

Sponsor: Lemaster

1<sup>st</sup> Read: March 21, 2024  
2<sup>nd</sup> Read: April 4, 2024

ORDINANCE NO. 2024-23

**AN ORDINANCE REPEALING AND AMENDING THE CITY OF WELLSTON'S CODIFIED ORDINANCE REGARDING THE INCOME TAX AT SECTIONS 39.03, 39.05, AND 39.18.**

WHEREAS, the legislative authority of the City of Wellston has published certain general and permanent ordinances in a volume of Codified Ordinances relating to the City Income Tax, including 39.03 – Imposition of Tax, 39.05 – Annual Return, and 39.18 – Interest and Penalties; and

WHEREAS, the legislative authority of the City of Wellston has determined it necessary to revise Sections 39.03, 39.05, and 39.18 of the City's Codified Ordinances regarding the City Income Tax; and

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE AUTHORITY OF THE POLITICAL SUBDIVISION OF THE CITY OF WELLSTON, OHIO THAT SECTIONS 39.03, 39.05, AND 39.18 REGARDING INCOME TAX OF THE CODIFIED ORDINANCES OF THE CITY OF WELLSTON BE AMENDED AS SET FORTH IN EXHIBIT "A", ATTACHED HERETO, WITH THOSE UNDERLINED PORTIONS SHOWING THE AMENDMENTS TO THE ORIGINAL LANGUAGE AND THAT IT BE PLACED WITHIN THE WELLSTON CITY CODE, IN REGULAR TEXT AND DECLARING AN EMERGENCY.

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

PASSED AND ADOPTED by the Legislative Authority of the Political Subdivision on this 18<sup>th</sup> day of April, 2024.



ATTEST:

[Signature]  
Clerk of the Legislative Authority

[Signature]  
President of Council

Approved this 18<sup>th</sup> day of April, 2024.

[Signature]  
Mayor

# EXHIBIT A

## § 39.03 IMPOSITION OF TAX.

The income tax levied by the city, at a rate of 1%, is levied on the municipal taxable income of every person residing in and/or earning and/or receiving income in the city.

### (A) *Individuals.*

(1) For residents of the city, the income tax levied herein shall be on all income, salaries, qualifying wages, commissions and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident. This is further detailed in the definition of income in § 39.02.

(2) For nonresidents, all income, salaries, qualifying wages, commissions and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(3) For residents and nonresidents, income can be reduced to municipal taxable income as defined in § 39.02. Exemptions which may apply are specified in § 39.02(C)(12).

### (B) *Refundable credit for nonqualified deferred compensation plan.*

(1) (a) For the purpose of this division (B), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**NONQUALIFIED DEFERRED COMPENSATION PLAN.** A compensation plan described in § 3121(v)(2)(C) of the Internal Revenue Code, being 26 U.S.C. § 3121(v)(2)(C).

**QUALIFYING LOSS.** The amount of compensation attributable to a taxpayer's nonqualified deferred compensation plan, less the receipt of money and property attributable to distributions from the nonqualified deferred compensation plan. Full loss is sustained if no distribution of money and property is made by the nonqualified deferred compensation plan. The taxpayer sustains a **QUALIFYING LOSS** only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.

### **QUALIFYING TAX RATE.**

a. The applicable tax rate for the taxable year for the which the taxpayer paid income tax to the city with respect to any portion of the total amount of compensation, the payment of which is deferred pursuant to a nonqualified deferred compensation plan.

b. If different tax rates applied for different taxable years, then the **QUALIFYING TAX RATE** is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the city each year with respect to the nonqualified deferred compensation plan.

**REFUNDABLE CREDIT.** The amount of city income tax that was paid on the non-distributed portion, if any, of a nonqualified deferred compensation plan.

(b) If, in addition to the city, a taxpayer has paid tax to other municipal corporations with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal

corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.

(c) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to the city for all taxable years with respect to the nonqualified deferred compensation plan.

(d) The credit allowed under this division is allowed only to the extent the taxpayer's qualifying loss is attributable to:

1. The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or

2. The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

(C) *Domicile.*

(1) (a) An individual is presumed to be domiciled in the city for all or part of a taxable year if the individual was domiciled in the city on the last day of the immediately preceding taxable year or if the Tax Administrator reasonably concludes that the individual is domiciled in the city for all or part of the taxable year.

(b) An individual may rebut the presumption of domicile described in division (C)(1)(a) above if the individual establishes, by a preponderance of the evidence, that the individual was not domiciled in the city for all or part of the taxable year.

(2) For the purpose of determining whether an individual is domiciled in the city for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:

(a) The individual's domicile in other taxable years;

(b) The location at which the individual is registered to vote;

(c) The address on the individual's driver's license;

(d) The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;

(e) The location and value of abodes owned or leased by the individual;

(f) Declarations, written or oral, made by the individual regarding the individual's residency;

(g) The primary location at which the individual is employed;

(h) The location of educational institutions attended by the individual's dependents as defined in § 1152 of the Internal Revenue Code, being 26 U.S.C. §§ 1152, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation where the educational institution is located; and

(i) The number of contact periods the individual has with the city. For the purposes of this division, an individual has one "contact period" with the city if the individual is away overnight from the individual's abode located outside of the city, and while away overnight from that abode, spends at least some portion, however minimal, of each of two consecutive days in the city.

(3) All additional applicable factors are provided in the rules and regulations.

(D) *Businesses.* This division applies to any taxpayer engaged in a business or profession in the city, unless the taxpayer is an individual who resides in the city or the taxpayer is an electric

company, combined company or telephone company that is subject to and required to file reports under R.C. Chapter 5745.

(1) Except as otherwise provided in division (D)(2) and (E) below, 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 municipal income taxation in the same proportion as the average ratio of the following:

(a) The average original cost or the real property 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. As used above, **TANGIBLE PERSONAL OR 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 individuals employed in the business or profession for services performed in the city to wages, salaries and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under § 39.04(C); and

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

(2) (a) If the apportionment factors described in division (D)(1) above do not fairly represent the extent of a taxpayer's business activity in the city, the taxpayer may request, or the city's Tax Administrator may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

1. Separate accounting;
2. The exclusion of one or more of the factors;
3. The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation; or
4. A modification of one or more of the factors.

(b) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by § 39.12(A).

(c) The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (D)(2)(a) above, but only by issuing an assessment to the taxpayer within the period prescribed by § 39.12(A).

(d) Nothing in division (D)(2) above nullifies or otherwise affects any alternative apportionment arrangement approved by a the Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.

(3) As used in division (D)(1)(b) above, **WAGES, SALARIES AND OTHER COMPENSATION** includes only wages, salaries or other compensation paid to an employee for services performed at any of the following locations:

(a) A location that is owned, controlled or used by, rented to or under the possession of one of the following:

1. The employer;
2. A vendor, customer, client or patient of the employer, or a related member of such a vendor, customer, client or patient; and/or
3. A vendor, customer, client or patient of a person described in (D)(3)(a)2. above, or a related member of such a vendor, customer, client or patient.

(b) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial or similar administrative, judicial or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer; or

(c) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (D)(3)(a) or (D)(3)(b) above solely in order to avoid or reduce the employer's municipal income tax liability. If the Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.

(4) For the purposes of division (D)(1)(c) above, and except as provided in division (E) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

(a) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in the city if, regardless of where title passes, the property meets any of the following criteria:

1. The property is shipped to or delivered within the city from a stock of goods located within the city;
2. The property is delivered within the city from a location outside the city, provided 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; or
3. The property is shipped from a place within the city to purchasers outside the municipal corporation, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(b) Gross receipts from the sale of services shall be situated to the city to the extent that such services are performed in the city;

(c) To the extent included in income, gross receipts from the sale of real property located in the city shall be situated to the city;

(d) To the extent included in income, gross receipts from rents and royalties from real property located in the city shall be situated to the city; and

(e) Gross receipts from rents and royalties from tangible personal property shall be situated to the city based upon the extent to which the tangible personal property is used in the city.

(5) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual, or by a disregarded entity owned by the individual, shall be subject to the

city's tax only if the property generating the net profit is located in the city or if the individual taxpayer that receives the net profit is a resident of the city. The city shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.

(6) (a) Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the city, if applicable, based upon the ratio of the commissions the agent or broker received from the sale, purchase or lease of real estate located in the city to the commissions received from the sale, purchase or lease of real estate everywhere in the taxable year.

(b) An individual who is a resident of the city shall report the individual's net profit from all real estate activity on the individual's annual tax return for the city. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such a credit is allowed under the city's income tax ordinance.

(7) When calculating the ratios described in division (D)(1) above for the purposes of that division or division (D)(2) above, the owner of a disregarded entity shall include in the owner's ratios the property, payroll and gross receipts of such disregarded entity.

(E)(1) As used in this division:

(a) "Qualifying remote employee or owner" means an individual who is an employee of a taxpayer or who is a partner or member holding an ownership interest in a taxpayer that is treated as a partnership for federal income tax purposes, provided that the individual meets both of the following criteria:

(i) The taxpayer has assigned the individual to a qualifying reporting location.

(ii) The individual is permitted or required to perform services for the taxpayer at a qualifying remote work location.

(b) "Qualifying remote work location" means a permanent or temporary location at which an employee or owner chooses or is required to perform services for the taxpayer, other than a reporting location of the taxpayer or any other location owned or controlled by a customer or client of the taxpayer. "Qualifying remote work location" may include the residence of an employee or owner and may be located outside of a municipal corporation that imposes an income tax in accordance with this chapter. An employee or owner may have more than one qualifying remote work location during a taxable year.

(c) "Reporting location" means either of the following:

(i) A permanent or temporary place of doing business, such as an office, warehouse, storefront, construction site, or similar location, that is owned or controlled directly or indirectly by the taxpayer;

(ii) Any location in this state owned or controlled by a customer or client of the taxpayer, provided that the taxpayer is required to withhold taxes under Section 4 of this Ordinance, on qualifying wages paid to an employee for the performance of personal services at that location.

(d) "Qualifying reporting location" means one of the following:

(i) The reporting location in this state at which an employee or owner performs services for the taxpayer on a regular or periodic basis during the taxable year;

(ii) If no reporting location exists in this state for an employee or owner under division (E)(1)(d)(i) of this section, the reporting location in this state at which the employee's or owner's supervisor regularly or periodically reports during the taxable year;

(iii) If no reporting location exists in this state for an employee or owner under division (E)(1)(d)(i) or (ii) of this section, the location that the taxpayer otherwise assigns as the employee's or owner's qualifying reporting location, provided the assignment is made in good faith and is recorded and maintained in the taxpayer's business records. A taxpayer may change the qualifying reporting location designated for an employee or owner under this division at any time.

(2) For tax years ending on or after December 31, 2023, a taxpayer may elect to apply the provisions of this division to the apportionment of its net profit from a business or profession. For taxpayers that make this election, the provisions of division (D) of this section apply to such apportionment except as otherwise provided in this division.

A taxpayer shall make the election allowed under this division in writing on or with the taxpayer's net profit return or, if applicable, a timely filed amended net profit return or a timely filed appeal of an assessment. The election applies to the taxable year for which that return or appeal is filed and for all subsequent taxable years, until the taxpayer revokes the election.

The taxpayer shall make the initial election with the tax administrator of each municipal corporation with which, after applying the apportionment provisions authorized in this division, the taxpayer is required to file a net profit tax return for that taxable year. A taxpayer shall not be required to notify the tax administrator of a municipal corporation in which a qualifying remote employee's or owner's qualifying remote work location is located, unless the taxpayer is otherwise required to file a net profit return with that municipal corporation due to business operations that are unrelated to the employee's or owner's activity at the qualifying remote work location.

After the taxpayer makes the initial election, the election applies to every municipal corporation in which the taxpayer conducts business. The taxpayer shall not be required to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in such municipal corporation.

Nothing in this division prohibits a taxpayer from making a new election under this division after properly revoking a prior election.

(3) For the purpose of calculating the ratios described in division (D)(1) of this section, all of the following apply to a taxpayer that has made the election described in division (E)(2):

(a) For the purpose of division (D)(1)(a) of this section, the average original cost of any tangible personal property used by a qualifying remote employee or owner at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(b) For the purpose of division (D)(1)(b) of this section, any wages, salaries, and other compensation paid during the taxable period to a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.



(c) For the purpose of division (D)(1)(c) of this section, and notwithstanding division (D)(4) of this section, any gross receipts of the business or profession from services performed during the taxable period by a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(4) Nothing in this division prevents a taxpayer from requesting, or a tax administrator from requiring, that the taxpayer use, with respect to all or a portion of the income of the taxpayer, an alternative apportionment method as described in division (D)(2) of this section. However, a tax administrator shall not require an alternative apportionment method in such a manner that it would require a taxpayer to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in that municipal corporation.

(5) Except as otherwise provided in this division, nothing in this division is intended to affect the withholding of taxes on qualifying wages pursuant to Section 4 of this Ordinance.

### **§ 39.05 ANNUAL RETURN; FILING.**

~~—(A) An annual city income tax return shall be completed and filed by every individual taxpayer 18 years of age or older and any taxpayer that is not an individual for each taxable year, for which the taxpayer is subject to the tax, whether or not a tax is due thereon.~~

(A) An annual Wellston City income tax return shall be completed and filed by every taxpayer for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon.

(1) The Tax Administrator may accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer or other payer under this section when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer or other payer, and no additional tax is due to the city.

(2) Retirees having no municipal taxable income for city income tax purposes may file with the Tax Administrator a written exemption from these filing requirements on a form prescribed by the Tax Administrator. The written exemption shall indicate the date of retirement and the entity from which retired. The exemption shall be in effect until such time as the retiree receives municipal taxable income taxable to the city, at which time the retiree shall be required to comply with all applicable provisions of this chapter.

(B) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator or other person charged with the property of that decedent.

(C) If an individual is unable to complete and file a return or notice required by the city, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary or other person charged with the care of the person or property of that individual.

(D) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust.

(E) The city shall permit spouses to file a joint return.



(F) (1) Each return required to be filed under this division shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer. The return shall include the taxpayer's Social Security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.

(2) The Tax Administrator shall require a taxpayer who is an individual to include with each annual return, and amended return copies of the following documents: all of the taxpayer's Internal Revenue Service form W-2, Wage and Tax Statements, including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040; and, with respect to an amended tax return, any other documentation necessary to support the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.

(3) The Tax Administrator may require a taxpayer that is not an individual to include with each annual net profit return, amended net profit return or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F or form 1120S; and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return. A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio Business Gateway or in some other manner shall either mail the documents required under this division to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio Business Gateway.

(4) After a taxpayer files a tax return, the Tax Administrator may request, and the taxpayer shall provide, any information, statements or documents required by the city to determine and verify the taxpayer's municipal income tax liability. The requirements imposed under this division (F) apply regardless of whether the taxpayer files on a generic form or on a form prescribed by the Tax Administrator.

(G) (1) Except as otherwise provided in this chapter, each return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state individual income tax returns under R.C. § 5747.08(G). The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the city. No remittance is required if the net amount due is \$10 or less.

(2) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of the city's income tax return. The extended due date of the city's income tax return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates. For tax years ending on or after January 1, 2023, the extended due date of City's income tax return for a taxpayer that is not an individual shall be the 15<sup>th</sup> day of the eleventh month after the last day of the taxable year to which the return relates. An extension of time to file under this division is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

(a) A copy of the federal extension request shall be included with the filing of the city's income tax return.

(b) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's city income tax return. If the request is

received by the Tax Administrator on or before the date the city income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.

(3) If the Tax Commissioner extends for all taxpayers the date for filing state income tax returns under R.C. § 5747.08(G), a taxpayer shall automatically receive an extension for the filing of a city's income tax return. The extended due date of the city's income tax return shall be the same as the extended due date of the state income tax return.

(4) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the city, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this division, including taxpayers not otherwise required to file annual returns.

(5) If a taxpayer receives an extension for the filing of a municipal income tax return under division (G)(2), (3), or (4) of this section, the tax administrator shall not make any inquiry or send any notice to the taxpayer with regard to the return on or before the date the taxpayer files the return or on or before the extended due date to file the return, whichever occurs first.

If a tax administrator violates division (G)(5) of this section, the municipal corporation shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, up to \$150.

Division (G)(5) of this section does not apply to an extension received under division (G)(2) of this section if the tax administrator has actual knowledge that the taxpayer failed to file for a federal extension as required to receive the extension under division (G)(2) of this section or failed to file for an extension under division (G)(2)(b) of this section.

~~(6)-(5)~~ To the extent that any provision in this division (G) conflicts with any provision in divisions (N), (O), (P) or (Q) below, the provisions in divisions (N), (O), (P) or (Q) below prevail.

(H) (1) For taxable years beginning after 2015, the city shall not require a taxpayer to remit tax with respect to net profits if the net amount due is \$10 or less.

(2) Any taxpayer not required to remit tax to the city for a taxable year pursuant to division (H)(1) above shall file with the city an annual net profit return under division (F)(3) below.

(I) If a payment is required to be made by electronic funds transfer, the payment is considered to be made when the payment is credited to an account designated by the Tax Administrator for the receipt of tax payments, except that, when a payment made by electronic funds transfer is delayed due to circumstances not under the control of the taxpayer, the payment is considered to be made when the taxpayer submitted the payment. This division shall not apply to payments required to be made under § 39.04(B)(1)(a) or provisions for semi-monthly withholding.

(J) Taxes withheld for the city by an employer, the agent of an employer or other payer as described in § 39.04 shall be allowed to the taxpayer as credits against payment of the tax imposed on the taxpayer by the city, unless the amounts withheld were not remitted to the city and the recipient colluded with the employer, agent or other payer in connection with the failure to remit the amounts withheld.

(K) Each return required by the city to be filed in accordance with this division shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return.

(L) The Tax Administrator shall accept for filing a generic form of any income tax return, report or document required by the city, provided that the generic form, once completed and filed, contains all

of the information required by ordinance, resolution or rules and regulations adopted by the city or the Tax Administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this chapter and of the city's ordinance, resolution or rules and regulations governing the filing of returns, reports or documents.

(M) (1) Any taxpayer subject to municipal income taxation with respect to the taxpayer's net profit from a business or profession may file the city's income tax return, estimated municipal income tax return, or extension for filing a municipal income tax return, and may make payment of amounts shown to be due on such returns by using the Ohio Business Gateway.

(2) Any employer, agent of an employer or other payer may report the amount of municipal income tax withheld from qualifying wages, and may make remittance of such amounts by using the Ohio Business Gateway.

(3) Nothing in this section affects the due dates for filing employer withholding tax returns.

Extension for service in or for the armed forces.

(N) Each member of the national guard of any state and each member of a reserve component of the armed forces of the United States called to active duty pursuant to an executive order issued by the President of the United States or an act of the congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces, may apply to the city's Tax Administrator for both an extension of time for filing of the return and an extension of time for payment of taxes required by the city during the period of the member's or civilian's duty service, and for 180 days thereafter. The application shall be filed on or before the one hundred eightieth day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.

(O) (1) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the one hundred and eighty-first day after the applicant's active duty or service terminates. The Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate. However, taxes pursuant to a contract entered into under this division are not delinquent, and the Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(2) If the Tax Administrator determines that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report or other tax document nor be required to pay any tax otherwise due to the municipal corporation before the one hundred and eighty- first day after the applicant's active duty or service terminates.

(3) Taxes paid pursuant to a contract entered into under (O)(1) above are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(P) (1) Nothing in this division denies to any person described in this division the application of divisions (N) and (O) above.

(2) (a) A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive, both an extension of time in which to file any return, report or other tax document and an extension of time in which to make any payment of taxes required by a municipal corporation in accordance with this chapter. The length of any extension granted under division (F)(2)(a) above shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this division, **QUALIFYING TAXPAYER** means a member of the

national guard or a member of a reserve component of the armed forces of the United States called to active duty pursuant to either an executive order issued by the President of the United States or an act of the congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces.

(b) Taxes whose payment is extended in accordance with division (F)(2)(a) above are not delinquent during the extension period. Such taxes become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (C)(2)(a) above in calculating the penalty or interest due on any unpaid tax.

(Q) For each taxable year to which division (N), (O) or (P) above applies to a taxpayer, the provisions of divisions (O)(2) and (O)(3) above, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.

(R) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AFFILIATED GROUP OF CORPORATIONS.** An affiliated group as defined in § 1504 of the Internal Revenue Code, being 26 U.S.C. § 1504, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.

**CONSOLIDATED FEDERAL INCOME TAX RETURN.** A consolidated return filed for federal income tax purposes pursuant to § 1501 of the Internal Revenue Code, being 26 U.S.C. § 1501.

**CONSOLIDATED FEDERAL TAXABLE INCOME.** The consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. **CONSOLIDATED FEDERAL TAXABLE INCOME** does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group as defined above.

**INCUMBENT LOCAL EXCHANGE CARRIER.** Has the same meaning as in R.C. § 4927.01.

**LOCAL EXCHANGE TELEPHONE SERVICE.** The same meaning as in R.C. § 5727.01.

(S) (1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the city's income tax in that taxable year, and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (S)(2) below or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

(2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated municipal income tax return election period in effect under division (S)(1) above. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.

(3) An election made under division (S)(1) or (S)(2) above is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(T) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated city income tax return for that taxable year if the Tax Administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the city. A taxpayer that is required to file a consolidated city income tax return for a taxable year shall file a consolidated city income tax return for all subsequent taxable years, unless the taxpayer requests and receives written permission from the Tax Administrator to file a separate return or a taxpayer has experienced a change in circumstances.

(U) A taxpayer shall prepare a consolidated city income tax return in the same manner as is required under the United States Department of Treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(V) (1) Except as otherwise provided in divisions (V)(2), (V)(3) and (V)(4) below, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in § 39.02, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated city income tax return shall make any adjustment otherwise required under § 39.02(C)(1) to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.

(3) If the net profit or loss of a pass-through entity having at least 80% of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated city income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

(a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in divisions (R) through (Y) of this section, exclude the property, payroll and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group; or

(b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in divisions (R) through (Y) of this section, include the property, payroll and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.

(4) If the net profit or loss of a pass-through entity having less than 80% of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is

included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:

(a) The corporation filing the consolidated municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in divisions (R) through (Y) of this section, exclude the property, payroll and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the city; and

(b) The pass-through entity shall be subject to city income taxation as a separate taxpayer in accordance with this chapter on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(W) Corporations filing a consolidated city income tax return shall make the computations required under divisions (R) through (Y) of this section by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(X) Each corporation filing a consolidated city income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges or other amounts imposed by the city in accordance with this chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

(Y) Corporations and their affiliates that made an election or entered into an agreement with the city before January 1, 2016, to file a consolidated or combined tax return with the city may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.

## **§ 39.18 INTEREST AND PENALTIES.**

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**APPLICABLE LAW.** This chapter, the resolutions, ordinances, codes, directives, instructions and rules adopted by the city, provided they impose or directly or indirectly address the levy, payment, remittance or filing requirements of the city.

**FEDERAL SHORT-TERM RATE.** The rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under § 1274 of the Internal Revenue Code, being 26 U.S.C. § 1274, for July of the current year.

**INCOME TAX, ESTIMATED INCOME TAX and WITHHOLDING TAX.** Any income tax, estimated income tax and withholding tax imposed by the city pursuant to applicable law, including at any time before January 1, 2016.

**INTEREST RATE.** As described in this division (A), the federal short-term rate, rounded to the nearest whole number percent, plus 5%. The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined.

**RETURN.** Includes any tax return, report, reconciliation, schedule and other document required to be filed with the Tax Administrator or the city by a taxpayer, employer, any agent of the employer or any other payer pursuant to applicable law, including at any time before January 1, 2016.

**UNPAID ESTIMATED INCOME TAX.** Estimated income tax due but not paid by the date the tax is required to be paid under applicable law.

**UNPAID INCOME TAX.** Income tax due but not paid by the date the income tax is required to be paid under applicable law.

**UNPAID WITHHOLDING TAX.** Withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.

**WITHHOLDING TAX.** Includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee's qualifying wages, but that, under applicable law, the employer, agent or other payer is required to withhold from an employee's qualifying wages.

(B) (1) This section applies to the following:

(a) Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016; and

(b) Income tax, estimated income tax and withholding tax required to be paid or remitted to the city on or after January 1, 2016.

(2) This section does not apply to returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to the ordinances or rules and regulations, as adopted before January 1, 2016, of the city to which the return is to be filed or the payment is to be made.

(C) Should any taxpayer, employer, agent of the employer or other payer for any reason fails, in whole or in part, to make timely and full payment or remittance of income tax, estimated income tax or withholding tax or to file timely with the city any return required to be filed, the following penalties and interest shall apply:

(1) Interest shall be imposed at the rate described in division (A) above, per annum, on all unpaid income tax, unpaid estimated income tax and unpaid withholding tax;

(2) (a) With respect to unpaid income tax and unpaid estimated income tax, the city may impose a penalty equal to 15% of the amount not timely paid; and

(b) With respect to any unpaid withholding tax, the city may impose a penalty equal to 50% of the amount not timely paid.

(3) (a) For tax years ending on or before December 31, 2022, wWith respect to returns other than estimated income tax returns, the city may impose a penalty of \$25 for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed \$150 for each failure.

(b) For tax years ending on or after January 1, 2023, with respect to returns other than estimated income tax returns, the City of Wellston may impose a penalty not exceeding \$25 for each failure to timely file each return, regardless of the liability shown thereon, except that the City shall abate or refund the penalty assessed on a taxpayer's first failure to timely file a return after the taxpayer files that return.

(D) Nothing in this section requires the city to refund or credit any penalty, amount of interest, charges or additional fees that the city has properly imposed or collected before January 1, 2016.



(E) Nothing in this section limits the authority of the city to abate or partially abate penalties or interest imposed under this section when the Tax Administrator determines, in the Tax Administrator's sole discretion, that such abatement is appropriate.

(F) By October 31 of each year, the city shall publish the rate described in division (A) above applicable to the next succeeding calendar year.

(G) The city may impose on the taxpayer, employer, any agent of the employer or any other payer the city's post-judgment collection costs and fees, including attorney's fees.