

# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 2004-16 Passed DECEMBER 21, 2004

## AN ORDINANCE AMENDING CHAPTER 193 OF THE CODE OF ORDINANCES OF THE CITY OF BROOKVILLE, OHIO, AND DECLARING IT AN EMERGENCY.

**WHEREAS**, Chapter 193 of the Code of Ordinances provides for the imposition and enforcement of the municipal income tax for the City of Brookville; and

**WHEREAS**, the Council of the City of Brookville has determined that it is necessary to amend Chapter 193 to provide conformity with the current provisions of the Ohio Revised Code applicable to the administration of municipal income tax codes and to assist in the uniform application and collection of the municipal incomes taxes of the City of Brookville; and

**WHEREAS**, this Ordinance does not amend the rate of taxation imposed by Chapter 193 of the Code of Ordinances or the purposes for which the municipal income tax is imposed.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROOKVILLE, OHIO THAT:

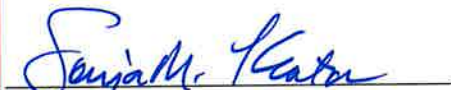
SECTION I: The Council of the City of Brookville hereby adopts and approves Chapter 193, as amended, as set forth and specified in Exhibit A attached hereto and incorporated herein by reference.

SECTION II: This Ordinance shall apply to all returns filed after January 1, 2005 for tax year 2004 and thereafter.

SECTION III: This Ordinance is hereby declared to be an emergency measure for the immediate preservation of the public peace, health, safety and welfare of the citizens of the City of Brookville, Ohio and to permit application of this Ordinance to all returns filed after January 1, 2005 and thereafter. Therefore, this Ordinance shall take effect and be in force from and after its passage as provided in the Charter of the City of Brookville, Ohio

PASSED this 21st day of December, 2004.

ATTEST:

  
Sonja M. Keaton, Clerk

  
David E. Seagraves, Mayor

### CERTIFICATE

The undersigned, Clerk of the City of Brookville, Ohio, does hereby certify that the foregoing is a true and correct copy of Ordinance No. 2004-16, passed by the Council of the City of Brookville, Ohio, on the 21st day of December, 2004.

  
Sonja M. Keaton, Clerk

### CERTIFICATE OF POSTING

The undersigned, Clerk of the City of Brookville, Ohio, hereby certifies that the foregoing Ordinance No. 2004-16 was posted at the City Building, US Post Office and the Brookville Branch of the Montgomery County Public Library, Brookville, Ohio, on the 23rd day of December, 2004 to the 23rd day of January, 2005, both days inclusive.

  
Sonja M. Keaton, Clerk

## Exhibit A

# CHAPTER 193 Income Tax Ordinance Codified Ordinances of Brookville, Ohio

<u>193.01</u>	<u>Purpose.</u>
<u>193.02</u>	<u>Definitions.</u>
<u>193.03</u>	<u>Imposition of tax.</u>
<u>193.04</u>	<u>Effective period.</u>
<u>193.05</u>	<u>Return and payment of tax.</u>
<u>193.06</u>	<u>Collection at source.</u>
<u>193.07</u>	<u>Declarations.</u>
<u>193.08</u>	<u>Duties and powers of the Superintendent of Taxation.</u>
<u>193.09</u>	<u>Investigative powers of the Superintendent; divulging confidential information.</u>
<u>193.10</u>	<u>Interest and penalties.</u>
<u>193.11</u>	<u>Collection of unpaid taxes and refund of overpayments.</u>
<u>193.12</u>	<u>Violations.</u>
<u>193.13</u>	<u>Board of Adjudication and Board of Tax Appeals.</u>
<u>193.14</u>	<u>Allocation of funds.</u>
<u>193.15</u>	<u>Credit for tax paid to another municipality.</u>
<u>193.16</u>	<u>Application of chapter; separability.</u>
<u>193.17</u>	<u>Collection of tax after termination of chapter.</u>
<u>193.18</u>	<u>Effective date.</u>
<u>193.99</u>	<u>Penalties.</u>

### **193.01 PURPOSE.**

To provide funds for the purposes of general municipal operations, maintenance, new equipment, and extension and enlargement of municipal services and facilities of this Municipality there shall be levied a tax on salaries, wages, commissions, other compensations, and net profits as provided in this chapter.

### **193.02 DEFINITIONS.**

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

(a) "Association" means a partnership, limited partnership, limited partnership association, professional association, partnership with limited liability, limited liability company, unincorporated association, business trust, real estate investment trust, joint venture, joint adventure, or any other form of unincorporated enterprise, owned by two or more persons.

(b) "Board of Adjudication" means the Board created by and constituted as provided in Section 193.13(a).

(c) "Board of Tax Appeals" means the Board created by and constituted as provided in Section 193.13(b).

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

(e) "Corporation" means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency.

(f) "Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.

(g) "Employer" means an individual, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, and who or that employs one or more persons for a salary, wage, commission, or other compensation for service.

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

(i) "Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(j) "Generic form" means an electronic or paper form designed for reporting estimated income taxes and annual income tax liability that is not prescribed by the Superintendent for the reporting of the income tax.

(k) "Gross receipts" means the total income from any source whatsoever.

(l) "Intangible income" means income of any of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Ohio R.C. Chapter 5701.

(m) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical sub network now known as the world wide web.

(n) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.

(o) "Net profits" for a taxpayer other than an individual means adjusted federal taxable income as defined in the Ohio Revised Code. "Net profits" for an individual taxpayer means the profit required for federal tax purposes to be reported on Schedule C, Schedule E, Schedule F or any other schedule of income and expenses as reportable for federal income tax purposes. Such net profits are generally comprised of the net gain from the operation of a business, excluding capital gains and losses, after provision for all ordinary and necessary expenses, paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, adjusted to the requirements of this chapter.

(p) "Non-resident" means any individual who is not a resident as herein defined.

(q) "Non-resident unincorporated business entity" means a person other than a corporation not having a place of business within the City of Brookville.

(r) "Other activity" means any undertaking, not otherwise specifically defined herein, which is normally entered into for profit, including, but not limited to, rental of real and personal property, and a business conducted by a trust or guardianship estate.

(s) "Other payer" means any person that pays an individual any item included in the taxable income of the individual, other than the individual's employer or that employer's agent.

(t) "Pass-through entity" has the meaning as defined in Ohio R.C. 718.14.

(u) "Person" means an individual (natural person), fiduciary, association or corporation.

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

(v) "Place of business" means any bona fide office (other than a mere statutory office), factory, warehouse or other space which is used by the taxpayer in carrying on any business activity.

(w) "Resident" means an individual domiciled in the City of Brookville. Any person who maintains a place of abode within the City of Brookville for a total of 183 days or more within any twelve-month period shall be deemed a resident.

(x) "Resident unincorporated business entity" means a person other than a corporation having a place of business within the City of Brookville.

(y) "Return preparer" means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.

(z) "Schedule C" means Internal Revenue Service Schedule C of Form 1040 filed by a taxpayer pursuant to the Internal Revenue Code.

(aa) "Superintendent of Taxation" (also referred to as the Superintendent) means the Superintendent of Taxation of the City of Brookville, Ohio, or the person executing the duties of the aforesaid Superintendent of Taxation.

(bb) "Taxable income" means qualifying wages, salaries and other compensation paid by an employer or employers before any deductions, other than ordinary and necessary business expenses, in the same manner as provided by the Internal Revenue Code, and/or net profits as herein defined.

(cc) "Taxable year" means the calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made. Unless approved by the Superintendent, the taxable year of a wage earner shall be a calendar year.

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

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

### **193.03 IMPOSITION OF TAX.**

(a) Taxable Income. Subject to the provisions of Section 193.15, a permanent annual tax for the purposes specified in Section 193.01 shall be imposed beginning April 1, 1971 at the rate of one percent (1%) per annum and at the rate of one and three-fourths percent per annum effective July 1, 1978, upon the following:

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

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

nonresidents for work done or services performed or rendered in the City of Brookville.

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

(4) On the portion of the distributive share of the net profits earned and accrued or received during the effective period of this chapter of a resident partner, member, other beneficiary or distributee, or owner of a resident unincorporated business entity, not attributable to the City of Brookville upon which the tax was not paid by the entity.

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

(6) On the portion of the distributive share of the net profits earned and accrued or received during the effective period of this chapter of a resident partner, owner, member, other beneficiary or distributee or owner of a non-resident unincorporated business entity not attributable to the City of Brookville on which the tax was not paid by the entity.

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

(8) If a taxpayer's taxable income includes income against which the taxpayer has taken a deduction for federal income tax purposes as reportable on the taxpayer's form 2106, the amount of the deduction for federal income tax purposes may be deducted from the taxpayer's net income in determining taxable income for the City of Brookville income tax base.

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

(b) Determination of Profits Derived From City. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the City of Brookville, shall be determined by the books and records of the taxpayer, if such books and records of the taxpayer shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of Brookville. In the absence of such records, the said portion shall be determined as follows:

(1) Multiply the entire net profits by a business allocation percentage to be the average ratio of:

A. The original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City of Brookville during the taxable period to the original cost of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, 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 or accrued during the taxable period to persons employed in the business or profession for services performed in the City of Brookville to wages, salaries, and other compensation paid or accrued during the same period to persons employed in the business or profession, wherever their services are performed;

C. Gross receipts of the business or profession from sales made and services performed during the taxable period in the City of Brookville to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

In the event that the foregoing allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such a result.

(2) As used in paragraph (b)(1)C. of this section, "sales made in the City of Brookville" means:

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

B. All sales of tangible personal property which is delivered within the City of Brookville regardless of where title passes even though transported from a point outside the City of Brookville if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Brookville and the sales result from such solicitation or promotion;

C. All sales of tangible personal property which is shipped from a place within the City of Brookville to purchasers outside the City of Brookville regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

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

(d) Consolidated Returns.

(1) Filing of consolidated returns may be permitted or required in accordance with the City of Brookville Income Tax Rules and Regulations.

(2) In the case of a corporation that carries on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the City of Brookville constituting only a portion of its total business, the Superintendent may require such additional information as he or she may deem necessary to ascertain whether net profits are properly allocated to the City of Brookville. If the Superintendent finds net profits are not properly allocated to the City of Brookville by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or transactions with such division, branch, factory, office, laboratory or activity, or by some other method, he or she shall make such allocation as he or she deems appropriate to produce a fair and proper allocation of net profits to the City of Brookville.

(e) Exceptions. The tax provided for herein shall not be levied upon:

(1) The military pay or allowances of active members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard;

(2) The income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities;

(3) Compensation paid under Ohio R.C. 3501.28 or 3501.36 to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars (\$1,000.00) annually. Such compensation in excess of one thousand dollars (\$1,000.00) shall be taxable, but the payer of such compensation shall not be required to withhold any tax from such compensation, notwithstanding the provisions of Section 193.06;

(4) Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Ohio R.C. Chapter 306 for operating a transit bus or other motor vehicle for the authority or commission in or through the City of Brookville, unless the bus or vehicle is operated on a scheduled route, the operator is subject to such a tax by reason of residence or domicile in the City of Brookville, or the headquarters of the authority or commission is located within the City of Brookville;

(5) The income of a public utility when that public utility is subject to the tax levied under Ohio R.C. 5727.24 or 5727.30, except starting January 1, 2002, the income of an electric company or combined company, as defined in Ohio R.C. 5727.01, computed by taking into account the adjustments provided by Ohio R.C. 5733.04(I)(16);

(6) The income of an individual if all of the following apply:

A. The individual does not reside in the City of Brookville;

B. The compensation is paid for personal services performed by the individual in the City of Brookville on twelve or fewer days during the calendar year;

C. In the case of an individual who is an employee, the principal place of business of the individual's employer is located outside the City of Brookville and the individual pays tax on compensation described in paragraph B. of this subsection (6) to the city or village, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual; and

D. The individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the Superintendent;

(7) Poor relief, unemployment insurance benefits, old age pensions or similar payments including disability benefits received from local, State or Federal governments or charitable, religious or educational organizations;

(8) Proceeds of insurance paid by reason of the death of the insured, pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived;

(9) Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations.

(10) Earnings and income of all persons under eighteen years of age, whether residents or non-residents.

(11) Alimony received.

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



(13) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any Act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce.

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

(15) Interest, dividends and other revenue from intangible property;

(16) On and after January 1, 2003, items excluded from income pursuant to Section 107 of the Internal Revenue Code.

(17) Distributions or dividends from the income of an S corporation to its shareholders.

#### **193.04 EFFECTIVE PERIOD.**

The permanent income tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation received and shall be levied with respect to the net profits of businesses, professions or other activities earned and accrued or received after April 1, 1971.

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

(a) Each resident, and each person who engages in business or other activity or whose salary, wage, commission or other compensation is subject to the permanent tax imposed by this chapter shall, whether or not a tax is due thereon, make and file a return on or before April 15 of the year following the effective date of this chapter, and on or before April 15 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within three and one-half months from the end of such fiscal year or period. The Superintendent is hereby authorized to provide, by regulation, that the return of an employer or employers, showing the amount of tax deducted by said employer or employers from the salaries, wages, commissions or other compensation of an employee, and paid by him, her, it or them to the Superintendent, may be accepted as the return required of any employee whose sole income, subject to tax under this chapter, is such salaries, wages, commissions or other compensation.

(b) The return shall be filed with the Superintendent on a form or forms furnished by or obtainable upon request from the Superintendent setting forth:

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

In lieu of the above, a taxpayer could submit an affidavit from the tax office of the city or cities in which he or she worked, stating that he or she had met his or her tax obligation. This alternative would only be open to those taxpayers who have income derived from salaries, wages or commission from which the local tax has been fully withheld at no less than 1.75 percent.

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

(3) Such other pertinent statements, information returns, or other information as the Superintendent may require.

(c) The Superintendent may extend the time for filing of the annual return upon the



request of the taxpayer. The extended due date of the Brookville return shall not be beyond the last day of the month following the month to which the due date for filing the Federal income tax return has been granted by the Internal Revenue Service. A copy of a federal extension request for the taxable period for which an extension is requested shall be considered a request for extension under this section, providing it is filed with the Superintendent on or before the date the Brookville return is required. A timely filed request for extension of time to file shall be granted unless the taxpayer owes the City of Brookville any delinquent income tax or any penalty, interest, assessment or other charge for the late payment or nonpayment of income tax, or has failed to file any required income tax return, report, or other related document for a prior tax period. The granting of an extension of time for filing the return does not extend the last date for paying the tax without penalty and interest.

(d) The taxpayer making a return shall, at the time of the filing thereof, pay to the Superintendent the amount of taxes shown as due thereon, provided, however, that credit shall be allowed for:

(1) Any portion of the tax so due which shall have been deducted at the source pursuant to the provisions of Section 193.06;

(2) Any portion of said tax which shall have been paid by the taxpayer pursuant to the provisions of Section 193.07; and

(3) Credit to the extent allowed by Section 193.15 for tax paid to another municipality.

Subject to the limitations contained in Section 193.11, any taxpayer who has overpaid the amount of tax to which the City of Brookville is entitled under the provisions of this chapter may have such overpayment applied against any subsequent liability hereunder or, at his or her election indicated on the return, such overpayment (or part thereof) shall be refunded.

(e) Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Section 193.11. Such amended returns shall be on a form obtainable upon request from the Superintendent. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return without the approval of the Superintendent.

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

(f) Information returns, schedules and statements required to support tax returns which are incomplete without such information shall be filed within the time limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements shall be deemed to be a violation of this chapter. However, the taxpayer shall have ten days after notification by the Superintendent, or his or her authorized representative, to file the items required by this subsection.

(g) The Superintendent shall accept a generic form of any return, report, or document required to be filed if the generic form once completed and filed, contains all of the information required to be submitted with the City of Brookville's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances of the City of Brookville governing the filing of returns, reports or documents.

### **193.06 COLLECTION AT SOURCE.**

(a) Each employer shall, at the time of the payment of any salary, wage, commission or other compensation, deduct the tax of one percent per annum for the period April 1, 1971, through June 30, 1978, and 1.75 percent per annum from and after July 1, 1978, of the qualifying salaries, wages, commissions or other compensation due by the said employer to his or her employees who are subject to the provisions of this chapter. In making such deduction at the time of payment, the employer shall compute the tax to the nearest full cent so that mills of five or more shall be increased to the next full cent and mills less than five shall be dropped. No person shall be entitled to a refund merely because such rounding-off of the tax results in an apparent overpayment based on his or her total earnings. Each employer shall, on or before the last day of each month, make a return and pay to the Superintendent the tax withheld during the preceding month. However, the Superintendent shall have the authority to approve the filing of returns and payment of the tax withheld on a quarterly basis. In such case, the employer shall, on or before the last day of each month following the calendar quarters ending March 31, June 30, September 30 and December 31, make a return and pay to the Superintendent the tax withheld during the preceding calendar quarter. Such approval for quarterly filings and payments may be withdrawn by the Superintendent when it is in the best interest of the City of Brookville to do so. The Superintendent shall provide by regulation, the manner in which such approval is to be granted or withdrawn.

On and after January 1, 2005, every employer required to deduct and pay withholding taxes shall make timely payment to the City of Brookville by electronic funds transfer, under regulations the Superintendent shall provide, unless the Superintendent allows another form of payment, case by case.

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

(b) The employer, in collecting said tax, shall be deemed to hold the same, until payment is made by such employer to the City of Brookville, as a trustee for the benefit of the City of Brookville, and any such tax collected by such employer from his or her employees shall, until the same is paid to the City of Brookville, be deemed a trust fund in the hands of such employer.

(c) No person shall be required to withhold the tax on the wages or other compensation paid to domestic servants employed by him or her exclusively in or about such person's residence, even though such residence is in the City of Brookville, but such employee shall be subject to all of the requirements of this chapter.

(d) On or before February 28 of each year, beginning with the year 1971, each employer shall file a withholding return on a form prescribed by and obtainable upon request from the Superintendent, setting forth the names and addresses of all employees from whose compensation the tax was withheld during the preceding calendar year, the amount of tax withheld from his or her employees and such other information as may be required by the City of Brookville Income Tax Rules and Regulations.

(e) It shall be the responsibility of any person, as defined in Section 193.02, who is required to withhold the tax from wages of its employees under this section, to see that all such taxes so withheld are paid to the City of Brookville in accordance with the provisions of this chapter. In the event taxes withheld from the salaries of employees are not paid to the City of Brookville in accordance with the provisions of this chapter, the person shall be criminally

liable under the provisions of Sections 193.12 and 193.99.

### **193.07 DECLARATIONS.**

(a) Every person who anticipates the receipt of any taxable income which is not subject to Section 193.06, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 193.03, shall file a declaration setting forth such person's estimated taxable income together with any estimated tax due thereon, if any, provided, however, that if a person's income is wholly from wages from which the tax will be withheld and remitted to the City of Brookville in accordance with Section 193.06, or the tax due is one hundred dollars (\$100.00) or less, such person need not file a declaration.

(b) Such declaration shall be filed on or before April 15 of each year during the life of this chapter, or within four months after the date the taxpayer becomes subject to the provisions of this chapter.

Those taxpayers reporting on a fiscal year basis shall file a declaration within three and one-half months after the beginning of each fiscal year or period.

(c) Such declaration shall be filed upon a form furnished by or obtainable upon request from the Superintendent, provided, however, that credit shall be taken for the City of Brookville tax to be withheld from any portion of such income to determine the estimated tax due. In accordance with the provisions of Section 193.15 credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality.

The original declaration (or any subsequent amendment thereof) may be amended at any time.

An amended declaration must be filed on or before January 31 of the following year, or in the case of a taxpayer on a fiscal year, on or before the date fixed by regulation of the Superintendent if it appears that the original declaration made for such taxable year underestimated the taxpayer's income by ten percent or more. At such time a payment which, together with prior payments, is sufficient to pay the taxpayer's entire estimated liability shall be made. If upon the filing of the return required by Section 193.05, it appears that the taxpayer did not pay ninety percent of his or her tax liability, as shown on said return, on or before January 31, or the date fixed by regulation, whichever is applicable, the difference between ninety percent of said taxpayer's tax liability and the amount of estimated tax actually paid on or before January 31, or the date fixed by regulation, whichever is applicable, shall be subject to the interest and penalty provisions of Section 193.10.

(d) Such declaration of net estimated tax to be paid the City of Brookville shall be accompanied by a payment of at least twenty two and one half percent of the estimated annual tax, less credit. For all taxpayers, at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year. For business entity taxpayers, at least a similar amount shall be paid on or before the fifteenth day of the sixth, ninth and twelfth months after the beginning of the taxable year. However, in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates. Furthermore, the last quarterly payment of estimated tax need not be made if the taxpayer files his or her final return and pays the balance of the tax due thereon within forty-five days following the end of the taxable year.

(e) On or before the fifteenth day of the fourth month of the calendar or fiscal year

following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City of Brookville shall be paid therewith in accordance with the provisions of Section 193.05.

### **193.08 DUTIES AND POWERS OF THE SUPERINTENDENT OF TAXATION.**

(a) It shall be the duty of the Superintendent to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; to keep an accurate record thereof; and to report daily all monies so received.

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

(b) The Superintendent is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of the City Council by motion, to adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the reexamination and correction of returns. The Superintendent shall make electronic versions of any rules or ordinances governing the income tax available to the public through the internet, and shall comply with the provisions of Ohio R.C. 718.07.

(c) In any case where a taxpayer or employer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Superintendent may assess the amount of tax appearing to be due, together with interest and penalties thereon, if any, in the following manner:

(1) General provisions.

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

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

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

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

1. A taxpayer shall have thirty days after the date the final assessment was served or mailed within which to file written notice of appeal with the Board of Tax Appeals. Such written notice of appeal shall be filed in a sealed envelope plainly marked "Appeal to Board of Tax Appeals" and mailed or delivered to the Superintendent, who shall, within five days after receipt thereof, deliver such appeal to the Chairman of the Board of Tax Appeals, or,

if the Chairman is not available, to the Vice-Chairman.

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

3. Any taxpayer against whom a final assessment has been issued and who has filed a notice of appeal shall be granted a hearing by the Board of Tax Appeals. At such hearing the appellant and the Superintendent shall be given opportunity to present evidence relating to the said final assessment. Within ninety days after the conclusion of such hearing, the Board of Tax Appeals shall affirm, reverse or modify the said final assessment and shall furnish a copy of its decision in respect thereof to the appellant and the Superintendent. The appellant's copy of said decision shall be served upon him, her or it within fifteen days after the decision is made, in the same manner as herein provided for the serving of assessments.

C. When any taxpayer subject to the provisions of this chapter has filed a return indicating the amount of tax due and has failed to pay said tax to the Superintendent as required by this chapter, the Superintendent need not issue an assessment but may proceed under the provisions of Sections 193.11, 193.12 and 193.99.

(2) Provisions affecting employers.

A. If the Superintendent determines that an employer subject to the provisions of this chapter has failed to file a return for tax withheld and has failed to pay to the Superintendent the full amount of said taxes, the Superintendent shall issue a proposed assessment showing the amount of tax due, together with any penalties and interest that may have accrued thereon, and the provisions of paragraphs (c)(1)A. and B. hereof shall then apply.

B. If the Superintendent determines that an employer subject to the provisions of this chapter has failed to withhold tax, the Superintendent shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon, and the provisions of paragraphs (c)(1)A. and B. hereof shall then apply.

C. When an employer subject to the provisions of this chapter has filed a return indicating the amount of tax withheld and has failed to pay said tax to the Superintendent as required by this chapter, the Superintendent may proceed under the provisions of Sections 193.11, 193.12 and 193.99 and need not issue an assessment as provided in paragraphs (c)(2)A. and B. hereof.

(d) Any taxpayer or employer who has not filed a notice of appeal to the Board of Tax Appeals from a final assessment issued against him or her shall pay the amount thereof within fifteen days after service of such final assessment.

Any taxpayer or employer who has filed a notice of appeal to the Board of Tax Appeals from a final assessment issued against him or her shall pay the amount determined to be due by the Board of Tax Appeals within fifteen days after service of his or her copy of the decision of the Board.

(e) The Superintendent shall have the authority, when requested by the taxpayer and for good cause shown, to extend the time of making and filing any return whenever he or she deems it necessary so to do, but not to exceed a period of six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax return.

(f) When an application for deferred payment of tax due is filed by a taxpayer, the

Superintendent may authorize partial payments of unpaid taxes when, in his or her judgment, the taxpayer is unable, due to hardship conditions, to pay the full amount of the tax when due, and when, in his or her judgment, such deferred payments are the best means of accomplishing the intent of this chapter. However, the Superintendent shall not authorize an extension of time for the payment of said taxes due for more than six months beyond the date of the filing of the application.

(g) Subject to the consent of the majority of the Board of Adjudication, the Superintendent shall have the power to compromise any liability imposed by this chapter.

#### **193.09 INVESTIGATIVE POWERS OF THE SUPERINTENDENT; DIVULGING CONFIDENTIAL INFORMATION.**

(a) The Superintendent, or any authorized employee, is hereby authorized to examine the books, papers, records and copies of Federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Superintendent believes is subject to, the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish within ten days following a written request by the Superintendent, or his or her duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

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

(c) The refusal to produce books, papers, records and copies of Federal income tax returns, the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Superintendent authorized hereby, shall be deemed a violation of this chapter, punishable as provided in Section 193.99.

(d) Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposes, or except when ordered by a court of competent jurisdiction. No person shall divulge such information in violation of this chapter.

(e) Every taxpayer shall retain all records necessary to compute his or her tax liability for a period of five years from the date his or her return is filed, or the withholding taxes are paid.

#### **193.10 INTEREST AND PENALTIES.**

(a) All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid ten days after they become due shall bear interest at the rate of one and one-half percent per month or any portion thereof.

(b) In addition to interest as provided in subsection (a) hereof, penalties based on the

unpaid tax are hereby imposed as follows:

(1) For failure to pay taxes due, other than taxes withheld: one-half of one percent per month or fraction thereof, or ten percent, whichever is greater.

(2) For failure to remit taxes withheld from employees: three percent per month or fraction thereof, or ten percent, whichever is greater.

(3) Where the taxpayer has failed to file a declaration on which he or she has estimated and paid a tax equal to or greater than the tax paid for the previous year, or has failed to file a declaration on which he or she has estimated and paid tax equal to or greater than ninety percent of the actual tax for the year, or has failed to file a final return and pay the total tax on or before the end of the month following the end of his or her taxable year: ten percent of the difference between ninety percent of the actual tax for the year and the amount paid through withholding or declaration.

(4) Except in the case of fraud, the penalty shall not exceed fifty percent of the unpaid tax.

(c) A penalty shall not be assessed on an additional tax assessment made by the Superintendent when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Superintendent, provided that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, provided an amended return is filed and the additional tax is paid within three months after final determination of the Federal tax liability.

(d) Upon recommendation of the Superintendent, the Board of Adjudication may abate penalty or interest, or both.

(e) In no case shall penalty and interest charges be levied when the total of such penalty and interest amounts to less than five dollars (\$5.00).

(f) Any person required to withhold the tax who knowingly fails to withhold such tax, or to pay over such tax, or knowingly attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not withheld, or not paid over. No other penalty under this section shall be applied to any offense to which this penalty is applied.

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

(h) A late filing fee of twenty-five dollars (\$25.00) is hereby established, with this charge to be assessed for failure to or refusal to file a City income tax return each year whether or not a tax is due. This late fee shall not be assessed against an individual taxpayer for the first year for which a return was required to be filed, providing the taxpayer files a complete return within six months after notification by the Superintendent to the taxpayer of the filing requirement.

#### **193.11 COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS.**

(a) In addition to any criminal penalties which may be imposed pursuant to this chapter, all taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts are recoverable. Except in the case of fraud, omission of twenty-five percent of income subject to this tax, or failure to file a return, an additional assessment shall not be made after three years from the time the return was due or filed, whichever is later, provided, however, that in those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which



an additional assessment may be made by the Superintendent shall be one year from the time of the final determination of the Federal tax liability.

(b) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date on which such payment was made or the return was due, or within three months after final determination of the Federal tax liability, whichever is later.

(c) Additional amounts of less than five dollars (\$5.00) shall not be refunded or assessed unless such assessment results from income which the taxpayer has failed to report.

### **193.12 VIOLATIONS.**

(a) No person shall:

(1) Fail, neglect or refuse to make any return or declaration required by this chapter; or  
(2) Make any incomplete, false or fraudulent return; or  
(3) Knowingly fail or refuse to pay the tax, penalties or interest imposed by this chapter; or

(4) Knowingly fail or refuse to withhold the tax from his or her employees and remit such withholding to the Superintendent; or

(5) Refuse to permit the Superintendent or any duly authorized agent or employee to examine his or her or his or her employer's books, records, papers and copies of Federal income tax returns relating to the income or net profits of a taxpayer; or

(6) Fail to appear before the Superintendent and to produce his or her or his or her employer's books, records, papers or copies of Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Superintendent; or

(7) Refuse to disclose to the Superintendent any information with respect to the income or net profits of a taxpayer; or

(8) Fail to comply with the provisions of this chapter or any order or subpoena of the Superintendent; or

(9) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

(b) Any person subject to the provisions of this chapter, who has failed to file or has filed an incorrect return or has failed to pay the full amount of tax due, shall not be deemed to have committed an offense punishable under the provisions of this section until the assessment issued against him or her under the provisions of Section 193.08 has become due and payable.

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

(d) The term "person," as used in this section, shall, in addition to the meaning prescribed in Section 193.02, include, in the case of an association or corporation not having any partner, member or officer within the City of Brookville, any employee or agent of such association or corporation who can be found within the corporate limits of the City of Brookville.

(e) All prosecutions under this section must be commenced within the periods provided for in Ohio R.C. 718.06.

(f) The failure of any employer or taxpayer or other person to receive or procure a return, declaration or other required form shall not excuse him or her from making any information return, return or declaration, from filing such forms, or from paying the tax.

### **193.13 BOARD OF ADJUDICATION AND BOARD OF TAX APPEALS.**

#### **(a) Board of Adjudication.**

(1) A Board of Adjudication, consisting of the City Manager, or a person designated by him or her, the Director of Finance, or a person designated by him or her, and the City Attorney, or an Assistant City Attorney designated by him or her, is hereby created. The Board shall select, each year for a one-year term, one of its members to serve as Chairperson and one to serve as Secretary. A majority of the members of the Board shall constitute a quorum.

(2) The Board shall adopt its own procedural rules and shall keep a record of its proceedings. All hearings of the Board shall be conducted privately, and the provisions of Sections 193.09 and 193.99, with reference to the confidential character of information required to be disclosed by this chapter, shall apply to such matters as may be presented to the Board of Adjudication.

(3) The Board shall have the authority, upon request of the Superintendent, to modify, in whole or in part, any assessment of tax, penalty and/or interest, required to be made by this chapter. In addition, the Board may authorize the Superintendent to accept partial payments for a period in excess of the time authorized in Section 193.08.

#### **(b) Board of Tax Appeals.**

(1) A Board of Tax Appeals, consisting of five representative citizens of the City of Brookville, not otherwise employed by the City of Brookville, to be appointed by the City Council for staggered terms of three years, is hereby created.

(2) One of the members of the Board appointed by the City Council shall be chosen by the members as Chairperson of the Board. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and keep a record of its proceedings. All hearings by the Board may be conducted privately, and the provisions of Sections 193.09 and 193.99, with reference to the confidential character of information required to be disclosed by this chapter, shall apply to such matters as may be heard on appeal before the Board.

(3) The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such assessment, ruling or decision, or any part thereof, made by the Superintendent, from which an appeal has been filed as provided in Section 193.08.

### **193.14 ALLOCATION OF FUNDS.**

All funds collected and received under the provisions of this chapter shall be deposited into the General Fund of the City of Brookville, and said funds shall be disbursed in the following manner:

(a) Such part thereof as shall be necessary to defray all costs of collecting the taxes levied by this chapter and the cost of administering and enforcing the provisions hereof shall first be paid.

(b) Net available income tax receipts received annually, after applying the provisions of division (a) of this chapter, may be used to defray operating, capital and all other expenses of the City of Brookville.

### **193.15 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.**

(a) Where a resident of the City of Brookville is subject to a municipal income tax in another municipality, or to an income tax in a joint economic development zone created under Ohio R.C. [715.691] 715.161 or in a joint economic development district created under Ohio R.C. 715.70, 715.71, or 715.72, he or she shall not pay a total municipal income tax on the same income greater than the tax imposed at the highest rate to which he or she is subject.

(b) Every individual taxpayer who resides in the City of Brookville who receives net profits, salaries, wages, commissions or other personal service compensation for work done or services performed or rendered outside the City of Brookville, if it be made to appear that he or she has paid a municipal or joint economic development zone or district income tax on the same income taxable under this chapter to another municipality, or to a joint economic development zone created under Ohio R.C. [715.691] 715.161, or to a joint economic development district created under Ohio R.C. 715.70, 715.71, or 715.72, shall be allowed a credit against the tax imposed by this chapter of the amount so paid by him or her or in his or her behalf to such other municipality, zone or district. The credit shall not exceed the tax assessed by this chapter on such income earned in such other municipality or municipalities, zone or zones, or district or districts where such tax is paid.

(c) Every person who is a partner of a partnership, a member of a limited liability company, or other person with an ownership interest in a pass-through entity, who has income that is taxable in the City of Brookville on or after January 1, 2003 from such pass-through entity, if such income in the hands of the pass-through entity is taxed in another municipality, shall be allowed a credit against the tax imposed upon such person by this chapter of the amount so paid by the pass-through entity on such income. The credit shall not exceed the tax assessed by this chapter on such income taxed in such other municipality or municipalities where such tax is paid by such pass-through entity.

(d) A claim for refund or credit under this section shall be made in such manner as the Superintendent may, by regulation, provide.

#### **193.16 APPLICATION OF CHAPTER; SEPARABILITY.**

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

#### **193.17 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.**

(a) This chapter shall continue effective, insofar as the levy of taxes is concerned, indefinitely, with respect to the levy of a 1.75 percent income tax, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of said taxes levied hereunder are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Sections 193.11, 193.12 and 193.99.

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Sections 193.05 and 193.06 as though the same were continuing.

**193.18 EFFECTIVE DATE.**

This chapter shall take effect and be in force from and after the earliest period allowed by law.

**193.99 PENALTIES.**

(a) Whoever willfully violates any of the provisions of this chapter, for which no penalty is otherwise provided, is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six months, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

(b) Whoever violates Section 193.09(d) shall be guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six months, or both, for each offense. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the City of Brookville who violates the provisions of Section 193.09(d), relative to the disclosure of confidential information, shall be guilty of an offense punishable by immediate dismissal.