

**CITY OF WILMINGTON, OHIO**  
**AMENDED ORDINANCE NO. O-16-41**

**AN ORDINANCE AUTHORIZING THE IMPOSITION OF AN ADDITIONAL  
ONE-HALF PERCENT (0.50%) MUNICIPAL INCOME TAX AND  
AMENDING SECTION 172.03 (IMPOSITION OF TAX)  
OF THE CODIFIED ORDINANCES OF THE CITY OF WILMINGTON**

WHEREAS, effective January 1, 2016, Chapter 172 of the codified ordinances of the City of Wilmington governs its municipal income tax; and

WHEREAS, in particular, Section 172.03 governs the imposition of a one percent (1%) tax on the Municipal Taxable Income of every person residing in and/or earning and/or receiving income in the City; and

WHEREAS, after much thought and careful consideration, Council for the City of Wilmington has determined it necessary to place a one-half percent (0.50%) Supplemental Income Tax on the November 2016 ballot for the electors' consideration, and

WHEREAS, because Council for the City of Wilmington wishes to impose a Supplemental Income Tax that will result in a total tax greater than one percent, it must adopt an ordinance authorizing the income tax; and

WHEREAS, contemporaneous with this Ordinance, Council for the City of Wilmington also is adopting a resolution stating the rate of the Supplemental Income Tax, the purpose of the Supplemental Income Tax, the date of the election at which the question is to be put before the voters, and directing the Board of Elections to conduct the election; and

WHEREAS, if a majority of the electors of the City voting on the question at the November 2016 general election approve the additional one-half percent municipal income tax, the Supplemental Income Tax must be included in Section 172.03 of the Codified Ordinances of the City of Wilmington. This Ordinance also accomplishes this contingent amendment.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Wilmington, County of Clinton, State of Ohio

SECTION 1: Council for the City of Wilmington hereby authorizes an additional one-half percent (0.50%) municipal income tax on every person residing in and/or earning and/or receiving income in the City of Wilmington.

SECTION 2: Because this additional one-half percent municipal income tax will result in a total tax greater than one percent, it must be submitted to, and approved by, the electors at the November 8, 2016 general election.

SECTION 3: If a majority of the electors of the City voting on the question at the November general election approve the additional one-half percent municipal income tax, Section 172.03 of the Codified Ordinances of the City of Wilmington shall be amended to read as follows:

The income tax levied by the Municipality on the Municipal Taxable Income of every person residing in and/or earning and/or receiving income in, shall be:

- (A) at a rate of one percent (1.0%) (for tax years 2016 and beyond) plus
- (B) at a rate of one-half percent (0.50%) (for tax years 2017 – 2021 only)

**Individuals.**

(A) For residents of the Municipality, 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 (Section 172.02 (C)(16)).

(B) 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.

(C) For residents and nonresidents, income can be reduced to "Municipal Taxable Income" as defined in Section 172.02 (C)(21). Exemptions which may apply are specified in Section 172.02 (C)(12).

**Refundable credit for Nonqualified Deferred Compensation Plan.**

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

(a) "Nonqualified deferred compensation plan" means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.

(b) "Qualifying loss" means 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.

(c) (i) "Qualifying tax rate" means the applicable tax rate for the taxable year for the which the taxpayer paid income tax to the Municipality with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.

(ii) 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 Municipality each year with respect to the nonqualified deferred compensation plan.

(d) "Refundable credit" means the amount of the Municipality income tax that was paid on the non-distributed portion, if any, of a nonqualified deferred compensation plan.

(2) If, in addition to the Municipality, 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.

(3) 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 Municipality for all taxable years with respect to the nonqualified deferred compensation plan.

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

(a) The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or

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

**Domicile.**

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

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

(2) For the purpose of determining whether an individual is domiciled in the Municipality 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 Section 152 of the Internal Revenue Code, 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;

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

(3) All additional applicable factors are provided in the Rules and Regulations.

### **Businesses.**

(F) This division applies to any taxpayer engaged in a business or profession in the Municipality, unless the taxpayer is an individual who resides in the Municipality or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745. of the ORC.

(1) Except as otherwise provided in division (F)(2) of this section, net profit from a business or profession conducted both within and without the boundaries of the Municipality shall be considered as having a taxable situs in the Municipality for purposes of municipal income taxation in the same proportion as the average ratio of the following:

(a) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the Municipality during the taxable period to the average 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 in the preceding paragraph, 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 Municipality 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 Section 172.04 (C);

(c) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the Municipality 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 (F)(1) of this section do not fairly represent the extent of a taxpayer's business activity in the Municipality, the taxpayer may request, or the Tax Commissioner of the Municipality 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:

(i) Separate accounting;

(ii) The exclusion of one or more of the factors;

(iii) 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;

(iv) 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 Commissioner denies the request in an assessment issued within the period prescribed by Section 172.12 (A).

(c) The Tax Commissioner may require a taxpayer to use an alternative apportionment method as described in division (F)(2)(a) of this section, but only by issuing an assessment to the taxpayer within the period prescribed by Section 172.12 (A).

(d) Nothing in division (F)(2) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by the Tax Commissioner or otherwise agreed upon by both the Tax Commissioner and taxpayer before January 1, 2016.

(3) As used in division (F)(1)(b) of this section, "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:

(i) The employer;

(ii) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;

(iii) A vendor, customer, client, or patient of a person described in (F)(3)(a)(ii) of this section, 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;

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

(4) For the purposes of division (F)(1)(c) 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 Municipality if, regardless of where title passes, the property meets any of the following criteria:

(i) The property is shipped to or delivered within the Municipality from a stock of goods located within the Municipality.

(ii) The property is delivered within the Municipality from a location outside the Municipality, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Municipality and the sales result from such solicitation or promotion.

(iii) The property is shipped from a place within the Municipality to purchasers outside the Municipality, 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 Municipality to the extent that such services are performed in the Municipality.

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

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

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

(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 Municipality's tax only if the property generating the net profit is located in the Municipality or if the individual taxpayer that receives the net profit is a resident of the Municipality. The Municipality 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 Municipality, 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 Municipality 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 Municipality shall report the individual's net profit from all real estate activity on the individual's annual tax return for the Municipality. 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 Municipality's income tax ordinance.

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

(8) Intentionally left blank.

(9) Intentionally left blank.

SECTION 4: The one-half percent (0.50%) supplemental municipal income tax authorized by this Ordinance shall be effective only for a five years, commencing on January 1, 2017 and ending on December 31, 2021 (tax years 2017 – 2021) and only if approved by the electors at the November 8, 2016 general election.

SECTION 5: The Clerk of Council is hereby directed to forward and file a copy of this Ordinance with the Clinton County Board of Elections.

SECTION 6: All other Sections and Sub-sections of Chapter 172 of the City of Wilmington Codified Ordinances shall remain unchanged, in effect, and enforceable. Nothing in this Ordinance modifies, repeals, amends, or replaces the currently enacted 1% Income Tax established by Ordinance 2410 or the rules governing the same.

SECTION 7: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council and that all deliberations of the Council and any of the decision making bodies of the City of Wilmington which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the State of Ohio.

SECTION 8: This Ordinance shall take effect at the earliest time allowed by law.

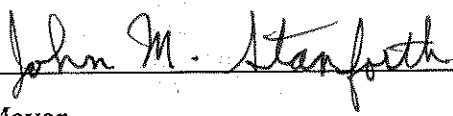
Passed this 7th day of July, 2016.

  
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President of Council

ATTEST:

  
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Clerk of Council

Approved by me this 7th day of July, 2016.

  
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Mayor