



City of Powell, Ohio  
**ORDINANCE 2018-40**  
Adopted September 4, 2018

**TO AMEND SECTION 181.12, COLLECTION OF UNPAID TAXES, RELATIVE TO THE INCOME TAX CODE FOR TAX YEARS BEGINNING PRIOR TO JANUARY 1, 2016, AND SECTION 182.096, REFUNDS, RELATIVE TO THE INCOME TAX CODE FOR TAX YEARS BEGINNING ON OR AFTER JANUARY 1, 2016.**

**WHEREAS** the City of Powell has received requests for refund where an individual has erroneously paid income tax to the City, due to confusion over whether his or her residence is located within the municipal boundaries, and where the person did not earn income within the City; and

**WHEREAS** after initial denial of these requests, the Board of Tax Appeals determined that the three-year limitations period applicable to refund requests did not apply to the applicants because they were not resident individuals or nonresident taxpayers as defined by the Codified Ordinances; and

**WHEREAS** the nature of the municipal boundaries and assignment of mailing addresses to "Powell," even where the residence is not within the municipal boundaries, creates potential for this confusion to recur; and

**WHEREAS** amendment to the Codified Ordinances is necessary to apply a limitations period to such requests and avoid accumulation of unknown refund liabilities;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF POWELL, DELAWARE COUNTY, OHIO, AS FOLLOWS:**

Section 1: That Section 181.12, Collection of Unpaid Taxes, of the Codified Ordinances, shall be amended to read as follows:

**181.12 - COLLECTION OF UNPAID TAXES.**

- (a) All taxes imposed by this chapter shall be collectible together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable.
- (b) The Finance Director is authorized to institute civil law suits to collect delinquent taxes due and owing the City by virtue of the provisions of this chapter. The Finance Director is authorized to waive penalties and interest and compromise tax liability and the right to accept waiver of state statutes of limitation.
- (c) Except in the case of fraud, omission of 25 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. In the case of fraud, omission of 25 percent or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover Municipal income taxes and penalties and interest thereon shall be brought within six years

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after the tax was due or the return was filed, whichever is later. However, 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 Finance Director shall be one year from the time of the final determination of the federal tax liability.

(d) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date when such payment was made or the return was due or within three months after final determination of the Federal tax liability. **Taxes erroneously paid shall include amounts erroneously paid by or on the behalf of persons who are not Resident Individuals and who are not subject to tax for income earned in the City; claims for refunds for such amounts must be made within three years from the date when such payment was made or within three months after final determination of the Federal tax liability.** In addition, the following shall apply regarding refunds of tax withheld from non-qualified deferred compensation plans (NDCP):

(1) A taxpayer may be eligible for a refund if the taxpayer has suffered a loss from a NDCP. The loss will be considered sustained only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to the NDCP. Full loss is sustained if no distribution of money and property will be made by the NDCP.

(2) A taxpayer who receives income as a result of payments from a NDCP, and that income is less than the amount of income deferred to the NDCP and upon which municipal tax was withheld, then a refund will be issued on the amount representing the difference between the deferred income that was taxed and the income received from the NDCP. If different tax rates applied to the tax years in which deferrals, a weighted average of the different tax rates will be used to compute the refund amount.

(3) Refunds shall be allowed only if the loss is attributable to the bankruptcy of the employer who had established the NDCP, or the employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified compensation.

(e) Income tax that has been deposited with the City, but should have been deposited with another municipality, is allowable by City as a refund but is subject to the three-year limitation on refunds. Income tax that should have been deposited with the City, but was deposited with another municipality, shall be subject to recovery by the City. The City will allow a non-refundable credit for any amount owed the City that is in excess of the amount to be refunded by the other municipality, as long as the tax rate of the other municipality is the same or higher than the City's tax rate. If the City's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the City.

(f) In the case of delinquencies, payments received shall first be applied to delinquent penalties and interest, beginning with the oldest delinquency. Upon satisfaction of this debt, payments shall then be applied to delinquent taxes, beginning with the oldest delinquency.

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- (g) Additional amounts of less than \$1.00 shall not be refunded or assessed unless such assessment results from income which the taxpayer has failed to report.

Section 2: That Section 182.096, Refunds, of the Codified Ordinances, shall be amended to read as follows:

**182.096 - REFUNDS.**

- (a) Upon receipt of a request for a refund, the Tax Administrator of the Municipality, in accordance with this section, shall refund to employers, agents of employers, other payers, or taxpayers, with respect to any income or withholding tax levied by the Municipality:

- (1) Overpayments of more than \$10.00;
- (2) Amounts paid erroneously if the refund requested exceeds \$10.00.

- (b) (1) Except as otherwise provided in this chapter, returns setting forth a request for refund shall be filed with the Tax Administrator, within three years after the tax was due or paid, whichever is later. Any documentation that substantiates the taxpayer's claim for a refund must be included with the return filing. Failure to remit all documentation, including schedules, other municipal income tax returns, or other supporting documentation necessary to verify credits, income, losses or other pertinent factors on the return will cause delay in processing, and/or disallowance of undocumented credits or losses.

- (2) In filing of the refund request, the Tax Administrator shall determine the amount of refund due and certify such amount to the appropriate municipal corporation official for payment. Except as provided in subsection (b)(3) of this section, the administrator shall issue an assessment to any taxpayer whose request for refund is fully or partially denied. The assessment shall state the amount of the refund that was denied, the reasons for the denial, and instructions for appealing the assessment.

- (3) If a Tax Administrator denies in whole or in part a refund request included within the taxpayer's originally filed annual income tax return, the Tax Administrator shall notify the taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial, and instructions for requesting an assessment that may be appealed under Section 182.18 of this chapter.

**(4) Requests for refund of any amounts erroneously paid by a person who is not a resident, and who does not have municipal taxable income as a nonresident pursuant to §182.041(b), must be filed with the Tax Administrator within three years after the payment was made. No interest shall be due on any such refund.**

- (c) A request for a refund that is received after the last day for filing specified in subsection (b) of this section shall be considered to have been filed in a timely manner if any of the following situations exist:

