

INCOME TAX ORDINANCE

HUDSON, MICHIGAN

ORDINANCE NO. 190

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF HUDSON BY ADDING A NEW CHAPTER, WHICH NEW CHAPTER SHALL BE DESIGNATED CHAPTER 7, -- CITY INCOME TAX -- OF TITLE I, OF SAID CODE

THE CITY OF HUDSON ORDAINS:

Section 1. That the Code of the City of Hudson be, and the same hereby is amended by adding a new Chapter, designated as CHAPTER 7 -- CITY INCOME TAX -- of Title I, of said Code, as follows:

CHAPTER 7 -- CITY INCOME TAX --

1.366. Chapter 2 of Act No. 284, of the Public Acts of the State of Michigan of 1964, as amended, providing for a uniform income tax ordinance, with all of its terms, provisions, and conditions, is hereby adopted by reference, all pursuant to authority contained within Chapter 1, Sec. 3 of Act No. 284, of the Public Acts of the State of Michigan of 1964, as amended.

Section 2. This Ordinance shall take effect on the 1st day of January, 1971.

Adopted: 7-7-1970

Approved at Referendum November 3, 1970

Complete copies of the Uniform City Income Tax Ordinance are available for public use, distribution and inspection at the Office of the City Clerk.

UNIFORM CITY INCOME TAX ORDINANCE

- Section 1 This ordinance shall be known and may be cited as the “uniform city income tax ordinance”.
- Section 2 For the purposes of this ordinance, the words, terms and phrases set forth in sections 3 to 9 and their derivations have the meaning given therein. When not in-consistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and in the singular number include the plural. “Shall” is always mandatory and not merely directory. “May” is always directory.
- Section 3
- (1) “Administrator” means the official designated by the city to administer the provisions of this ordinance.
 - (2) “Business” Means an enterprise, activity, profession or undertaking of any nature conducted or ordinarily conducted for profit or gain by any person, including the operation of an unrelated business by a charitable, religious or educational organization.
 - (3) “Capital gains” and “capital losses” mean the same as defined for federal income tax purposes.
- Section 4
- (1) “City” means the city adopting the ordinance.
 - (2) “Compensation” means salary, pay or emolument given as compensation or wages for work done or services rendered, in cash or in kind, and includes but is not limited to the following: salaries, wages, bonuses, commissions, fees, tips, incentive payments, severance pay, vacation pay and sick pay.
 - (3) “Corporation” means a corporation or a joint stock association organized under the laws of the United States, this state, or any other state, territory, or foreign country or dependency.
- Section 5
- “Doing business” means the conduct of any activity with the object of gain or benefit, except that it does not include:
- (a) The solicitation of orders by a person or his representative in the city for sales of tangible personal property, which orders are sent outside the city for approval or rejection and, if approved, are filled by shipment or delivery from a point outside the city.
 - (b) The solicitation of orders by a person or his representative in the city in the name of or for the benefit of a prospective customer of a person, if orders by the customer to such person to enable the customer to fill orders resulting from the solicitation are orders described in paragraph (a).
 - (c) The mere storage of personal property in the city in a warehouse neither owned nor leased by the taxpayer.
- Section 6
- (1) “Employee” means a person from whom an employer is required to withhold for either federal income or federal social security taxes.
 - (2) “Employer” means an individual, partnership, association, corporation, nonprofit organization, governmental body or unit or agency, or any other entity whether or not taxable under this ordinance, that employs 1 or more persons on a salary, bonus, wage, commission or other basis, whether or not the employer is in a business.

- (3) "Federal internal revenue code" means the internal revenue code of the United States in effect on the last day of the taxpayer's tax year.
- (4) "Financial institution" means a bank, industrial bank, trust company, building and loan or savings and loan association, credit union, safety and collateral deposit company, regulated investment company as defined in section 851 and the following sections of the federal internal revenue code, under whatever authority organized, and any other association, joint stock company or corporation at least 90% of whose assets consist of intangible personal property and at least 90% of whose gross income consists of dividends or interest or other charges resulting from the use of money or credit.

- Section 7
- (1) "Fiscal year" means an accounting period of 12 months ending on any day other than December 31. Only fiscal years accepted by the internal revenue service for federal income tax purposes may be used for city tax purposes.
 - (2) "Net profits" means the net gain from the operation of a business, profession or enterprise, after provision for all costs and expenses incurred in the conduct thereof, determined on either a cash or accrual method, on the same basis as provided for in the federal internal revenue code for federal income tax purposes, excluding items exempted under this ordinance, but without deduction of federal and city taxes based on income and without deductions of net operating loss carry-over or capital loss carry-over sustained prior to the effective date of this tax.

- Section 8
- (1) "Nonresident" means an individual domiciled outside the city.
 - (2) "Person" mean a natural person, partnership, fiduciary, association, corporation or other entity. When used in any provision imposing a criminal penalty, "person" as applied to an association means the parties or members thereof, and as applied to a corporation, the officers thereof.
 - (3) "Predominant place of employment" means that city imposing a tax under a uniform city income tax ordinance other than the city of residence, in which the employee estimates he will earn the greatest percentage of his compensation from the employer, which percentage is 25% or more.

- Section 9
- (1) "Resident" means an individual domiciled in the city. "Domicile" means a place where a person has his true, fixed and permanent home and principal establishment, to which, whenever absent there from, he intends to return, and domicile continues until another permanent establishment is established. If an individual, during the taxable year, being a resident becomes a nonresident or vice versa, taxable income shall be determined separately for income in each status.
 - (2) "Taxable year" means the calendar year, or the fiscal year, used as the basis on which net profits and other income subject to tax under this ordinance are to be computed, and in case of a return for a fractional part of a year, the period for which the return is required to be made.
 - (3) "Taxpayer" means a person required under this ordinance to file a return or to pay a tax.

Section 11 Subject to the exclusions, adjustments, exemptions and deductions herein provided, an annual tax of 1% on corporations and resident individuals and of ½% on non-resident individuals for general revenue purposes is hereby imposed as an excise on income

earned and received on and after the effective date of this ordinance.

- Section 12 The tax shall apply on the following types of income of a resident individual to the same extent and on the same basis that the income is subject to taxation under the federal internal revenue code:
- (a) On a salary, bonus, wage, commission and other compensation.
 - (b) On a distributive share of the net profits of a resident owner of an unincorporated business, profession, enterprise, undertaking or other activity, as a result of work done, services rendered and other business activities wherever conducted.
 - (c) On dividends, interest, capital gains less capital losses, income from estates and trust and net profits from rentals of real and tangible personal property.
 - (d) On other income of a resident individual.

- Section 13 The tax shall apply on the following types of income of a nonresident individual to the same extent and on the same basis that the income is subject to taxation under the federal internal revenue code:
- (a) On a salary, bonus, wage, commission and other compensation for services rendered as an employee for work done or services performed in the city. Vacation pay, holiday pay, sick pay and a bonus paid by the employer are deemed to have the same tax situs as the work assignment or work location and are taxable on the same ratio as the normal earnings of the employee for work actually done or services actually performed.
 - (b) On a distributive share of the net profits of a nonresident owner of an unincorporated business, profession, enterprise, undertaking or other activity, as a result of work done, services rendered and other business activities conducted in the city.
 - (c) On capital gains less capital losses from sales of, and on the net profits from rentals of, real and tangible personal property, if such arise from property located in the city.

- Section 14 The tax shall apply on the taxable net profits of a corporation doing business in the city, being levied on such part of the taxable net profits as is earned by the corporation as a result of work done, services rendered and other business activities conducted in the city, as determined in accordance with this ordinance. "Taxable net profits of a corporation" means federal taxable income as defined in section 63 of the federal internal revenue code but taking into consideration all exclusions and adjustments provided in this ordinance. No deduction shall be allowed for:
- (a) Net operating losses and net capital losses sustained prior to the effective date of the tax.
 - (b) The city income tax imposed by this ordinance.

A corporation may deduct income, war profits and excess profits taxes, imposed by a foreign country or possession of the United State, allocable to income included in taxable net income, any part of which would be allowable as a deduction in determining federal taxable income under the applicable provisions of the federal internal revenue code.

- Section 15 An Unincorporated business, profession or other activity conducted by 1 or more persons subject to the tax as either a sole proprietorship or partnership shall not be taxable as such. The persons carrying on the unincorporated business, profession or other activity

are liable for income tax only in their separate and individual capacities and on the following bases:

- (a) A resident proprietor or partner is taxable upon his entire distributive share of the net profits of the activity regardless of where the activity is conducted.
- (b) A nonresident proprietor or partner is taxable only upon his distributive share of the portion of the net profits of the activity which is attributable to the city under the allocation methods provided in this ordinance.
- (c) In the hands of a proprietor or partner of an unincorporated activity, the character of any item of income taxable under this ordinance is determined as if such item were realized by the individual proprietor or partner directly from the source from which it is realized by the unincorporated activity. In computing his taxable income for a taxable year, a person who is required to file a return shall include therein his taxable distributive share of the net profits for any partnership year ending within or with his taxable year.

- Section 16 An unincorporated business, profession or other activity owned by 2 or more persons shall file an annual information return setting forth:
- (a) The entire net profit for the period covered by the return and the taxable portion of the net profit attributable to the city.
 - (b) The names and addresses of the owners of the unincorporated activity and each owner's taxable distributive share of the total net profit and each nonresident owner's share of the taxable net profit attributable to the city.

- Section 17 At the election of an unincorporated business, profession or other activity, the entity, on behalf of the owners, may compute and pay the tax due with respect to each owner's share of the net profit of the activity after giving effect to exemptions to which each owner is entitled. This election is available to all unincorporated business entities having 2 or more owners regardless of the residence of the owners. The tax thus paid by the entity shall constitute all tax due with respect to each owner's distributive share of the net profits of the unincorporated business, profession or other activity.

If the unincorporated business, profession or other activity elects under this section to file a return and pay the tax on behalf of its owners, the election and filing are deemed to meet the requirements of this ordinance for the filing of a return for each owner who has no other income subject to the tax. However, a return is required from any such owner having taxable income other than his distributive share of the net profits of the entity. In such case the entire income subject to the tax shall be included in the return and credit taken thereon for the tax paid in his behalf by the unincorporated activity.

If the unincorporated business, profession or other activity elects to pay the tax on behalf of the owners, then the unincorporated business, profession or other activity assumes the status of a taxpayer and is liable to interest and penalty if payment is not made by the due date, in accordance with the calendar or fiscal year used by the unincorporated business, profession or other activity.

- Section 18 When the entire net profit of a business subject to the tax is not derived from business activities exclusively within the city, the portion of the entire net profit, earned as a result of work done, services rendered or other business activity conducted in the city, shall be

determined under either section 19, sections 20 to 24, or section 25.

Section 19 The taxpayer may petition for and the administrator may grant approval of, or the administrator may require the separate accounting method. If such method is petitioned for the administrator may require a statement, explaining the manner in which the apportionment will be made, in sufficient detail to determine whether the net profits attributable to the city will be apportioned with reasonable accuracy.

Section 20 The business allocation percentage method shall be used if such taxpayer is not granted approval to use the separate accounting method of allocation. The entire net profits of such taxpayer earned as a result of work done, services rendered or other business activity conducted in the city shall be ascertained by determining the total "in-city" percentages of property, payroll and sales. "In-city" percentages of property, payrolls and sales, separately computed, shall be determined in accordance with Sections 21 to 24.

Section 21 First, the taxpayer shall ascertain the percentage which the average net book value, of the tangible personal property owned and the real property, including leasehold improvements, owned or used by it in the business and situated within the city during the taxable period, is of the average net book value of all of such property, including leasehold improvements, owned or used by the taxpayer in the business during the same period wherever situated. Real property shall include real property rented or leased by the taxpayer and the value of such property shall be deemed to be 8 times the annual gross rental thereon. "Gross rental of real property" means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use or possession of real property and includes but is not limited to:

- (a) An amount payable for the use or possession of real property or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.
- (b) An amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs or other amount required to be paid by the terms of a lease or other arrangement.

Section 22 Second, the taxpayer shall ascertain the percentage which the total compensation paid to employees for work done or for services performed within the city is of the total compensation paid to all the taxpayer's employees within and without the city during the period covered by the return. For allocation purposes, compensation shall be computed on the cash or accrual basis in accordance with the method used in computing the entire net income of the taxpayer.

If an employee performs services within and without the city, the following examples are not all inclusive but may serve as a guide for determining the amount to be treated as compensation for services performed within the city:

- (a) In the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within the city is of his total working time.
- (b) In the case of an employee compensated directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for business attributable to his efforts in the city.

- (c) In the case of an employee compensated on other results achieved, the proportion of the total compensation received which the value of his services within the city bears to the value of all his services.

Section 23

Third, the taxpayer shall ascertain the percentage which the gross revenue of the taxpayer derived from sales made and services rendered in the city is of the total gross revenue from sales and services wherever made or rendered during the period covered by the return.

- (1) For the purposes of this section, "sales made in the city" means all sales where the goods, merchandise or property is received in the city by the purchaser, or a person or firm designated by him. In the case of delivery of goods in the city to a common or private carrier or by other means of transportation, the place at which the delivery has been completed is considered as the place at which the goods are received by the purchaser.

The following examples are not all inclusive but may serve as a guide for determining sales made in the city:

- (a) Sales to a customer in the city with shipments to a destination within the city from a location in the city or an out-of-city location are considered sales made in the city.
 - (b) Sales to a customer in the city with shipments to a destination within the city directly from the taxpayer's in-city supplier or out-of-city supplier are considered sales made in the city.
 - (c) Sales to a customer in the city with shipments directly to the customer at his regularly maintained and established out-of-city location are considered out-of-city sales.
 - (d) Sales to an out-of-city customer with shipments or deliveries to the customer's location within the city are considered sales made in the city.
 - (e) Sales to an out-of-city customer with shipments to an out-of-city destination are considered out-of-city sales.
- (2) In the case of public utilities, or businesses furnishing transportation services, "gross revenue" for the purposes of this section may be measured by such means as operating revenues, vehicle miles, revenue miles, passenger miles, ton miles, tonnage, or such other method as shall reasonably measure the proportion of gross revenue obtained in the city by such business.
 - (3) In case the business of the taxpayer involves substantial business activities other than sales of goods and services such other method or methods of allocation shall be employed as shall reasonably measure the proportion of gross revenue obtained in the city by such business.

Section 24

Fourth, the taxpayer shall add the percentages determined in accordance with Sections 21, 22 and 23 and divide the total by 3 and the result so obtained is the business allocation percentage. In determining this percentage, a factor shall be excluded from the computation only when the factor does not exist anywhere insofar as the taxpayer's business operation is concerned and, in such case, the total of the percentages shall be divided by the number of factors actually used. The business allocation percentage shall be applied to the entire net profits, wherever derived, of the taxpayer subject to the tax to determine the net profits allocable to the city.

Section 25 An alternative method of accounting shall be used if the taxpayer or the administrator demonstrates that the net profits of the taxpayer allocable to the city cannot be justly and equitably determined under the separate accounting method or the business allocation percentage method, or if undue expense to the taxpayer would result from complying therewith because of the taxpayer's manner of operations and methods of accounting. In such case the administrator, upon application of the taxpayer or upon his own initiative, may approve or specify factors or methods of determination as will effect a just, nondiscriminatory and reasonable result. Application to the administrator to substitute other factors in the formula or to use a different method to allocate net profits shall be made in writing and state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought. No specific form need be followed in making the application. Once a taxpayer has filed under a substitute method, he shall continue so to file until give permission by the administrator to change.

Section 26 (1) Capital gains and capital losses, other than gains and losses on securities issued by the government of the United States, shall be included in income only to the extent of that portion of the gains or losses which occur after the effective date of this ordinance. In determining the amount of gain or loss, the taxpayer may use net proceeds from the sale or exchange less fair market value as of the effective date of this ordinance. The fair market value of property shall be determined by an appraisal or similar reliable evidence. The fair market value of a security shall be the last quoted price on the last business day prior to the effective date. For a security traded over the counter the last quoted price shall be the last bid price on the last business day prior to the effective date. The taxpayer may determine the gain or loss on a transaction in the same manner as for federal income tax purposes taking into account only that portion thereof which occurs after the effective date. The portion of that gain or loss includible in computing taxable income will be the same proportion of the total gain or loss as the period of time the property was held after the effective date of the ordinance bears to the total time the property was held. In any city adopting this ordinance which had a valid local income tax ordinance in effect on January 1 1964, capital gains and losses shall be included to the extent of that portion of such gains or losses which occur after the effective date of the original city income tax ordinance.

(2) If capital losses exceed capital gains in a taxable year, the unused portion may be utilized to the same extent and on the same basis as under the federal internal revenue code.

Section 27 An estate or trust is not subject to tax under this ordinance, except that it shall be treated as a nonresident individual for purposes of section 11 of this ordinance to the extent income of the estate or trust described in section 13 is not includible in the return of a resident individual as "income from estates and trusts". A resident individual shall include "income from estates and trusts" in his income subject to tax under this ordinance without regard to the situs of the estate or trust. For this purpose, and "estate" means the estate of a deceased person during the period of administration or settlement and a "trust" means an inter vivos or testamentary trust created by an individual for the benefit of 1 or more persons.

- Section 28
- (1) "Income from estates" means "income" as defined in section 643 (b) of the federal internal revenue code, properly paid, credited or distributed but not in excess of the resident individual's share of the distributable net income of the estate decreased by the amount of depreciation or depletion allowed the resident individual as a deduction under section 642 of the federal internal revenue code. The exceptions hereinafter set forth with respect to trusts are also applicable to income from estates. "Income from trusts" means the amount of "income" as defined in section 643 (b) of the federal internal revenue code, distributed or required to be distributed under sections 652 (a) or 662 (a) (1) of the federal internal revenue code, decreased by the amount of depreciation or depletion allowed the resident individual as a deduction by section 642 of the federal internal revenue code, with the following exceptions:
 - (a) Dividends on stock of state and national banks and trust companies.
 - (b) Interest from obligations of the United States, the states or subordinate units of government of the states.
 - (2) Income received by a resident individual from a fiduciary shall retain the character it held in the hands of the fiduciary. With respect to trusts where the income is taxed to the grantor or some other person under subpart E of subchapter J of the federal internal revenue code, the grantor or other person shall include in his return all items of income and deductions allowed by this ordinance.
 - (3) An individual shall include "income from estates and trusts" in his return in the same year as provided in the federal internal revenue code with respect to distributions of income from estates and trusts. The amount of income included in the return for the first tax year of a resident individual, with respect to estates and trusts, shall be computed as though the tax year of the estate or trust for federal income tax purposes began on the effective date of this ordinance and ended with the end of the tax year of the estate or trust for federal income tax purposes which ends next following the effective date.

Section 31 An individual taxpayer in computing his taxable income is allowed deductions for the full personal and dependency exemptions authorized by the federal internal revenue code. The taxpayer may claim his or her spouse and dependents as exemptions, but if the taxpayer and the spouse are both subject to the tax imposed by this ordinance, the number of exemptions claimed by each of them when added together shall not exceed the total number of exemptions allowed under this ordinance.

- Section 32 The following payments and benefits received by any person are not subject to the tax:
- (a) Gifts and bequests.
 - (b) Proceeds of insurance, annuities, pensions and retirement benefits. Amounts received for personal injuries, sickness or disabilities are excluded from taxable income only to the extent provided by the federal internal revenue code.
 - (c) Welfare relief, unemployment benefits including supplemental unemployment benefits, and workmen's compensation or similar payments from whatever source derived.
 - (d) Amounts received by charitable, religious, educational and other similar nonprofit organizations which are exempt from taxation under the federal internal revenue code.
 - (e) Amount received by supplemental unemployment benefit trusts or pension, profit

sharing and stock bonus trusts qualified and exempt under the federal internal revenue code.

- (f) Interest from obligations of the United State, the states or subordinate units of government of the states and gains or losses on the sales of obligations of the United States.
- (g) Net profits of financial institutions and insurance companies.
- (h) Dividends received from national and state bank stock.
- (i) Amounts paid to an employee as reimbursement for expenses necessarily and actually incurred by him in the actual performance of his services and deductible as such by the employer.
- (j) Compensation received for service in the armed forces of the United States.

Section 33 Ordinary, necessary, reasonable and unreimbursed expenses paid or incurred by an individual in connection with the performance by him of services as an employee may be deducted from gross income in determining income subject to the tax. The expenses are limited to the following:

- (a) Expenses of travel, meals and lodging while away from home.
- (b) Expenses as an outside salesman, away from his employer's place of business.
- (c) Expenses of transportation.
- (d) Expenses under a reimbursement or other expense allowance arrangement with his employer, where the reimbursement or allowance has been included in total compensation reported.

Section 41 A person having a tax liability under this ordinance in any year shall make and file with the city an annual return for that year, on a form furnished or approved by the city, on or before the last day of the fourth month for the same calendar year, fiscal year or other accounting period, as has been accepted by the internal revenue service for federal income tax purposes for the taxpayer. An individual taxpayer is not required to file an annual return if the amount of tax due under this ordinance does not exceed the amount withheld by more than \$2.00. A husband and wife may file a joint return and, in such case, the tax liability is joint and several.

Section 42 The annual return shall set forth:

- (a) The number of exemptions, place of residence, place of employment and other pertinent information as shall reasonably be required.
- (b) The aggregate amount of compensation, dividends, interest, net profit from rentals, capital gains less capital losses, net profits from business and other income, subject to the tax.
- (c) The total amount of the tax imposed by this ordinance.
- (d) The amount of the tax previously withheld or paid.
- (e) Credits provided in this ordinance.
- (f) The balance of the tax due or to be refunded.

Section 43 Any balance of the tax which is due the city at the time of filing the annual return shall be paid therewith. If the annual return reflects an overpayment of the tax, the declaration thereof on the return constitutes a claim for refund and the overpayment shall be applied against any subsequent liability there under or, at the election of the taxpayer and when so indicated on the return, the overpayment or any part shall be refunded.

- Section 44 Where total income, total deductions, net profits, or other figures are derived from the taxpayer's federal income tax return, any item of income not subject to the city income tax and unallowable deductions shall be eliminated in determining net income subject to the city tax. The fact that a taxpayer is not required to file a federal income tax return does not relieve him from filing a city tax return.
- Section 45 For the purpose of determining net profit allocable to the city under this ordinance, a corporate taxpayer may elect to file a consolidated return including subsidiaries whose voting stock is more than 50% owned by the taxpayer, if such return will more properly reflect the net profits and activities of the taxpayer in the city. The city may require a consolidated return if necessary to properly determine net profits of the taxpayer allocable to the city.
- Section 46 An amended return shall be filed, on a form obtainable from the city, where necessary to report additional income and pay an additional tax due, or to claim a refund of tax overpaid, subject to the requirements or limitations contained in this ordinance. Within 90 days from final determination of a federal tax liability which also affects the computation of a taxpayer's city income tax liability, the taxpayer shall prepare and file an amended city income tax return showing income subject to the city tax based upon the final determination of federal income tax liability, and pay an additional tax shown due thereon or make claim for refund of an overpayment. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return, or any extensions thereof.
- Section 51
- (1) An employer doing business or maintaining an establishment within the city shall withhold from each payment to his employees on and after the effective date of this ordinance the tax on their compensation subject to the tax, after giving effect to exemptions, as follows:
 - (a) Residents.
 - (i) At a rate equal to 1% of all compensation paid to the employee who is a resident of the city, if he is not subject to withholding in any other city levying the tax.
 - (ii) At a rate equal to 1/2 of 1% of all compensation paid to the employee who is a resident of the city, from whom the employer is required to withhold on such compensation earned in another city.
 - (b) Nonresidents. At a rate equal to 1/2 of 1% of the compensation paid to the employee for work done or services performed in the city designated by the employee as his predominant place of employment. The withholding rate shall be applied to the percentage of the employee's total compensation equal to the employee's estimated percentage of work to be done or services to be performed in the city for such employer, but no withholding shall be required if the estimated percentage of work is less than 25%.
 - (2) An employer withholding the tax is deemed to hold such tax as a trustee for the city.
 - (3) An employer who is required to withhold and who fails or refuses to deduct and withhold is liable for the payment of the amount required to be withheld. The liability shall be discharged upon payment of the tax by the employee but the employer is not relieved of penalties and interest provided in this ordinance for such

failure or refusal.

- Section 52 Employers shall not withhold any tax from the following payments:
- (a) Compensation paid to domestic help.
 - (b) Compensation paid to a person who is not an employee, including an independent contractor.
 - (c) An amount allowed and paid to an employee as reimbursement for expenses necessarily and actually incurred by him in the actual performance of his services, and deductible by the employer.
- Section 53 If the tax is not withheld, an employee is not excused from filing a return and paying the tax on his compensation. If the tax is withheld but an employer fails to pay the tax to the city, the employee is not liable for the tax so withheld.
- Section 54 (1) An employee with compensation subject to tax shall file with his employer a form on which the employee shall state the number of exemptions claimed, the city of residence, the predominant place of employment, and the percentage of work done or services performed in the predominant place of employment. The percentage shall be expressed as "less than 25%", "40%", "60%", "80%" or "100%". The employer shall retain the form and rely on the information therein for withholding purposes unless directed by the city to withhold on another basis. If information submitted by the employee is not believed to be true, correct and complete, the city shall be so advised.
- Section 55 An employee shall file with his employer a revised form within 10 days after his number of exemptions decreases or he changes his residence from or to a taxing city. The employee may file a revised form when his number of exemptions increases. An employee shall file a revised form by December 1 of each year, if his predominant place of employment or his estimate of the percentage of work done or services to be rendered in the city will change for the ensuing year. Revised withholding certificates shall not be given retroactive effect.
- Section 56 If an employee refuses to furnish a withholding certificate upon the request of his employer, the employer shall withhold 1% of the employee's total compensation, and report and pay the withholding on the basis of the best information in the possession of the employer.
- Section 57 (1) The city shall provide withholding tables establishing the amounts to be withheld for various tax rates, wage brackets, numbers of exemptions and pay periods. An employer who uses the tables fully discharges his duty to withhold. An employer may elect not to use the tables, in which case to discharge fully his duty to withhold he shall withhold the applicable per cent of taxable compensation after provision for exemptions.
- (2) The first compensation paid an employee on or after the effective date of the tax levy is subject to withholding on either of the following bases at the option of the employer:
- (a) On the full amount of compensation paid.
 - (b) On the proportion of compensation paid for work done or services performed

on or after the effective date of the levy.

- Section 58 If an employer withholds more than the apparent tax liability of an employee due to an increase in the number of exemptions claimed during the year, or due to the actual percentage of work performed in the city by a nonresident being less than the estimated percentage, or due to a change of residence during the year to or from a taxing city, or due to any reason other than the employer's error, the employer shall neither refund the excess to the employee nor offset the excess by under-withholding in a subsequent period. The employee shall claim his refund from the city on his annual return.
- Section 59 Correction of an over or an under-withholding as a result of an employer's error shall be made as follows:
- (a) If the error is discovered in the same quarter in which it is made, the employer shall make the necessary adjustment on a subsequent pay and include only the corrected amount on the quarterly return.
 - (b) If the error is discovered in a subsequent quarter of the same calendar year, the employer shall make the necessary adjustment on a subsequent pay and report it as an adjustment on the quarterly return.
 - (c) If the error is discovered in the following calendar year, or if the employer-employee relationship has terminated, the procedure shall be as follows:
 - (i) The employee or former employee shall apply to the city for a refund in case of an over-withholding. Upon proper verification the city shall refund to him the amount of the over-withholding.
 - (ii) If a deficiency is discovered, the employer shall notify the city and the employee or former employee, who shall pay the city the additional tax due in his annual return.
- Section 60 An employer shall file a return, furnished by or obtainable on request from the city, and pay to the city the full amount of the tax withheld on or before the last day of the month following the close of each calendar quarter.
- Section 61
- (1) An employer shall file a reconciliation of his quarterly returns on or before the last day of February following each calendar year in which he has withheld from an employee's compensation. A deficiency is due when the reconciliation is filed. If the employer made quarterly payments in excess of the amount withheld from an employee's compensation, the city upon proper verification shall refund the excess to the employer.
 - (2) In addition to the reconciliation the employer shall file an information return for each employee from whom the city income tax has been withheld and each employee subject to withholding under this ordinance, setting forth his name, address and social security number, the total amount of compensation paid him during the year, and the amount of city income tax withheld from him. The information return shall be on a copy of the federal W-2 form or on a form furnished or approved by the city. A copy of the information return shall be furnished to the employee.
 - (3) If an employer goes out of business or otherwise ceases to be an employer, reconciliation forms and the information return forms shall be filed by the date the final withholding return and payment are due.

- Section 62 (1) A person, who anticipates taxable income from which the city income tax will not be withheld, shall file a declaration of estimated tax on a form furnished by or obtainable on request from the city. A calendar year taxpayer shall file a declaration on or before each April 30. A taxpayer on a fiscal year basis or other accounting period shall file a declaration within 4 months after the beginning of each fiscal year or other accounting period.
- (2) If a taxpayer has not previously been required to file, the declaration shall be filed on or before the first date for making a quarterly payment which occurs after he becomes subject to the requirement to file a declaration. A taxpayer shall file a declaration for the same calendar year, fiscal year or other accounting period that has been accepted by the federal internal revenue service for federal income tax purposes. A declaration by an individual or unincorporated entity is not required if the total estimated tax, less any credits applicable thereto, does not exceed \$40.00. A declaration by a corporation is not required if the total estimated tax, less any credits applicable thereto, does not exceed \$250.00. A declaration by or on behalf of an estate or trust is not required.
- Section 63 (1) A taxpayer's annual return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year, or he may use the same figures used for estimating his federal income tax adjusted to exclude any income or deductions not taxable or permissible under this ordinance.
- (2) The estimated tax may be paid in full with the declaration or in 4 equal installments on or before the last day of the fourth, sixth, ninth and thirteenth months after the beginning of the taxable year.
- (3) An amended declaration may be filed when making a quarterly payment, and the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.
- Section 64 (1) The filing of a declaration of estimated tax does not excuse the taxpayer from filing an annual return even though there is no change in the declared tax liability. An annual return shall be filed by the end of the fourth month of the year following that for which the declaration was filed. Upon written request of a taxpayer the administrator may extend the time for filing the annual return for not to exceed 6 months. The administrator may require a tentative return and payment of the estimated tax.
- (2) A penalty or interest shall not be assessed if the return is filed and the final tax paid within the extended time and all other filing and payment requirements of this ordinance are satisfied, and the estimated tax paid equals 70% or more of the tax shown due on the final return or 70% or more of the tax shown due on the taxpayer's return for the preceding taxable year.
- Section 65 An individual who is a resident of the city and received net profits from a business, profession or rental of real or tangible personal property, gains from the sale or exchange of real or tangible personal property, or salaries, wages, commissions or other compensation for work done or services performed or rendered, in each case outside the city, and is subject to and has paid an income tax on this income to another municipality, shall be allowed a credit against the city income tax for the amount paid to the other

municipality. The credit shall not exceed the amount of taxes which would be assessed under this ordinance on the same amount of income of a nonresident.

- Section 66 In withholding or in paying the tax due under this ordinance, a fractional part of a cent shall be disregarded unless it amounts to ½ cent or more, in which case it shall be increased to 1 cent.
- Section 71 (1) The administrator may adopt, amend and repeal rules and regulations relating to the administration and enforcement of this ordinance, but not in conflict with the ordinance, subject to the approval of the city governing body. The rules and regulations, amendments and repeals, after approval by the city governing body, shall become effective upon being published in the official newspaper of the city.
(2) The administrator shall enforce this ordinance and the rules and regulations. The administrator shall prepare, adopt and make available to taxpayers, employers and other persons all forms necessary for compliance with this ordinance.
(3) The city treasurer shall collect all taxes and payments due under this ordinance and deposit them in a designated city depository.
- Section 72 A taxpayer or employer desiring a special ruling on a matter pertaining to this ordinance or rules and regulations shall submit in writing to the administrator all the facts involved and the ruling sought. A taxpayer or employer aggrieved by a special ruling may appeal the special ruling in writing to the income tax board of review within 30 days.
- Section 73 (1) The administrator personally, or his fully authorized agent or a duly authorized city employee, may examine the books, papers and records of any person, employer, taxpayer or his agent or representative, for the purpose of verifying the accuracy and completeness of a return filed, or, if no return was filed, to ascertain the tax, withholding, penalties or interest due under this ordinance.
(2) The administrator or his duly authorized agent may examine any person, under oath, concerning income which was or should have been reported for taxation under this ordinance, and for this purpose may compel the production of books, papers and records and the attendance of all parties before him, whether as parties or witnesses, if he believes such persons have knowledge of such income.
- Section 74 (1) Information gained by the administrator, city treasurer or any other city official, agent or employee as a result of a return, investigation, hearing or verification required or authorized by this ordinance is confidential, except for official purposes in connection with the administration of the ordinance and except in accordance with a proper judicial order.
(2) Any person who divulges this confidential information, except for official purposes, is guilty of a misdemeanor and subject to a fine not exceeding \$500.00 or imprisonment for a period not exceeding 90 days, or both for each offense. In addition, an employee of the city who divulges this confidential information is subject to discharge for misconduct.
- Section 81 (1) A person shall furnish, within 10 days following a request of the administrator or his duly authorized agent, the means, facilities and opportunity for making such reasonable examinations and investigations as are authorized by this ordinance, and

shall present himself for examination under oath when so ordered by the administrator. The request or order of the administrator or his duly authorized agent may be made verbally. However, a person may require that the request or order be addressed in writing to him, and if the request relates to interest, dividends or other payments made to a taxpayer or presumed taxpayer, that it adequately identify him.

- (2) Refusal by any person to submit to such examination or investigation, when requested or ordered by the administrator, is a violation of this ordinance, punishable by such penalties as are provided in the ordinance.

- Section 82
- (1) All taxes imposed upon taxpayers and moneys withheld by employers under this ordinance and remaining unpaid after they are due bear interest from such due date at the rate of $\frac{1}{2}$ of 1% per month until paid.
 - (2) A person failing to file a return, or to pay the tax, or to remit withholding when due, is liable, in addition to the interest, to a penalty of 1% of the amount of the unpaid tax for each month or fraction thereof, not to exceed a total penalty of 25% of the unpaid tax. The administrator may abate the penalty or a part thereof for just cause. If the total interest or interest and penalty to be assessed is less than \$2.00, the administrator, in lieu thereof, shall assess a penalty in the amount of \$2.00.

- Section 83
- (1) Interest or a penalty shall not be imposed on an additional tax assessment if, within 90 days from final determination of a federal tax liability which also affects the computation of the taxpayer's city income tax liability, the taxpayer prepares and files an amended city income tax return showing income subject to the city tax based upon the final determination of federal income tax liability, and pays the additional tax shown due thereon or makes claim for refund of an overpayment. Interest shall not be allowed on refund of the city income tax resulting from a final determination of federal tax liability.
 - (2) Interest and a penalty shall not be imposed for underestimating the tax if the total amount of tax withheld and paid by declaration, equals at least 70% or more of the tax shown due on the final return or 70% or more of tax shown on the taxpayer's return for the preceding taxable year.
 - (3) An employee shall not be penalized because of the failure of his employer to report or pay tax withheld from the employee when the employer has in fact withheld the proper amount of tax.

- Section 84
- (1) If the administrator determines that a taxpayer or an employer subject to the provisions of this ordinance has failed to pay the full amount of the tax due or tax withheld, he shall issue a proposed assessment showing the amount due and unpaid, together with interest and penalties that may have accrued thereon. The proposed assessment shall be served upon the taxpayer or employer in person or by mailing by registered or certified mail to the last known address of the taxpayer or employer. Proof of mailing the proposed assessment is prima facie evidence of a receipt thereof by the addressee.
 - (2) A taxpayer or employer has 30 days after receipt of a proposed assessment within which to file a written protest with the administrator, who shall then give the taxpayer or employer or his duly authorized representative an opportunity to be heard and present evidence and arguments in his behalf.

- Section 85 (1) After the hearing the administrator shall issue a final assessment setting forth the total amount found due in the proposed assessment and any adjustment he may have made as a result of the protest. The final assessment shall be served in the same manner as a proposed assessment. Proof of mailing of the final assessment is prima facie evidence of a receipt thereof by the addressee.
- (2) If a protest is not filed in respect to a proposed assessment, a taxpayer or employer is deemed to have received a final assessment 30 days after receipt of the proposed assessment.
- Section 86 If an employer or taxpayer files a return showing the amount of tax or withholding due the city, but fails to pay the amount to the city treasurer, the administrator is not required to issue a proposed assessment or a final assessment. The administrator shall issue a 10-day demand for payment and if no payment or satisfactory evidence of payment is made in the 10 days he may thereafter recover the tax with interest and penalties thereon in the name of the city in any court of record as other debts are recoverable, or prosecute for violation of this ordinance under section 99, or both.
- Section 87 If the city believes that collection of the tax withheld from an employee's compensation as imposed under this ordinance will be jeopardized by delay, the city, whether or not the time otherwise proscribed by the ordinance for making the return and paying the tax has expired, shall immediately assess the tax and interest and additions provided by the ordinance. The tax, interest and additions shall thereupon become immediately due and payable, and the city shall make an immediate notice and demand for payment, notwithstanding the fact that the withheld tax is not due under the ordinance until the last day of the month following the end of the calendar quarter.
- Section 88 (1) Except in case of fraud, failure to file a return, failure to comply with the withholding provisions of this ordinance, or omission of substantial portions of income subject to the tax, an additional assessment shall not be made after 3 years from the date the return was including extensions thereof, or the tax was paid, whichever is later. An omission of more than 25% of gross income is considered a substantial omission of income. Under this section a declaration of estimated tax is not considered a return.
- (2) If the federal internal revenue service and a taxpayer execute a waiver of the federal statute of limitations, as to a taxable year, the expiration of the period within which an additional assessment may be made by the administrator or a claim for refund filed by the taxpayer for such taxable year for city income tax purposes shall be 6 months from the date of expiration of the waiver.
- Section 89 (1) Except as otherwise provided in this ordinance, a tax erroneously paid shall not be refunded unless a claim for refund is made with 3 years from the date the payment was made or the final return was due, including extensions thereof, whichever is later, unless the administrator and the taxpayer mutually agree to extend the time for assessment or refund. Under this section a declaration of estimated tax is not considered a return. Upon denial of a refund a taxpayer may follow the same procedure for appeal as provided in the case of a deficiency assessment.
- (2) A tax deficiency as finally determined and interest or penalties thereon shall be paid within 30 days after receipt of a final assessment where no appeal is made.

Section 91 The governing body of the city shall appoint an income tax board of review consisting of 3 residents of the city who are not city officials or employees.

The board shall select its chairman, secretary and such other officers as it deems necessary and shall adopt rules governing the procedure for hearings before it and its other procedures. The rules shall be filed in the office of the city clerk and shall be available for inspection by any interested person. A copy of the rules shall be furnished on request to any interested person.

A majority of the board members shall constitute a quorum for any action by or hearing before the board, or for any other purpose. A member of the board shall not act on a matter in which he has a financial interest other than the common public interest. A record shall be kept of all the board's transactions and proceedings.

- Section 92
- (1) A taxpayer or employer may file a written notice of appeal with the secretary of the income tax board of review within 30 days after receipt of a final assessment, denial in whole or part of a claim for refund, or special ruling of the administrator. Upon receipt of the notice of appeal, the board of review shall notify the administrator, who shall forward within 15 days to the board a certified transcript of all actions and findings taken by him relating to the matter under appeal. The appellant or his duly authorized representative may inspect the transcript.
 - (2) The board of review shall grant the appellant a hearing at which the appellant or his duly authorized representative and the administrator and his authorized agent have an opportunity to present evidence relating to the matter under appeal. After conclusion of the hearing the board acting by a majority vote of its 3 members shall affirm, reverse or modify the matter under appeal and furnish a copy of its decision to the appellant and to the administrator.
 - (3) The provisions of this ordinance as to the confidential character of tax data are applicable to proceedings pending before or submitted to the board.
 - (4) A tax deficiency or refund and any interest or penalties thereon shall be paid within 30 days after receipt of notice of determination by the board if no further appeal is made.

Section 93 A taxpayer, employer or other person aggrieved by a rule adopted by the administrator or a taxpayer, employer, person or city aggrieved by a determination of the board of review on a final assessment, denial in whole or in part of a claim for refund, or a special ruling, may file a timely appeal there from to the state commissioner of revenue in such form and manner as the commissioner shall prescribe. Within 30 days after a final order of the commissioner upon the appeal, the taxpayer shall pay the city the taxes, interest and penalty found due from the taxpayer to the city, and the city shall refund to the taxpayer any amount found to have been overpaid by the taxpayer.

Section 2 The effective date of this ordinance shall be January 1, 1971.

Section 94 If a taxpayer, employer, person or city is aggrieved by a decision of the state commissioner of revenue, the aggrieved party may bring an action within 90 days in the circuit court for the county in which the taxing jurisdiction is located to obtain a judicial determination of the matter.

Section 95 If a taxpayer is found entitled by a decision on an appeal to recover any sum paid, and no further appeal has been taken within the time limited, the sum shall be paid from the general fund of the city.

Section 99 Each of the following violations of this ordinance is a misdemeanor and is punishable, in addition to the interest and penalties provided under the ordinance, by a fine not exceeding \$500.00, or imprisonment for a period not exceeding 90 days or both:

- (a) Willful failure, neglect or refusal to file a return required by the ordinance.
- (b) Willful failure, neglect or refusal to pay the tax, penalty or interest imposed by the ordinance.
- (c) Willful failure of an employer to withhold or pay to the city a tax as required by the ordinance.
- (d) Refusal to permit the city or an agent or employee appointed by the administrator in writing to examine the books, records and papers of a person subject to the ordinance.
- (e) Knowingly filing an incomplete, false or fraudulent return.
- (f) Attempting to do or doing anything whatever in order to avoid full disclosure of the amount of income or to avoid the payment of any or all of the tax.

Adopted: July 7, 1970

Effective: January 1, 1971

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