*

### **§ 36.31 BOARD OF ADJUDICATION AND BOARD OF TAX APPEALS.**

(A) *Board of Adjudication.*

*Which reads as follows:*

(1) A Board of Adjudication, consisting of the Mayor or a person designated by him or her, the Director of Finance and Records, or a person designated by him or her, and the Director of Law or an assistant designated by him or her, is created. The Board shall select, each year for a one-year term, one of its members to serve as Chairman and one to serve as Secretary. A majority of the members of the Board shall constitute a quorum.

*Is hereby amended to read:*

**(1) A Board of Adjudication, consisting of the Municipal Manager or a person designated by him or her, the Director of Finance and Records, or a person designated by him or her, and the Director of Law or an assistant designated by him or her, is created. The Board shall select, each year for a one-year term, one of its members to serve as Chairman and one to serve as Secretary. A majority of the members of the Board shall constitute a quorum.**

*Which reads as follows:*

(2) The Board shall adopt its own procedural rules and shall keep a record of its proceedings. All hearings of the Board shall be conducted privately and the provisions of § 36.28 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matter as may be presented to the Board of Adjudication.

*Is hereby amended to read:*

**(2) The Board shall adopt its own procedural rules and shall keep a record of its proceedings. The Board shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under section 149.43 of the Revised Code. Hearings requested by a taxpayer before a board of appeal created pursuant to this section are not meetings of a public body subject to section 121.22 of the Revised Code.**

(3) The Board shall have the authority, on request of the Director, to modify, in whole or in part, any assessment of tax, penalty, and/or interest, required to be made by this chapter. In addition, the Board may authorize the Director to accept partial payments for a period in excess of the time authorized in § 36.27.

(B) *Board of Tax Appeals.*

(1) A Board of Tax Appeals, consisting of three representative citizens of the municipality, not otherwise employed by the municipality, to be appointed by Council for a term of three years, is created.

(2) Upon adoption of this division (B), each current member of the Board of Tax Appeals shall be individually assigned by Council to terms expiring January 1, 1997, January 1, 1998, and January 1, 1999. Upon expiration of each of these terms, subsequent terms shall be three years in length. Any vacancy on the Board of Tax Appeals shall be filled by appointment of Council for the remainder of the unexpired term.

*Which reads as follows:*

(3) One of the members of the Board, appointed by Council, shall be chosen by the members as Chairman of the Board. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and keep a record of its proceedings. All hearings by the Board may be conducted privately and the provisions of § 36.28 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard on appeal before the Board.

*Is hereby amended to read:*

**(3) One of the members of the Board, appointed by Council, shall be chosen by the members as Chairman of the Board. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and keep a record of its proceedings. Such records are not public records available for inspection under section 149.43 of the Revised Code. Hearings requested by a taxpayer before a board of appeal created pursuant to this section are not meetings of a public body subject to section 121.22 of the Revised Code.**

(4) The Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any assessment, ruling, or decision, or any part thereof, made by the Director from which an appeal has been filed as provided in § 36.27.

(5) The Board of Tax Appeals shall be a continuing body and proceedings which have been lawfully begun by one Board of Tax Appeals can be prosecuted by succeeding Boards of Tax Appeals until completed and made effective.

('80 Code, § 93.12) (Ord. 741, passed 4-3-73; Am. Ord. 96-03, passed 2-20-96)

**Statutory reference:**

*Authority to create appeals board by ordinance, see R.C. § 733.85*

*Confidentiality of information, see R.C. § 718.1*

**§ 36.32 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.**

(A) This chapter shall continue effective, insofar as the levy of taxes is concerned, until repealed and, insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied, or enforcing any provisions of this chapter are concerned, it shall continue effective until all of the taxes levied hereunder are fully paid and any and all suits and prosecutions for the collection of the taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in §§ 36.30 and 36.99.

(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 §§ 36.24 and 36.25 of this chapter as though the same were continuing.

('80 Code, § 93.14) (Ord. 741, passed 4-3-73)

**§ 36.33 ALLOCATION OF FUNDS.**

(A) All revenues collected under this chapter shall be allocated, after expenses, by the Director of Finance and Records so that \$102,080 is placed to the credit of the general fund and the balance is credited to the capital improvement fund.

(Ord. 86-09, passed 2-18-86)

(B) After December 31, 1986, all funds collected under this chapter shall be allocated as follows:

(1) Seventy-five percent of the income tax funds to be allotted to the general fund.

(2) Twenty-five percent of the income tax funds to be allotted to a capital improvement fund.

('80 Code, § 93.15) (Ord. 741, passed 4-3-73; Am. Ord. 775, passed 3-18-75)

**§ 36.34 CREDIT FOR RESIDENTS WORKING IN JOINT ECONOMIC DEVELOPMENT DISTRICTS.**

The municipality shall grant a credit against its tax on income to a resident of the municipality who works in a joint economic development zone created under R.C. § 715.691 or a joint economic development district created under R.C. §§ 715.70, 715.71, or 715.72 to the same extent that it grants a credit against its tax on income to its residents who are employed in another municipal corporation.

(R.C. § 718.16)

**§ 36.99 PENALTY.**

(A) Any person who 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 or her employees and remit the withholding to the Director;
- (5) Refuse to permit the Director or any duly authorized agent or employee to examine his or her or his or her 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 Director and to produce his or her or his or her employer's books, records, papers, or copies of federal income tax returns relating to the income or net profits of a taxpayer on order or subpoena of the Director;
- (7) Refuse to disclose to the Director 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 Director; or
- (9) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties, or interest imposed by this chapter shall be guilty of a misdemeanor and shall be fined not more than \$500 or imprisoned not more than six months, or both, for each offense.

(B) (1) Any person subject to the provisions of this chapter 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 an offense punishable under the provisions of this section until the assessment issued against him or her under the provisions of § 36.27 has become due and payable.

(2) Any person who has filed a return under the provisions of this chapter, indicating the amount of tax due, and has failed to pay the tax, together with any penalties or interest that may have accrued thereon, shall not be deemed to have committed an offense for having knowingly failed to pay the tax, penalties, or interest due as provided in division (A)(3) above, until the date of the filing of the return.

(C) The term **PERSON** as used in this section shall, in addition to the meaning prescribed in § 36.02, include in the case of an association or corporation not having any partner, member, or officer within the municipality, any employee or agent of the association or corporation who can be found within the corporate limits of the municipality.

(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 persons to receive or procure a return, declaration, or other required form shall not excuse him or her from making any information return, or declaration, from filing the form, or from paying the tax.  
(’80 Code, § 93.99) (Ord. 741, passed 4-3-73)

***Statutory reference:***

*Statute of limitations, see R.C. § 718.06*

**SECTION 2:** This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed this \_\_\_\_\_ 19th \_\_\_\_\_ day of \_\_\_\_\_ October \_\_\_\_\_, 2004.

First Reading: September 21, 2004  
Second Reading: October 5, 2004  
Third Reading: October 19, 2004

Effective Date: \_\_\_\_\_ November 8, 2004 \_\_\_\_\_

Approved:

\_\_\_\_\_  
Larry A. Shock  
Mayor

Attest:

\_\_\_\_\_  
E. Karen Grimmatt  
Director of Finance and Records

**CERTIFICATE**

I, E. Karen Grimmatt, Director of Finance and Records for the Municipality of New Lebanon, Ohio, do hereby certify the foregoing is a true and correct copy of Ordinance 2004-15 as passed by Council and approved by the Mayor and that the same has been published as required by Section 2.18 of the Charter of the Municipality of New Lebanon.

\_\_\_\_\_  
E. Karen Grimmatt  
Director of Finance and Records