CODIFIED ORDINANCES OF THE CITY OF SALEM, OHIO

TITLE NINE - Taxation

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CHAPTER 181
Income Tax

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181.01 DEFINITIONS

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

"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, limited liability company, Chapter S Corporations as defined in the federal tax code, 26 U.S.C. 1361, or any other form of unincorporated enterprise.

"Board of Review" means the Board created by and constituted as provided in Section 181.13.

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

"City" means the City of Salem, Ohio.

"Corporation" means a corporation (excluding Chapter S Corporations as defined in the federal tax code, 26 U.S.C. 1361) 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. An individual may have more than one residence but not more than one domicile.

"Employee" means one who works for income, wages, salary, commission or other type of compensation in the service of and under the control of an employer. Any person upon whom an employer is required to withhold for federal income tax or social security or PERS on whose account payments are made under the Worker's Compensation Law shall be an employee.

"Employer" means an individual, partnership, limited partnership, association, corporation, governmental body, unit or agency, or any other entity who or that employs one or more persons on an income, salary, wage, commission or other compensation basis.

"Fiscal year" means an accounting period of twelve months or less, ending on any day other than December 31st.

"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 Salem's regular tax return and estimated payment forms ,and are in a similar format that will allow processing of the generic forms without altering the City's procedures for processing forms..

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

"Income" means all monies and compensation in any form, subject to limitations imposed by ORC 718, derived from any source whatsoever, including but not limited to:

(a) All wages (prior to tax year 2004), qualifying wages (for tax years 2004 and later), commissions, other compensation and other income from whatever source received by residents of the City.

(B) All salaries, wages (prior to tax year 2004), qualifying wages (for tax years 2004 and later), commissions, other compensation and other income from whatsoever source received by nonresidents for work done or services performed or rendered or activities conducted in the City.

(C) 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 the City.

"Net Profits" for taxable years prior to 2004, means the net gain from the operation of and/or the complete or partial sale or disposition of the assets of a business, profession or enterprise after provision for all cost and expense incurred in the conduct thereof, including reasonable allowance for depreciation, for bad debts, either paid or accrued in accordance with recognized principles of accounting applicable to the method of accounting regularly employed, and without deduction of federal and state 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, partnership, limited partnership, corporation, unincorporated business, association or other entity domiciled outside the City.

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

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

"Place of business" means any bona fide office, other than a mere statutory office, factory, warehouse, or other space with is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance. A taxpayer does not have a regular place of business outside the City solely by consigning goods to an independent factor or contractor outside the City for sale.

"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 City of Salem. This definition is effective January 1, 2004, for taxable years 2004 and later.

"Resident" means an individual, partnership, limited partnership, corporation, unincorporated business, association or other entity domiciled in the City.

"Tax Administrator" means the individual, designated by the chapter, who is responsible for administering and enforcing the provisions of the chapter. The Tax Administrator shall be appointed by the Treasurer of the City of Salem. In the absence of the Tax Administrator the duties of that office shall be the responsibility of the Treasurer.

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

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

181.02 PURPOSE; IMPOSITION OF TAX

To provide funds for the purpose of general Municipal operations, maintenance of equipment, new equipment, extension, enlargement and improvement of Municipal services and facilities and capital improvements of the City, there is hereby levied a tax upon income at the rate of one percent (1%) upon the following:

(a) On all income, salaries, wages, commission and other compensation earned and/or received on and after January 1, 1983, by resident individuals of the City. For clarification purposes "income" includes Lottery, gambling and sports winnings, and games of chance. In no circumstance shall deductions be allowed against these winnings. 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, salaries, wages, commission and other compensation earned and/or received on and after January 1, 1983, by nonresident individuals of the City, for work done or services performed or rendered in the City. 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 Salem. Effective for taxable years beginning on and after January 1, 2001, the City shall not tax the compensation of a non-resident individual if all of the following apply:

(1) The individual does not reside in the City.

(2) The compensation is paid for personal services performed by the individual in the City 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 and the individual pays tax on income 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.

(c) On the net profits attributable to the City, earned on and after January 1, 1983, of all resident unincorporated businesses, professions and other activities derived from work done or services rendered or performed and business or other activities conducted in the City.

(d) On the portion of the distributive share of the net profit earned on or after January 1, 1983, of a resident individual, partner or owner of a resident unincorporated business entity attributable to the City and not levied against such unincorporated business entity.

(e) On the net profits attributable to the City, earned on and after January 1, 1983, of all nonresident unincorporated businesses, professions or other activities, derived from work done or services performed or rendered and business or other activities conducted in the City.

(f) On the portion of the distributive share of the net profits earned and/or received on and after January 1, 1983, of a resident individual, partner or owner of a nonresident unincorporated business entity not attributable to the City and not levied against such unincorporated business entity.

(g) On the net profits earned on and after January 1, 1983, of all corporations derived from work done or services performed or rendered and business or other activities conducted in the City.

(h) (1) Net profit from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable situs in the City for purposes 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 during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated. Real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.

(B) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City, to wages, salaries and other compensation paid during the same period to persons employed in the business profession, wherever their services are performed. For taxable years beginning on and after January 1, 2004, 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, to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

In the event that the foregoing apportionment formula 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) hereof, "sales made in the City" means:

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

(B) All sales of tangible personal property which is delivered within the City, regardless of where title passes even though transported from a point outside the City if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City 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 to purchasers outside the 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) On the net income of rental of any and all real properties, owned by residents of the City, wherever located, where the gross monthly rental of any and all, regardless of number and value, aggregates one hundred dollars ($100.00) or more per month.

(j) On the net income of rental of any and all real property located with the City, owned by nonresidents of the City, where the gross monthly rental of any and all, regardless of number and value, aggregates one hundred dollars ($100.00) or more per month.

(k) On the net income of rental of commercial property when the rental is based on fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental aggregates one hundred dollars ($100.00) or more per month.

(l) On the net income of rental of farm property whether or not the gross income is one hundred dollars ($100.00) per month or more.

(m) On the net income from the rental of two or more rooms in a private residence whether or not the gross income is one hundred dollars ($100.00) per month or more.

181.03 EFFECTIVE DATE

The tax shall be levied, collected and paid with respect to income, salaries, wages, commissions and other compensation earned and/or received on and after January 1, 2005, and with respect to the net profit of businesses, professions and

other activities earned on and after January 1, 2005. Provided, however, that 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 net profit for the fiscal year as shall be earned on and after January 1, 2005, to the close of the taxpayers fiscal year thereafter the taxpayer shall report on its fiscal year basis. This Ordinance replaces Ordinance_____, and all amendments supplements thereto, for taxable years 2004 and later as required by amendments that were effective January 1, 2004 to Ohio Revised Code 718.

RETURN AND PAYMENT OF TAX

(a) Each taxpayer shall, whether or not a tax is due thereon, make and file a return on or before April 15 of each year following the effective date of this section. When the 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 fiscal year or other period.

(b) Salem taxpayers who are retired for the entire tax year receiving only Social Security, pension, interest or dividend income, and who are not self-employed or owners of rental property, are required to file a Salem City exemption return once to identify their status. However, if the taxpayer's income or employment status changes during any year, the taxpayer would again be required to comply with Section 181.04 (a) herein.

(c) The return shall be filed with the Tax Administrator on a form or forms furnished by or obtainable upon request from such Tax Administrator, or on a generic form as defined in this chapter, setting forth:

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

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

(3) Such other pertinent statements, information returns or other information as the Tax Administrator may require, including but not 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.

(d) The taxpayer, in addition to the forms and schedules in (c)(3) above, may file copies of any other documents the taxpayer considers as necessary.

(e) The return shall also show the amount of the tax imposed on such earning and profit. The taxpayer making the return shall, at the time of the filing thereof, pay to the Tax Administrator the amount of taxes shown as due thereon. Provided, however, that where any portion of the tax shall have been paid by such taxpayer pursuant to the provisions of Section 181.05 and/or Section 181.06 of this chapter, 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 the final return.

(f) Extensions - The Tax Administrator shall extend the time for filing of the annual city return upon the filing of a copy of the taxpayer's request for a federal extension. For tax years prior to 2004, no extension may exceed six (6) months or one (1) month beyond the extension requested of or granted by the internal Revenue Service for filing of the federal income tax return, and will not be approved for a period less than the federal extension request. 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 for individuals, and for businesses not filing the annual return through the Ohio Business Gateway, 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 businesses filing the annual return through the Ohio Business Gateway, 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. The request for extension shall be filed not later than the last day for filing the municipal income tax return as prescribed by ordinance or rule of the City of Salem income tax. The City 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. The City of Salem may deny a taxpayer's request for an extension only if the taxpayer fails to timely file the request, fails to file a copy of the request for the federal extension, owes this 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 this municipality's income tax return does not extend the last date for paying the tax without penalty unless this municipality grants an extension of the date.

(g) In the computation of any tax due under this section, a business loss of a previous tax year shall not be allowed or carried forward to reduce the tax due in any subsequent year.

(h) Within three months from the final determination of any Federal tax liability affecting the taxpayer's tax liability to the City, the taxpayer shall make and file an amended return showing income subject to the City tax, based upon the final determination of Federal tax liability, and shall pay any additional tax due or make claim for refund of any overpayment.

(i) An officer or employee of an employer who has control or supervision of, or is charged with responsibility for filing the City income tax report or paying the City income withheld for employees, shall be personally liable for failure to file the report and/or for failure to pay the City income tax withheld. Dissolution, bankruptcy, or reorganization of an employer shall not discharge an officer's or employee's personal liability for a prior failure of the employer to file City income tax returns and/or to pay City income tax due or withheld on behalf of employees.

(j) All employers, businesses, contractors or subcontractors who do work in the City shall register with the Income Tax Department of the City and shall present thereto a list of all employees, subcontractors, contractors or others who may do work for them whose profits, wages or earnings are not presently subject to withholding of the Salem City Income Tax before they begin doing business therein. Further, all employers, businesses, contractors or subcontractors have a continuing duty to notify the City Income Tax Department of any

additional employees, subcontractors, contractors or others when such new employee, subcontractor, contractor or other is hired or contracted with or by such employer, business, contractor or subcontractor. There shall be no cost for the registration of any business, employee, contractor or subcontractors thereof.

(k) Tax Registration Requirements for Construction Permits.

(1) All contractors involved in any project within the incorporated city limits whether general contractor, subcontractor or other, must be identified and registered with the City Income Tax Department before any permit from the Housing, Planning and Zoning Office will be issued for the project. The general contractor, or owner if self-contracted, is responsible for notifying any additional contractors brought into the project after the start of the project that income tax registration is required.

(2) In the event that an unregistered contractor is discovered performing work within the city limits, the City Income Tax Department shall have the authority to stop the project until such time as contractor or contractors are in compliance. The City Income Tax Department shall also have the authority to stop any project where the contractor or contractors are registered but one or more is delinquent in filing city income tax or paying city income tax with the City Income Tax Department.

(3) All contractors, including the owner if the project was self-contracted, shall provide a listing of any and all contractors or subcontractors who worked with or for them during the tax year within the city limits with such list to be included with the annual income tax return of the contractor or owner.

(l) All new businesses, employers, contractors, developers, subcontractors or any other such person or entity must register with the City Income Tax Department before they will be eligible to receive any City services including but not limited to, City utilities. Each new resident of the City shall register with the Tax Department of the City within thirty (30) days of residence in the City. There shall be no cost for this registration.

(m) Landlords of residential, commercial or other property within the City of Salem who provide water and/or sewer service to tenants are required to submit a report to the City Income Tax Department listing new tenants whether by lease, sublease or other such agreement in any rental property owned by landlord within the city limits, and also listing tenants who have moved from said rental properties during the reporting period. The reports shall be filed at the end of the month following the end of each quarter. penalties for non-filing shall be assessed in accordance with Section 181.10.

(n) 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. However, once the affiliated group has elected to file a consolidated return or a separate return with the City, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the City.

(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, or in case any person operates a division, branch, factory, office, laboratory or activity within the City constituting a portion only of its total business, the Administrator shall require such additional information as the Administrator may deem necessary to ascertain whether net profits are properly allocated to the City. If the Administrator finds net profits are not properly allocated to the City 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, the Administrator shall make such allocation as the Administrator deems appropriate to produce a fair and proper allocation of net profits to the City.

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

(p) Losses from a business cannot be used to offset wages or other types of non-business income.

181.05 COLLECTION AT SOURCE

(a) Except as provided in Section (d) below, each employer within the City who employs within the City one or more persons on a salary, wage, commission or other compensation basis, excluding exempted incomes set forth in Section 181.15, shall deduct at the time of the payment of such salary, wage, commission or other compensation the tax of one percent (1%) of salaries, wages, commissions or other compensation due by the employer to the employee and shall make a return and pay to the Tax Administrator the amount of taxes so deducted. If the taxes withheld by an employer for the City during the previous tax year averaged less than five hundred dollars ($500.00) per month, payments may be made quarterly on or before the last day of the month following the end of the quarter, subject to the approval of the Tax Administrator. The Tax Administrator may revoke the approval of quarterly filing and payments whenever he has reason to believe that the conditions for granting such authorization have changed, were judged incorrectly, were not met, or when it is in the best interest of the City to do so.

(b) If the amount of the tax due is five hundred dollars ($500.00) or greater per month, the employer shall make a return and pay to the Tax Administrator the amount of taxes so deducted on a monthly basis, due on or before the last day of the month following the month for which the taxes were withheld.

(c) Such return shall be on a form prescribed by the Tax Administrator. Such employer, in collecting the tax, shall be deemed to hold the same as trustee for the benefit of the City until payment is made by the employer to the City, and any such tax collected by such employer from his employee shall, until same is paid to the City, be deemed a trust fund in the hands of such employer.

(d) An officer or employee of an employer who has control or supervision of, or is charged with responsibility for withholding the City income tax and/or paying the City income withheld for employees, shall be personally liable for failure to withhold and/or to pay the City income tax withheld. Dissolution, bankruptcy, or

reorganization of an employer shall not discharge an officer's or employee's personal liability for a prior failure of the employer to withhold and/or to pay City income tax due.

181.06 DECLARATIONS

(a) Every taxpayer who anticipates any income which is not subject to the provisions of Section 181.05 shall file a declaration of the estimated tax for the taxable year of 1983. Such declaration shall be filed on or before April 15, 1984, and thereafter a similar declaration shall be filed for each calendar year on or before April 15 of each ensuring year for the duration of the taxes referred to herein, by all such taxpayers.

(b) Such declaration shall be filed upon a form prescribed by the Tax Administrator, or on an acceptable generic form, which form may simply state that 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) Declarations in the amount of one hundred dollars ($100.00) or more shall be made as follows:

(1) If the taxpayer is an individual, the declaration 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) Estimated tax to be paid the City by taxpayers who are corporations and associations 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 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 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 (100%) 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, or has remitted an amount equal to ninety percent (90%) of the estimated liability for the current year for which estimated payments have been made.

(e) Should it appear that such taxpayer has paid more than the amount of tax to which the City is entitled, a refund of the amount so overpaid shall be made, or same may be applied toward the declaration of tax due for

the ensuing year. Claims for refunds shall be made on forms prescribed by and obtainable from the Tax Administrator, or on an acceptable generic form.

181.07 CREDIT FOR TAX PAID

Every individual taxpayer who resides in the City, but who receives net profits, income, salaries, wages, commissions or other personal service compensation, for work done or services performed or rendered outside of the City, if it be made to appear that he has paid a municipal income tax on such net profits, income, salaries, wages, 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, commission or compensation earned in such other municipality or municipalities where such tax is paid.

181.08 DUTIES OF THE TAX ADMINISTRATOR

(a) The Tax Administrator shall receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; shall keep an accurate record thereof; and shall report all moneys so received. All cashiers handling tax moneys shall be subject directly to the Tax Administrator and shall give daily accountings to the Tax Administrator.

(b) It shall be the duty of the Tax Administrator to enforce payment of all taxes owing the City, to keep accurate records for a minimum of 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 amounts of payments thereof.

(c) The Tax Administrator is hereby charged with the enforcement of the provisions of this chapter and to enforce the rules and regulations as approved by the Board of Review relating to any matter or thing pertaining to the collection of 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 hereby required to comply with said rules and regulations.

(d) In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Administrator may determine the amount of tax appearing to be due the City from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so 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 Tax Administrator. If the taxpayer fails to respond to the assessment within 30 days, the tax, penalties, and interest assessed shall become due and payable and collectible as are other unpaid taxes.

(e) Subject to the consent of the Board of Review or pursuant to regulations approved by the Board, the Tax Administrator shall have the power to compromise any interest or penalty, or both, imposed by this chapter.

(f) A Department of Taxation is hereby created within the office of the Treasurer; the Department of Taxation shall have such assistants, clerks and other employees as may be from time to time determined by Council, and shall receive such salary as may be determined by Council. The Treasurer shall make all appointments of personnel and purchase all equipment, supplies and material for the Department of Taxation. The Department of Taxation shall be charged with the administration and operation of this chapter, under the direction of the Treasurer. The Tax Administrator, who works under the direction of the Treasurer, shall prescribe the form and method of accounts and reports for the 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 such receipt. The Treasurer shall also make written report to Council annually of all moneys collected hereunder during the preceding year.

181.09 INVESTIGATIVE POWERS

(a) The Tax Administrator or his duly authorized agent or employee, is hereby authorized to examine the books, papers, records, and Federal and State income tax returns of any employer, or of 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. Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish to the Tax Administrator or his duly authorized agent or employee, the means, facilities and opportunity for making such examination and investigations as are hereby authorized.

(b) The Tax Administrator, or his 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, records, and Federal and State income tax returns, 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 person 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 for official purposes.

(e) Any information gained as the result of the filing of any tax returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposes and except in accordance with proper judicial order. Any person divulging such information shall upon conviction thereof be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than five hundred dollars ($500.00) 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 who violates the provisions of this section relative to disclosures of confidential information shall be immediately dismissed from the service of the City.

181.10 INTEREST AND PENALTIES

(a) All taxes imposed by this chapter, including declarations and estimated payments, and also 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 eighteen percent (18%) per annum.

(b) The taxpayer upon whom such taxes are imposed in addition thereto, a late filing penalty of twenty-five dollars ($25.00), to a late payment penalty of one and one-half percent (1 ½%) of the amount of the unpaid tax for each month or fraction of a month of non-payment with a minimum late payment penalty of ten dollars ($10.00).

© The employers required by this chapter to deduct, withhold and pay taxes imposed by the chapter shall be liable in addition to a withholding late filing penalty of twenty-five dollars ($25.00), to a withholding late payment penalty of three percent (3%) of the amount of the unpaid tax for each month or fraction of a month of nonpayment with a minimum late payment penalty of ten dollars ($10.00).

(d) Failure of a landlord to file the required quarterly reports regarding tenants shall result in a penalty in the amount of $25 for the first offense, and $50 for each subsequent offense.

(e) Any person required to file a tax return with the City who fails to timely file a return shall be liable to pay a penalty to twenty-five dollars ($25.00) even if no tax is found to be due.

(f) The Tax Administrator may abate interest or penalties, or both, and upon refusal to abate interest or penalties, or both, by the Tax Administrator, the Board of Review may nevertheless abate interest or penalties, or both.

181.11 COLLECTION OF UNPAID TAXES

(a) All taxes imposed and administered by the chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of twenty-five percent 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. 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) In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal Statute of Limitations, the period within which an additional assessment may be made by the Tax Administrator shall be one year from the time of the final determination of the Federal tax liability.

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

(1) To taxes for the oldest year in which a tax liability remains unpaid, then to interest and penalty assessments remaining unpaid for that same year. Payments shall continue to be applied in this sequence until all delinquent liabilities have been satisfied.

(2) To the taxpayer's current estimated tax liability.

(d) Any amount of less than one dollar ($1.00) shall not be collected or refunded.

181.12 ALLOCATION OF FUNDS

(a) All funds collected under the provisions of this chapter shall be deposited in the Income Tax Fund and such Fund shall be distributed in the following order, to wit:

(1) Such part thereof as shall be necessary to defray all costs of collecting the taxes and the cost of administering and enforcing the provisions hereof.

(2) Such part thereof as shall be necessary to pay:

(A) The principal of and interest on the general obligation bonds of the City as the same shall become due and payable; and

(B) The interest on the general obligation bond anticipation notes of the City as such interest shall become due and payable.

(3) Not more than eighty-five percent (80%) of the net available income tax receipts (as hereafter defined) shall be used to defray General Fund expenses of the City.

(4) The remainder of the net available income tax receipts (as hereafter defined) shall be used for capital improvements of the City, including, but not limited to, traffic control; maintenance and improvement of streets and sidewalks; new equipment for the Safety and Service Department; the payment of costs and expenses incurred in connection with the issuance of bonds or notes of the City which costs and expenses are not paid out of the proceeds from the sale of such bonds or notes; and the payment of the principal of general obligation bond anticipation notes of the City.

(b) As used in this section, net available income tax receipts means all funds collected under the provisions of this chapter less the costs of collecting such funds and the costs of administering and enforcing the provisions hereof.

181.13 BOARD OF REVIEW

(a) A Board of Review, consisting of three (3) electors of the City of Salem, one to be appointed by and serve at the pleasure of the Mayor, one to be appointed by and serve at the pleasure of the Treasurer, and the third to be

selected by the two so appointed, with such appointment to be approved by Council and who shall serve at the pleasure of Council, 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. Effective January 1, 2006, the Board member appointed by the Mayor shall serve a three year term, the Board member appointed by the City Treasurer shall serve a two year term, and the Board member selected by the two so appointed shall serve a one year term. At the expiration of each term that begins January 1, 2006, each subsequent term shall be three years in length.

(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 shall be conducted privately and the provisions of Section 181.09 with reference to the confidential character of information required to be disclosed by the chapter shall apply to such matters as may be heard before the Board of Review on appeal.

(d) At the time a decision is issued regarding an income tax obligation that is subject to an appeal, as provided in this section or in the ordinance or regulation, the Tax Administrator shall notify the taxpayer of his right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

(e) Any person who is aggrieved by a decision by the Tax Administrator and who has filed the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Review by filing a request with the Board. The request shall be in writing, shall state why the decision should be deemed incorrect or unlawful, and shall be filed within thirty days after the Tax Administrator issues the decision complained of.

(f) The Board shall schedule a hearing within forty-five days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant, or other representative.

(g) The Board may affirm, reverse, or modify the Tax Administrator's decision or any part of that decision. The Board shall issue a decision on the appeal within ninety days after the Board's final hearing on the appeal, and send notice of its decision by ordinary mail to the petitioner within fifteen days after issuing the decision.

(h) Any person dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to a court of competent jurisdiction as provided by law within thirty (30) calendar days from the date of the Board's ruling or decision. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

(i)It shall be the responsibility of the Board of Review to create, approve and adopt the rules and regulations, including all amendments and changes thereto.

181.14 SEVERABILITY

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

181.15 EXEMPTIONS

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

(a) Military pay or allowance of members of the armed forces of the United States and of members of their reserve components, including the National Guard.

(b) Poor relief, payments from pension plans, social security, unemployment compensation, and disability benefits received 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, 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) Any association, organization, corporation, club or trust, which is exempt from federal taxes on income by reason of its charitable, religious, educational, literary, scientific, etc. purposes.

(f) Gains from involuntary conversions, cancellations of indebtedness, interest on federal obligations, and income of a decedent's estate during the period of administration, except such income from the operation of a business.

(g) Earnings and income of all persons under eighteen years of age, whether residents or nonresidents.

(h) Compensatory damages for personal injuries or for damages to property by way of insurance or otherwise, but this exclusion does not apply to compensation paid for lost salaries or wages, nor to punitive damages.

(i) Tax shall not be levied on expenses reported in accordance with federal guidelines for Federal Form 2106, subject to audit and approval by the City Division of Taxation.

(j) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation. The minister 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 church.

(k) Compensation paid under Section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars ($1,000) annually.

(l) Income, salaries, wages, commissions and other compensations 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 a municipality to impose net income taxes.

(m) 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.

181.16 REFUNDS

(a) Should it appear that any taxpayer has paid more than the amount of the tax to which the City is entitled under the provisions of this chapter, a refund or credit of the amount so overpaid shall be made, provided a proper claim for refund of such overpayment of tax has been filed by the taxpayer within three years of the due date or filing date of the tax return, 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, 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.

(b) Income tax that has been deposited with the City of Salem, but should have been deposited with another municipality, is allowable by the City of Salem as a refund but is subject to the three-year limitation on refunds.

Income tax that should have been deposited with the City of Salem, but was deposited with another municipality, shall be subject to recovery by the City of Salem. The City of Salem will allow a non-refundable credit for any amount owed the City of Salem 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 Salem's tax rate. If the City of Salem's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the City of Salem.

(c) Overpayments of withheld tax that have resulted due to incorrect withholding of an employee by an employer, and are not due as a result of excess withholding requested by the employee, shall be refunded to the employer. It shall be the responsibility of the employer, and not the Municipality, to refund such overpayment to the employee. However, nothing in this subparagraph shall affect the right of a nonresident employee to apply directly to the Municipality for refund of income tax withheld for days worked out of Salem.

181.17 EFFECTIVE PERIOD

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, shall continue effective until all of such taxes levied hereunder are fully paid and any 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.

181.99 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 or interest imposed by this chapter; or
(4)Failing, neglecting or refusing to withhold the tax from employees or to remit such withholding to the Tax Administrator; or
(5) Refusing to permit the Tax Administrator or any duly authorized agent or employee to examine books, records, papers, and federal and State income tax returns relating to the income or net profits of a taxpayer; or
(6) Failing to appear before the Tax Administrator and to produce books, records, papers, and federal and State income tax returns relating to the income or net profits of a taxpayer under order or subpoena of the Tax Administrator; or
(7) Refusing to disclose to the Tax Administrator any information with respect to the income or net profits of a taxpayer; or
(8) Failing to comply with the provisions of this chapter of any order or subpoena of the Tax Administrator 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) Whoever violates any of the provisions of subsection (a) hereof shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months or both, for each offense.

(c) All prosecutions under this section must be commenced within three years from the time of the offense complained of, except in the case of failure to file a return or in the case of filing a false or fraudulent return, or failure to include twenty-five percent or more of income, in which cases the limitation of time within which prosecution must be commenced shall be six years from the date the return was due or the date the false or fraudulent return was filed.

(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.