



**City of Powell, Ohio**

**ORDINANCE 2016-56**

Adopted November 15, 2016

**AN ORDINANCE TO AMEND SECTIONS 191.051 AND 191.091 OF THE CODIFIED ORDINANCES OF THE CITY TO UPDATE THE MUNICIPAL INCOME TAX CODE.**

**WHEREAS**, the General Assembly comprehensively reviewed and amended Chapter 718 of the Ohio Revised Code by enacting H. B. 5 in December 2014, and mandated that municipal income tax codes be amended by January 1, 2016 such that any income or withholding tax is "levied in accordance with the provisions and limitations specified in [Chapter 718]"; and

**WHEREAS**, the General Assembly again amended Chapter 718 of the Ohio Revised Code by enacting Senate Bill 172, effective September 14, 2016; and

**WHEREAS**, upon a detailed review of S.B. 172, and the Codified Ordinances of the City of Powell, this Ordinance is found and determined by this Council to enact the amendments required to be in accord with the provisions and limitations specified in Chapter 718 of the Revised Code.

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

**Section 1.** That Section 191.051 of the Codified Ordinances is amended to read as follows:

**191.051 COLLECTION AT SOURCE; WITHHOLDING FROM QUALIFYING WAGES**

- (A) (1) Each employer, agent of an employer, or other payer located or doing business in the Municipality shall withhold from each employee an amount equal to the qualifying wages of the employee earned by the employee in the Municipality multiplied by the applicable rate of the Municipality's income tax, except for qualifying wages for which withholding is not required under section 191.052 of this Chapter or division (D) or (F) of this section. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.
- (2) In addition to withholding the amounts required under division (A)(1) of this section, an employer, agent of an employer, or other payer may also deduct and withhold, on the request of an employee, taxes for the municipal corporation in which the employee is a resident.
- (B) (1) An employer, agent of an employer, or other payer shall remit to the Tax Administrator of the Municipality the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer, along with any report required by the Tax Administrator to accompany such payment, according to the following schedule:
- (a) Any employer, agent of an employer, or other payer not required to make payments under division (B)(1)(b) or (B)(1)(c) of this section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the **fifteenth-last** day of the month following the **end last day** of each calendar quarter.
- (b) Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of the municipal corporation in the preceding calendar year exceeded two thousand three hundred ninety-nine dollars, or if the total amount

of taxes deducted and withheld or required to be deducted and withheld on behalf of the Municipality in any month of the preceding calendar quarter exceeded two hundred dollars. **Payment Payments** under division (B)(1)(b) of this section shall be made ~~so that the payment is received by~~ to the Tax Administrator not later than fifteen days after the last day of each month.

(c) Taxes required to be deducted and withheld shall be remitted semimonthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted on behalf of the Municipality in the preceding calendar year exceeded eleven thousand nine hundred ninety-nine dollars, or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the Municipality in any month of the preceding calendar year exceeded one thousand dollars. The payment under division (B)(1)(c) of this section shall be made ~~so that the payment is received by~~ to the Tax Administrator not later than one of the following:

(i) If the taxes were deducted and withheld or required to be deducted and withheld during the first fifteen days of a month, the third banking day after the fifteenth day of that month;

(ii) If the taxes were deducted and withheld or required to be deducted and withheld after the fifteenth day of a month and before the first day of the immediately following month, the third banking day after the last day of that month.

(d) An employer, agent of an employer or other payer is required to make payment by electronic funds transfer to the Tax Administrator of all taxes deducted and withheld on behalf of the employee for remittance to the Municipality if the employer, agent of an employer, or other payer is required to make payments electronically for the purpose of paying federal taxes withheld on payments to employees under section 6302 of the Internal Revenue Code, 26 C.F.R. 31.6302-1, or any other federal statute or regulation. The payment of tax by electronic funds transfer under this division does not affect an employer's, agent's, or other payer's obligation to file any return as required under this section. Once the threshold for remitting payment electronically for federal purposes has been met, any accrued municipal income tax withheld from employee qualifying wages earned within the Municipality shall be remitted to the Municipality at the same time that the federal tax withholding payment is due.

(e) Upon written request and documentation of sufficient facts justifying the same, the Tax Administrator may modify the requirements set forth Section (c) and (d) hereinabove for certain employers and/or employees. No employer or employee may claim a modification unless it is in writing signed by the Tax Administrator, which may be limited in scope or expire on certain conditions or dates stated therein.

(C) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent, or other payer under this division shall be accepted by the Municipality as the return required of an employee whose sole income subject to the tax under this chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer, unless the Municipality requires all resident individual taxpayers to file a tax return under section 191.091 of this Chapter,

(D) An employer, agent of an employer, or other payer is not required to withhold municipal income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.

(E) (1) An employee is not relieved from liability for a tax by the failure of the employer, agent of an employer, or other payer to withhold the tax as required under this chapter or by the employer's, agent's, or other payer's exemption from the requirement to withhold the tax.

(2) The failure of an employer, agent of an employer, or other payer to remit to the Municipality the

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tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.

(F) Compensation deferred before June 26, 2003, is not subject to any municipal corporation income tax or municipal income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.

(G) Each employer, agent of an employer, or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such taxes have been withheld, and such amount shall be deemed to be held in trust for the Municipality until such time as the withheld amount is remitted to the Tax Administrator.

(H) On or before the last day of February of each year, an employer shall file a Withholding Reconciliation Return with the Tax Administrator listing the names, addresses, and social security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the Municipality during the preceding calendar year, the amount of tax withheld, if any, from each such employee's qualifying wage, the total amount of qualifying wages paid to such employee during the preceding calendar year, the name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year, any other information required for federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee, and other information as may be required by the Tax Administrator.

(I) The officer or the employee of the employer, agent of an employer, or other payer with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required by this section, shall be personally liable for a failure to file a report or pay the tax due as required by this section. The dissolution of an employer, agent of an employer, or other payer does not discharge the officer's or employee's liability for a failure of the employer, agent of an employer, or other payer to file returns or pay any tax due.

(J) An employer is required to deduct and withhold municipal income tax on tips and gratuities received by the employer's employees and constituting qualifying wages only to the extent that the tips and gratuities are under the employer's control. For the purposes of this division, a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.

(K) A Tax Administrator shall consider any tax withheld by an employer at the request of an employee when such tax is not otherwise required to be withheld by this Chapter to be tax required to be withheld and remitted for the purposes of this section."

**Section 2.** That Section 191.091 of the Codified Ordinances is amended to read as follows:

**191.091 RETURN AND PAYMENT OF TAX**

(A) (1) An annual return with respect to the income tax levied on Municipal Taxable Income by the Municipality shall be completed and filed by every taxpayer for any taxable year for which the taxpayer is subject to the tax, regardless of whether or not income tax is due.

(2) The Tax Administrator shall accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer located in the Municipality under subsection 191.051(C) of this Chapter when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due to the Municipality.

(3) All resident individual taxpayers, eighteen (18) years of age and older, shall file an annual municipal income tax return with the Municipality, regardless of income or liability. Existing 191.22. (Ord. 01-71. Passed 11-27-01)

(B) If an individual is deceased, any return or notice required of that individual shall be completed and filed

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by that decedent's executor, administrator, or other person charged with the property of that decedent.

- (C) If an individual is unable to complete and file a return or notice required by the Municipality in accordance with this chapter, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual. Such duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations, and contact information including name, address, and phone number of the duly authorized agent, guardian, conservator, fiduciary, or other person.
- (D) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust. Such fiduciary shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations, and contact information including name, address, and phone number of the fiduciary.
- (E) No municipal corporation shall deny spouses the ability to file a joint return.
- (F) (1) Each return required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's social security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.
- (2) A taxpayer who is an individual is required to include, with each annual return, amended return, or request for refund required under this section, copies of only the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040; and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.
- (3) A taxpayer that is not an individual is required to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.
- (4) A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio business gateway or in some other manner shall either mail the documents required under this division to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio business gateway or a portal provided by Municipality.
- (5) After a taxpayer files a tax return, the Tax Administrator shall request, and the taxpayer shall provide, any information, statements, or documents required by the Municipality to determine and verify the taxpayer's municipal income tax liability. The requirements imposed under division (F) of this section apply regardless of whether the taxpayer files on a generic form or on a form prescribed by the Tax Administrator.
- (6) Any other 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 shall also be included to avoid delay in processing, or disallowance by the Tax Administrator of undocumented credits or losses.

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- (G) (1) (a) Except as otherwise provided in this chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state individual income tax returns under division (G) of section 5747.08 of the Ohio Revised Code. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the Municipality or Tax Administrator.
- (b) Except as otherwise provided in this chapter, each annual net profit income tax return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the tax administrator on or before the fifteenth day of the fourth month following the end of the taxpayer's taxable year or period. The taxpayer shall complete and file the return or notice on forms prescribed by the tax administrator or on generic forms, together with remittance made payable to the Municipality or Tax Administrator.
- (c) In the case of individual income tax return required to be filed by an individual, and net profit income tax return required to be filed by a taxpayer who is not an individual, no remittance is required if the amount shown to be due is ten dollars or less.
- (2) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the Municipality in accordance with this chapter, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.
- (3) With respect to taxpayers to whom Section 191.092 of this Chapter applies, to the extent that any provision in this division conflicts with any provision in Section 191.092 of this Chapter, the provision in Section 191.092 of this Chapter prevails.
- (H) (1) For taxable years beginning after 2015, the Municipality shall not require a taxpayer to remit tax with respect to net profits if the amount due is ten dollars or less.
- (2) Any taxpayer not required to remit tax to the Municipality for a taxable year pursuant to division (H)(1) of this section shall file with the Municipality an annual net profit return under division (F)(3) and (4) of this section.
- (I) ~~This division shall not apply to payments required to be made under division (B)(1)(b) or (c) of Section 191.051 of this Chapter.~~
- (1) If any report, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under this chapter is delivered after that period or that to the Tax Administrator or other municipal official with which the report, claim, statement, or other document is required to be filed, or to which the payment is required to be made, the date of the postmark stamped on the cover in which the report, claim, statement, or other document, or payment is mailed shall be deemed to be the date of delivery or the date of payment. "The date of postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.
- (2) If a payment under this chapter is ~~required to be~~ made by electronic funds transfer, the payment is shall be considered to be made on the date of the timestamp assigned by the first electronic system receiving that payment. ~~when the payment is credited to an account designated by the Tax Administrator for the receipt of tax payments, except that, when a payment made by electronic funds transfer is delayed due to circumstances not under the control of the taxpayer, the payment is considered to be made when the taxpayer submitted the payment. For purposes of this section, "submitted the payment" means the date which the taxpayer has designated for the delivery of payment, which may or may not be the same date as the date the payment was initiated by the taxpayer.~~
- (J) The amounts withheld for the Municipality by an employer, the agent of an employer, or other payer as

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described in section 191.051 of this Chapter shall be allowed to the recipient of the compensation as credits against payment of the tax imposed on the recipient unless the amounts withheld were not remitted to the Municipality and the recipient colluded with the employer, agent, or other payer in connection with the failure to remit the amounts withheld.

- (K) Each return required by the Municipality to be filed in accordance with this section shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the Tax Administrator to contact the preparer or other person concerning questions that arise during the examination or other review of the return and authorizes the preparer or other person only to provide the Tax Administrator with information that is missing from the return, to contact the Tax Administrator for information about the examination or other review of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the Tax Administrator and has shown to the preparer or other person. Authorization by the taxpayer of another person to communicate with the Tax Administrator about matters pertaining to the return does not preclude the Tax Administrator from contacting the taxpayer regarding such matters.
- (L) The Tax Administrator of the Municipality shall accept for filing a generic form of any income tax return, report, or document required by the Municipality in accordance with this Chapter, provided that the generic form, once completed and filed, contains all of the information required by ordinances, resolutions, or rules adopted by the Municipality or Tax Administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this Chapter and of the Municipality's Ordinance or resolution governing the filing of returns, reports, or documents.
- (M) When income tax returns, reports, or other documents require the signature of a tax return preparer, the Tax Administrator shall accept a facsimile of such a signature in lieu of a manual signature.
- (N) (1) As used in this division, "worksite location" has the same meaning as in section 191.052 of this chapter.
- (2) A person may notify a tax administrator that the person does not expect to be a taxpayer with respect to the municipal corporation for a taxable year if both of the following conditions apply:
- (a) The person was required to file a tax return with the municipal corporation for the immediately preceding taxable year because the person performed services at a worksite location within the municipal corporation, and the person has filed all appropriate and required returns and remitted all applicable income tax and withholding payments as provided by this chapter. The tax administrator is not required to accept an affidavit from a taxpayer who has not complied with the provisions of this chapter.
- (b) The person no longer provides services in the municipal corporation, and does not expect to be subject to the municipal corporation's income tax for the taxable year. The person shall provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the municipal corporation. The affidavit also shall include the following statement: "The affiant has no plans to perform any services within the municipal corporation, make any sales in the municipal corporation, or otherwise become subject to the tax levied by the municipal corporation during the taxable year. If the affiant does become subject to the tax levied by the municipal corporation for the taxable year, the affiant agrees to be considered a taxpayer and to properly register as a taxpayer with the municipal corporation, if such a registration is required by the municipal corporation's resolutions, ordinances, or rules." The person shall sign the affidavit under penalty of perjury.
- (c) If a person submits an affidavit described in division (N)(2) of this section, the tax administrator shall not require the person to file any tax return for the taxable year unless the tax

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administrator possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change, or the taxpayer has engaged in activity which results in work being performed, services provided, sales made, or other activity that results in municipal taxable income reportable to the Municipality in the taxable year. It shall be the responsibility of the taxpayer to comply with the provisions of this chapter relating to the reporting and filing of municipal taxable income on an annual municipal income tax return, even if an affidavit has been filed with the tax administrator for the taxable year. Nothing in division (N) of this section prohibits the tax administrator from performing an audit of the person.

- (O) Any person, including corporations, partnerships, employers, estates and trusts, who files 250 or more information returns of form W-2 for any calendar year, must file these returns using magnetic media or such other process as determined acceptable to the Director of Finance. All requirements apply separately to both original and corrected forms.
- (P) In addition to the above wage reporting requirements, any person paying money to an individual or independent contractor shall report such payment. The information should be reported on Federal Form 1099 and filed yearly with the Tax Administrator on or before February 28th. Any return not so filed shall be subject to a penalty in accordance with Section 191.10 (C)(4) of this Chapter. In addition to the late filing penalty, any return which remains un-filed more than two months after its due date shall be subject to the penalties provided under Section 191.99 of this Chapter."

**Section 3:** That this Ordinance shall take effect on the earliest possible date permitted by law.

**VOTE ON RULES SUSPENSION:** Y 7 N 0

**VOTE ON ORDINANCE 2016-56:** Y 7 N 0

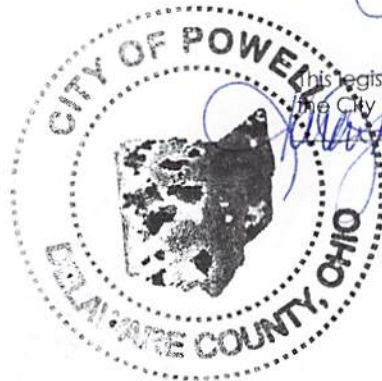
  
Brian Lorenz  
Mayor

Nov 22, 2016  
Date

  
Karen J. Mitchell  
City Clerk

11-22-16  
Date

**EFFECTIVE DATE:** December 15, 2016



This registration has been posted in accordance with the City Charter on this date 11-23-2016  
  
City Clerk

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