

ORDINANCE NO. 2015 - 18

AN ORDINANCE ENACTING A NEW CHAPTER 181 OF THE CODIFIED ORDINANCES OF THE VILLAGE OF NEW LONDON, RELATIVE TO INCOME TAX

Whereas, the Ohio Legislature has enacted HB 5, by which the certain new regulations controlling a municipality's ability to levy an income tax has been enacted; and

Whereas, HB 5 requires that municipalities bring their local income tax ordinances into full compliance with these new regulations; Now, Therefore,

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF NEW LONDON, HURON COUNTY, OHIO, AS FOLLOWS

Section 1. That Chapter 181 of the Codified Ordinances of the Village of New London is hereby amended and restated, effective as of January 1, 2016, and continuing thereafter, to read as follows:

**CHAPTER 181  
INCOME TAX**

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### **181.01 DEFINITIONS.**

As used in this chapter, the following words shall have the meaning ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning:

- (a) "Adjusted federal taxable income," for a person required to file as a C corporation means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:
- (1) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.
  - (2) Add an amount equal to five per cent of intangible income deducted under division (a)(1) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code.
  - (3) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.
  - (4) (A) Except as provided in division (a)(4)(B) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.  
 (B) Division (a)(4)(A) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.
  - (5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.
  - (6) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income.

- (7) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Revised Code;
- (8) (A) Except as limited by divisions (a)(8)(B), (C), and (D) of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017.  
The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.
- (B) No person shall use the deduction allowed by division (a)(8) of this section to offset qualifying wages.
- (C) (i) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct more than fifty per cent of the amount of the deduction otherwise allowed by division (a)(8)(A) of this section.
- (ii) For taxable years beginning in 2023 or thereafter, a person may deduct the full amount allowed by division (a)(8)(A) of this section.
- (D) Nothing in divisions (a)(8)(C)(i) and (ii) of this section precludes a person from carrying forward, for the period otherwise permitted under division (a)(8)(A) of this section, any amount of net operating loss that was not fully utilized by operation of divisions (a)(8)(C)(i) and (ii) of this section.
- (9) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division (E)(3)(b) of section 718.06 of the Revised Code.
- (10) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with division (E)(3)(b) of section 718.06 of the Revised Code.
- (11) If the taxpayer is not a C corporation, is not a disregarded entity, and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or

United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction. "Disregarded entity" means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.

- (12) Nothing in division (a) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.
- (b) "Association" means a partnership, limited partnership, or any other form of unincorporated enterprise, owned by two or more persons.
- (c) "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, limited partnership, corporation, association or any other entity.
- (d) "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, foreign country or dependency.
- (e) "Employee" means an individual who is an employee for federal income tax purposes.
- (f) "Employer" means a person that is an employer for federal income tax purposes.
- (g) "Fiduciary" means a guardian, trustee, executor, administrator or any other person acting in any fiduciary capacity for any individual, trust, estate or business.
- (h) "Income" means the following:
- (1) For residents, 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.
  - (2) In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.
  - (3) For taxpayers that are not individuals, net profit of the taxpayer.
  - (4) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct

related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings.

- (i) "Net operating loss" means a loss incurred by a person in the operation of a trade or business. "Net operating loss" does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.
- (j) (1) "Net profit" for a person other than an individual means adjusted federal taxable income.  
(2) "Net profit" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (j)(2) of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (a)(8) of this section.  
(3) For the purposes of this chapter, and notwithstanding division (j)(1) of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.
- (k) "Nonresident" means an individual that is not a resident.
- (l) "Other entity" means any person or unincorporated body not previously named or defined and includes, inter alia, fiduciaries located within the Village.
- (m) "Person" means every individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any association, shall mean the partners or members thereof, and as applied to corporation, the officers thereof.
- (n) "Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:
  - (1) Deduct the following amounts:
    - (A) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.
    - (B) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.
    - (C) Any amount included in wages that is exempt income.
  - (2) Add the following amounts:
    - (A) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.
    - (B) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option and the municipal corporation has not, by resolution or ordinance,

exempted the amount from withholding and tax adopted before January 1, 2016. This paragraph applies only to those amounts constituting ordinary income.

- (C) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (n)(2)(C) of this section applies only to employee contributions and employee deferrals.
- (D) Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.
- (E) Any amount received that is treated as self-employment income for federal tax purposes in accordance with section 1402(a)(8) of the Internal Revenue Code.
- (F) Any amount not included in wages if all of the following apply:
  - (i) For the taxable year the amount is employee compensation that is included in the taxpayer's gross income for federal income tax purposes;
  - (ii) For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;
  - (iii) For no succeeding taxable year will the amount constitute wages; and
  - (iv) For any taxable year the amount has not otherwise been added to wages pursuant to either division (n)(2) of this section or section 718.03 of the Revised Code, as that section existed before the effective date of H.B. 5 of the 130th general assembly.
- (o) "Resident" means an individual who is domiciled in the municipal corporation as determined under section 181.011 of these Codified Ordinances.
- (p) (1) "Taxpayer" means a person subject to a tax levied on income by the Village of New London in accordance with this Chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (p)(2) of this section, a disregarded entity.
  - (2) A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member if it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:
    - (A) The limited liability company's single member is also a limited liability company.
    - (B) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.
    - (C) Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer.

(D).....The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member.

(E).....The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election. For this purpose, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least four hundred thousand dollars.

(q) "Village" means the Village of New London, Ohio.

**181.011 DOMICILE.**

(A)(1) An individual is presumed to be domiciled in a municipal corporation for all or part of a taxable year if the individual was domiciled in the municipal corporation on the last day of the immediately preceding taxable year or if the tax administrator reasonably concludes that the individual is domiciled in the municipal corporation for all or part of the taxable year.

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

(B).....For the purpose of determining whether an individual is domiciled in a municipal corporation for all or part of a taxable year, only the following factors shall be considered:

(1).....The location of financial institutions in which the individual or the individual's spouse have any accounts, including, but not limited to, checking, savings, certificates of deposit, or individual retirement accounts;

(2).....The location of issuers of credit cards to the individual or the individual's spouse or of any other persons making installment loans to the individual or the individual's spouse;

(3).....The location of institutional lenders which have made loans to, or which are guaranteed by, the individual or the individual's spouse;

(4).....The location of investment facilities, brokerage firms, realtors, financial advisors, or consultants used by the individual or the individual's spouse;

(5).....The location of either the insurance company that issued or the insurance agent that sold any policy of insurance to the individual or the individual's spouse, including, but not limited to, life, health, disability, automobile, or homeowner's insurance;

- (6)..... The location of law firms, accounting firms, and similar professionals utilized by the individual or the individual's spouse for legal, tax, accounting, financial, or retirement services;
- (7)..... The location of physicians, dentists, osteopaths, optometrists, or other health care providers, or veterinarians utilized by the individual or the individual's spouse;
- (8)..... The location of organizations described in section 501(c) of the Internal Revenue Code to which the individual or the individual's spouse make contributions or other payments or in which they participate as a congregant, member, board member, committee member, adviser, or consultant;
- (9)..... The location of burial plots owned by the individual or the individual's spouse;
- (10)..... The location of business ventures or business entities in which the individual or the individual's spouse has a more than twenty-five per cent ownership interest or in which the individual exercises, either individually or jointly, significant control over the affairs of the venture or entity;
- (11)..... The recitation of residency or domicile in a will, trust, or other estate planning document;
- (12)..... The location of the individual's friends, dependents as defined in section 152 of the Internal Revenue Code, and family members other than the individual's spouse, if the individual is not legally separated from the individual's spouse under a decree of divorce or separate maintenance as provided in section 7703(a)(2) of the Internal Revenue Code;
- (13)..... 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;
- (14)..... The location of trustees, executors, guardians, or other fiduciaries named in estate planning documents of the individual or the individual's spouse;
- (15)..... The location of all businesses at which the individual or the individual's spouse makes purchases of tangible personal property;
- (16)..... The location where the individual married;
- (17)..... The location or identity of recipients of political contributions made by the individual or the individual's spouse;
- (18)..... The number of contact periods the individual has with the municipal corporation. For the purposes of this division, an individual has one "contact period" with a municipal corporation if the individual is away overnight from the individual's abode located outside of the municipal corporation and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the municipal corporation.
- (19)..... The individual's domicile in other taxable years;
- (20)..... The location at which the individual is registered to vote;

- (21).....The address on the individual's driver's license;
- (22).....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;
- (23).....The location and value of abodes owned or leased by the individual;
- (24).....Declarations, written or oral, made by the individual regarding the individual's residency;
- (25).....The primary location at which the individual is employed.

**181.012. WORKSITE LOCATIONS/WITHHOLDING.**

(A).....As used in this section:

- (1) "Employer" includes a person that is a related member to or of an employer.
- (2) "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.
- (3) "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.
- (4) "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.
- (5) "Fixed location" means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.
- (6) "Worksite location" means a construction site or other temporary worksite in this state at which the employer provides services for more than twenty days during the calendar year. "Worksite location" does not include the home of an employee.
- (7) "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

..... If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any

of the employee's qualifying wages subject to division (B)(1)(a) of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.

For the purposes of this division, the location at which an employee spends a particular day shall be determined in accordance with division (B)(2) of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

(B)(1) Subject to divisions (C), (E), (F), and (G) of this section, an employer is not required to withhold municipal income tax on qualifying wages paid to an employee for the performance of personal services in a municipal corporation that imposes such a tax if the employee performed such services in the municipal corporation on twenty or fewer days in a calendar year, unless one of the following conditions applies:

- (a) The employee's principal place of work is located in the municipal corporation.
- (b) The employee performed services at one or more presumed worksite locations in the municipal corporation. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in this state at which the employer provides services that can reasonably be expected by the employer to last more than twenty days in a calendar year. Services can "reasonably be expected by the employer to last more than twenty days" if either of the following applies at the time the services commence:
  - (i) The nature of the services are such that it will require more than twenty days of actual services to complete the services;
  - (ii) The agreement between the employer and its customer to perform services at a location requires the employer to perform actual services at the location for more than twenty days.
- (c) The employee is a resident of the municipal corporation and has requested that the employer withhold tax from the employee's qualifying wages as provided in section 718.03 of the Revised Code.
- (d) The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure.

(2) For the purposes of division (B)(1) of this section, an employee shall be considered to have spent a day performing services in a municipal corporation only if

the employee spent more time performing services for or on behalf of the employer in that municipal corporation than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:

- (a) Traveling to the location at which the employee will first perform services for the employer for the day;
- (b) Traveling from a location at which the employee was performing services for the employer to any other location;
- (c) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;
- (d) Transporting or delivering property described in division (B)(2)(c) of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;
- (e) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.

(C) If the principal place of work of an employee is located in a municipal corporation that imposes an income tax in accordance with this chapter, the exception from withholding requirements described in division (B)(1) of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to the municipal corporation in which the employee's principal place of work is located.

(D)(1) Except as provided in division (D)(2) of this section, if, during a calendar year, the number of days an employee spends performing personal services in a municipal corporation exceeds the twenty-day threshold described in division (B)(1) of this section, the employer shall withhold and remit tax to that municipal corporation for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in that municipal corporation.

(2) An employer required to begin withholding tax for a municipal corporation under division (D)(1) of this section may elect to withhold tax for that municipal corporation for the first twenty days on which the employer paid qualifying wages to the employee for personal services performed in that municipal corporation.

(3) If an employer makes the election described in division (D)(2) of this section, the taxes withheld and paid by such an employer during those first twenty days to the municipal corporation in which the employee's principal place of work is located are refundable to the employee.

(E) Without regard to the number of days in a calendar year on which an employee performs personal services in any municipal corporation, an employer shall

withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the municipal corporation in which the employer's fixed location is located if the employer qualifies as a small employer as defined in section 718.01 of the Revised Code.

To determine whether an employer qualifies as a small employer for a taxable year, a tax administrator may require the employer to provide the tax administrator with the employer's federal income tax return for the preceding taxable year.

(F)..... Divisions (B)(1) and (D) of this section shall not apply to the extent that a tax administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of section 718.03 of the Revised Code.

(G)..... In the case of a person performing personal services at a petroleum refinery located in a municipal corporation that imposes a tax on income, an employer is not required to withhold municipal income tax on the qualifying wages of such a person if the person performs those services on twelve or fewer days in a calendar year, unless the principal place of work of the employer is located in another municipal corporation in this state that imposes a tax applying to compensation paid to the person for services performed on those days and the person is not liable to that other municipal corporation for tax on the compensation paid for such services. For the purposes of this division, a petroleum refinery is a facility with a standard industrial classification code facility classification of 2911, petroleum refining.

Notwithstanding division (D) of this section, if during a calendar year, the number of days an individual performs personal services at a petroleum refinery exceeds twelve, the employer shall withhold tax for the municipal corporation for the first twelve days for which the employer paid qualifying wages to the individual and for all subsequent days in the calendar year on which the individual performed services at the refinery.

#### **181.02 IMPOSITION OF TAX.**

To provide funds for the purpose of general Municipal operations, maintenance of equipment, new equipment, extension, enlargement and improvement of Municipal services and facilities and capital improvements of the Village of New London, there be, and hereby is levied a tax upon the earnings at the rate of one percent (1%) upon the categories of income set forth below; and that, in addition, from and after January 1, 2011, and through the period ending December 31, 2018 only, there is hereby levied an additional tax upon income of an additional fifty hundredths of one percent (.50%) per annum, upon the categories of income set forth below:

- (a) On all qualifying wages earned or received by resident individuals of the Village of New London.
- (b) On all qualifying wages earned or received by non-resident individuals of the Village of New London, for work done or services performed or rendered in the Village of New London.
- (c) On all income derived from gaming, wagering, lotteries or schemes of chance by residents of New London or by nonresidents of New London when the income

- derived from gaming, wagering, lotteries or schemes of chance is won or received from New London sources including ticket purchases in New London.
- (d) On the net profits attributable to New London, earned by all resident unincorporated businesses, professions and other activities derived from work done or services rendered or performed and business or other activities conducted in the Village of New London.
  - (e) On the net profit attributable to New London of all nonresident unincorporated businesses, professions or other activities conducted in New London, whether or not such business has an office or place of business in New London.
  - (f) On the portion of the distributive share of the net profits earned by a resident individual from an unincorporated or incorporated business entity which is located outside of New London.
  - (g) On that portion of the distributive share of net profits of a resident individual, partner or owner of a nonresident unincorporated business entity.
  - (h) On the net profits earned by all corporations derived from work done or services performed or rendered and business or other activities conducted in the Village of New London.
  - (i) (1) Net profit from a business or profession conducted both within and without the boundaries of the Village of New London shall be considered as having a taxable situs in the Village of New London for purposes of 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 Village of New London during the taxable period to the average 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, 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 persons employed in the business or profession for services performed in the Village of New London to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation from which taxes are not required to be withheld under section 718.011 of the Revised Code;
    - (C) Total Gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the Village of New London to total gross receipts of the business or profession during the same period from sales, and services, wherever made or performed.

- (2).....(A) If the apportionment factors described in division (i)(1) of this section do not fairly represent the extent of a taxpayer's business activity in a municipal corporation, the taxpayer may request, or the tax administrator of the municipal corporation 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 administrator denies the request in an Assessment.
- (C)..... A tax administrator may require a taxpayer to use an alternative apportionment method only by issuing an assessment.
- (D)..... Nothing herein nullifies or otherwise affects any alternative apportionment arrangement approved by a tax administrator or otherwise agreed upon by both the tax administrator and taxpayer before January 1, 2016.
- (3)..... As used in division (i)(1) 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; or a vendor, customer, client, or patient of a person the same.
  - (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 administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described above solely in order to avoid or reduce the employer's municipal income tax liability. If a tax administrator makes such a determination, the employer may dispute the determination by establishing, by a

preponderance of the evidence, that the tax administrator's determination was unreasonable.

(4) For the purposes of division (i)(1), 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 a municipal corporation if, regardless of where title passes, the property meets any of the following criteria:

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

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

(iii) The property is shipped from a place within the municipal corporation to purchasers outside the municipal corporation, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(B) Gross receipts from the sale of services shall be situated to the municipal corporation to the extent that such services are performed in the municipal corporation.

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

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

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

(7) 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 tax only by the municipal corporation in which the property generating the net profit is located and the municipal corporation in which the individual taxpayer that receives the net profit resides.

(8) Taxpayers may 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.

- (9)..... 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 a municipal corporation based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the municipal corporation to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year. Notwithstanding the foregoing, an individual who is a resident of the Village shall report the individual's net profit from all real estate activity on the individual's annual tax return for the Village.
- (10)..... If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under divisions (C)(12) and (R)(1)(d) of section 718.01 of the Revised Code by a municipal corporation to which the taxpayer has apportioned a portion of its net profit, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to that municipal corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to that municipal corporation any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation. This division applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to a municipal corporation under this section.
- (11)..... When calculating the ratios described herein, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.
- (j) To the fullest extent allowed by state law, on all lottery winnings, regardless of how denominated, received by any person from any source including by not limited to any lottery authorized, sanctioned, sponsored, conducted or participated in by the State of Ohio, or any of its subdivisions.

### **181.03 EFFECTIVE DATES.**

(a) The initial one percent (1%) tax provided for in Section 181.02 of the Codified Ordinances shall be levied, collected and paid with respect to salaries, wages, commissions and other compensation earned on and after January 1, 1974, and with respect to the net profit of businesses, professions and other activities earned on and after January 1, 1974. Provided, however, that where the fiscal year of the business, profession or other activity differs from the calendar year, the tax shall be applied to that part of the net profit for the fiscal year as shall be earned on and after January 1, 1974, to the close of the taxpayer's fiscal year; thereafter, the taxpayer shall report on its fiscal year basis.

(b) The additional fifty hundredths of one percent (.50%) tax provided for in Section 181.02 of the Codified Ordinances shall be levied, collected and paid with respect to salaries, wages, commissions and other compensation earned on and after January 1, 2011 and through the period ending December 31, 2018 only, and with respect to the net profit of businesses, professions and other activities earned on and after January 1, 2011 and through the period ending December 31, 2018 only; provided, however, that where the fiscal year of the business, profession or other activity differs from the calendar year, the tax shall be applied to that part of the net profit for the fiscal year as shall be earned on and after January 1, 2011, to the close of the taxpayer's fiscal year; thereafter, the taxpayer shall report on its fiscal year basis through the period ending December 31, 2018. Recognizing that this additional income tax requires approval from the electorate, it is the intention of Council that this additional income tax shall remain in effect only through December 31, 2018, and that any extension of its effective date beyond December 31, 2018 shall require an additional, future approval by the electorate.

**181.04 RECIPROCITY PROVISION; CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES; OTHER CREDITS.**

(a) If a resident of New London is subject to and has paid a municipal income tax due to the operation of a business or the receipt of compensation in another taxing municipality in Ohio, such taxpayer shall be allowed a credit against the New London tax due for the taxes accrued and paid to the other municipality based upon a tax rate of one percent (1.00%) of income only (it being the intention of Council that there will be no reciprocity credit for the additional fifty hundredths (.50%) of one percent income tax effective on January 1, 2011 or any renewal thereof), but such credit shall not exceed the amount of New London tax levied on such compensation or from the profits of a business, nor shall such credit or allowance be permitted for a school district tax.

(b) If a resident of New London operates a business or businesses in another taxing municipality in Ohio and the business or businesses incur a loss, the amount of the loss is deemed primarily subject to the taxing jurisdiction of the other taxing municipality and may not be used to reduce the taxpayer's New London tax base.

(c) With respect to any income tax applicable to a "pass-through entity" as that term is defined in Ohio R.C. 718.01, the Village of New London shall grant a credit to taxpayers that are domiciled in the Village of New London for taxes paid to another municipal corporation by a pass-through entity that does not conduct business in the Village. The amount of the credit shall equal the lesser of the following amounts:

- (1) The amount, if any, of tax paid by the pass-through entity to another municipal corporation in this State, apportioned ratably according to the ownership interest of the taxpayer in proportion to the ownership interest of all owners of the entity;
- (2) The amount of tax that would be imposed on the pass-through entity by the Village of New London if the pass-through entity conducted business in the Village, apportioned ratably according to the ownership interest of

the taxpayer in proportion to the ownership interest of all owners of the entity.

(d) A refundable credit shall be allowed against the income tax imposed by this chapter for each "qualifying loss," as the same is defined and limited by Ohio R.C. 718.021, in connection with a nonqualified deferred compensation plan, which qualifying loss is sustained by a taxpayer during the taxable year.

(e) (1) Except as provided in subsection (e)(2) hereof, if tax or withholding is paid to a municipal corporation on income or wages, and if New London imposes a tax on that income or wages after the time period allowed for a refund of the tax or withholding paid to the first municipal corporation, New London shall allow a nonrefundable credit, against the tax or withholding paid to the first municipal corporation with respect to such income or wages.

(2) If the tax rate in New London is less than the tax rate in the first municipal corporation, then the credit described in subsection (e)(1) hereof shall be calculated using the tax rate in effect in New London.

(3) Nothing in this section permits any credit carry forward.

#### **181.05 ADMINISTRATION.**

(a) It shall be the duty of the Fiscal Officer to annually audit the records of the Income Tax Clerk and to conduct such other inspections and audits as she deems appropriate to insure that proper procedures, required by the State Code and Ordinances, are being met.

(b) It shall be the duty of the Income Tax Clerk, under the direct supervision of the Village Clerk-Treasurer:

(1) To receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; to keep an accurate record thereof; to report and turn over to the Fiscal Officer, all monies so received.

(2) 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.

(3) To enforce the provisions of this chapter and to enforce the rules and regulations of Council, relating to any matter or thing pertaining to the collection of Village income taxes and the administration and enforcement of the provisions of this chapter, including provisions for the examination and correction of returns and payments. In doing so, the Income Tax Clerk shall have any and all of the powers and authority set forth in Sections 718.13, 718.24 and 718.26 of the Revised Code.

(c) In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Income Tax Clerk may determine the amount of tax appearing to be due the Village from the taxpayer and shall send to such taxpayer a written statement showing the amount so determined, together with interest and penalties thereon, if any.

(d) Subject to the consent of the Board of Review or pursuant to regulations approved by the Council, the Income Tax Clerk shall have the power to compromise any interest or penalty, or both, imposed by this chapter.

(e) A Department of Taxation is hereby created within the Office of the Fiscal Officer. Such department of taxation shall have such deputies, clerks and other employees as may be from time to time determined by Council, and shall receive such salary as may be determined by Council. The Fiscal Officer shall recommend all appointments of personnel and purchase all equipment, supplies, and materials for the department of taxation subject to the approval of Council. The Department of Taxation shall be charged with the administration and operation of this chapter, under the direction of the Village Fiscal Officer. The Fiscal Officer shall prescribe the form and method of accounts and reports for said department, as well as the forms for taxpayer's returns and declarations and shall be charged with the internal examination and audit all such accounts. The Income Tax Clerk shall exhibit accurate records showing the amount received from each taxpayer, and the date of said receipts. The Fiscal Officer shall also make written reports to Council annually of all monies collected hereunder during the preceding year.

(f) Taxpayers may submit written requests to the Income Tax Clerk for official opinions as to whether or how certain income, sources of income, or a certain activity or transaction will be taxed. The Income Tax Clerk may choose not to offer such an opinion; however, formal opinions which are issued shall be binding on the Village. The procedures for requesting and issuing such opinions of the tax administrator and their legal effect and use, shall be as specified in Revised Code Section 718.38.

(g) The Fiscal Officer or his duly authorized agent or employee, may, when it is in the best interests of the Village:

(1) Compromise a claim;

(2) Extend for a reasonable period the time for payment of a claim by agreeing to accept monthly or other periodic payments.

In this regard, "claim" means a claim for an amount payable to the Village corporation that arises pursuant to the provisions of this chapter. The Fiscal Officer, or designee, may consider the following standards when ascertaining with respect to a claim whether a compromise or payment-over-time agreement is in the best interests of the Village:

(A) There exists a doubt as to whether the claim can be collected.

(B) There exists a substantial probability that, upon payment of the claim and submission of a timely request for refund with respect to that payment, the tax administrator would refund an amount that was illegally or erroneously paid.

(C) There exists an economic hardship such that a compromise or agreement would facilitate effective tax administration.

(D) There exists a joint liability among spouses, one of whom is an innocent spouse, provided that any relief under this standard shall only affect the claim as to the innocent spouse. A spouse granted relief under section 6015 of the Internal Revenue Code with regard to any income item is rebuttably presumed to be an innocent spouse with regard to that income item to the extent that

income item is included in or otherwise affects the computation of a municipal income tax or any penalty or interest on that tax.

- (E) Any other reasonable standard that the tax administrator establishes.

The Fiscal Officer's rejection of a compromise or payment-over-time agreement proposed by a person with respect to a claim shall not be appealable. A compromise or payment-over-time agreement with respect to a claim shall be binding upon and shall inure to the benefit of only the parties to the compromise or agreement, and shall not extinguish or otherwise affect the liability of any other person. A compromise or payment-over-time agreement with respect to a claim shall be void if the taxpayer defaults under the compromise or agreement or if the compromise or agreement was obtained by fraud or by misrepresentation of a material fact. Any amount that was due before the compromise or agreement and that is unpaid shall remain due, and any penalties or interest that would have accrued in the absence of the compromise or agreement shall continue to accrue and be due.

#### **181.06 INVESTIGATIVE POWERS OF FISCAL OFFICER; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.**

(a) The Fiscal Officer or his duly authorized agent or employee, is hereby authorized to examine the books, papers and records of any employer, or of any taxpayer or person subject to the tax, or believed to be 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. At or before the commencement of an audit, the Village employee carrying it out shall provide a Notice to the taxpayer, as specified in Revised Code Section 718.36(A); and the procedures for carrying out the audit as specified in Revised Code Section 718.36 shall be followed.

Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish to the Fiscal Officer or his duly authorized agent or employee, within thirty days following a written request by the Fiscal Officer or his duly authorized agent or employee, the means, facilities, and opportunity for making such examination and investigations as are hereby authorized.

(b) The Fiscal Officer, or his duly authorized agent or employee, is hereby authorized to examine any person, employer or employee under oath, concerning any income which was or should have been returned for taxation, and for this purpose may compel the production of books, Federal income tax records, papers and records and the attendance of all persons before him whether as parties or witnesses, wherever he believes such persons have knowledge of such income.

(c) The refusal to produce books, papers, records and Federal income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax 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 any order or subpoena of the Fiscal Officer authorized hereby shall be deemed a violation of this chapter.

(d) Tax returns, investigations, hearings and all audit papers and information connected therewith are confidential and shall be carefully preserved so that they shall

not be available for inspection by anyone other than the proper agents of the Village for official purposes.

(e) Any information gained as the result of the filing of any tax returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposes (which includes the exchange of information with other tax authorities) and except in accordance with proper judicial order. Any person divulging such information shall upon conviction thereof be deemed guilty of a misdemeanor of the first degree. Each disclosure shall constitute a separate offense. In addition to the above penalties, any employee of the Village who violates the provisions of this section relative to disclosure of confidential information shall be immediately dismissed from the service of the Village.

### **181.07 INTEREST AND CIVIL PENALTIES.**

(a) For purposes of this Section:

- (1) "Federal short-term rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year.
- (2) "Applicable Interest Rate" means the federal short-term rate, rounded to the nearest whole number per cent, plus five per cent. The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined. By the thirty-first day of October of each year the Income Tax Clerk shall publish the Applicable Interest Rate applicable to the next succeeding calendar year.

(b) Whenever a taxpayer, employer, any agent of the employer, or any other payer for any reason fails, in whole or in part, to make to the Village timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the Village any return required to be filed, the interest amounts and penalties prescribed in this Section shall be paid, as follows:

- (1) Interest shall be imposed at the Applicable Interest Rate, per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax.
- (2) (A) With respect to unpaid income tax and unpaid estimated income tax, a penalty equal to fifteen per cent of the amount not timely paid shall be paid.
- (B) With respect to any unpaid withholding tax, a penalty equal to fifty per cent of the amount not timely paid shall be paid.
- (C) With respect to returns other than estimated income tax returns, a penalty of twenty-five dollars for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon shall be paid. This penalty shall not exceed one hundred fifty dollars for each failure.

- (3) In addition to any interest and penalties, all of the Village's post-judgment collection costs and fees, including attorney's fees shall be paid by the taxpayer, employer, any agent of the employer, or any other payer.

Notwithstanding the foregoing paragraphs, no penalty, interest, or other assessment will be made for the late payment or nonpayment of estimated tax liability in either of the following circumstances: the taxpayer is an individual who lives in the Village but was not domiciled in the Village on January 1 of the current calendar year; or the taxpayer has remitted through estimated tax payments or otherwise a total amount which is at least equal to one hundred percent (100%) of the taxpayer's tax liability for the preceding year as shown on the return filed by the taxpayer for that preceding year, provided that the return for the preceding year reflected a twelve month period and the taxpayer filed a return for the preceding year.

(c) The Income Tax Clerk shall have the authority to abate or partially abate penalties or interest imposed under this section when the tax administrator determines, in the Income Tax Clerk's sole discretion, that such abatement is appropriate.

#### **181.08 VIOLATIONS.**

- (a) The following shall be considered violations of this chapter:
- (1) Failing, neglecting or refusing to make any return or declaration required by this chapter; or
  - (2) Making any incomplete, false or fraudulent return; or
  - (3) Failing, neglecting or refusing to pay the tax, penalties or interest imposed by this chapter; or
  - (4) Failing, neglecting or refusing to withhold the tax from employees or to remit such withholding to the Income Tax Clerk; or
  - (5) Refusing to permit the Fiscal Officer or any duly authorized agent or employee to examine books, records and papers and Federal income tax returns relating to the income or net profits of a taxpayer; or
  - (6) Failing to appear before the Fiscal Officer and to produce books, records, federal income tax returns and papers relating to the income or net profits of a taxpayer under order or subpoena of the Fiscal Officer; or
  - (7) Refusing to disclose to the Fiscal Officer any information with respect to the income or net profits of a taxpayer; or
  - (8) Failing to comply with the provisions of this chapter or any order or subpoena of the Fiscal Officer authorized hereby; or
  - (9) Attempting 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 who violates any of the provisions of subsection (a) hereof shall be guilty of a misdemeanor of the first degree.
- (c) The failure of any employer or taxpayer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return or declaration, from filing such form, or from paying the tax.

### **181.09 ALLOCATION OF FUNDS.**

(a) The funds collected pursuant to the initial one percent (1%) tax provided for in Section 181.02 of the Codified Ordinances shall be deposited in the General Fund and said funds collected for the tax period of January 1, 1974 and thereafter, shall be disbursed in the following order, to wit:

- (1) Such part thereof as shall be necessary to defray all costs of collecting the taxes and the cost of administering and enforcing the provisions thereof.
- (2) The balance of the funds remaining in the General Fund shall be available for appropriation, as deemed necessary by the Council of the Village of New London, for any lawful Municipal purposes.

(b) The funds collected pursuant to the additional fifty hundredths of one percent (.50%) provided for in Section 181.02 of the Codified Ordinances shall be deposited in the General Fund and said funds collected for the tax period of January 1, 2011, and thereafter, or any renewal thereof, shall be used to defray Police and Fire Department operating expenses only.

### **181.10 ASSESSMENTS; APPEAL RIGHTS; BOARD OF TAX REVIEW.**

(a)..... For purposes of this section, "Assessment" means a written finding by the Income Tax Clerk that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation that commences the person's time limitation for making an appeal to the board of tax review and has "ASSESSMENT" written in all capital letters at the top of such finding. "Assessment" does not include an informal notice denying a request for refund, a billing statement notifying a taxpayer of current or past-due balances owed to the Village, a request for additional information, a notification to the taxpayer of mathematical errors, or other written correspondence to a person or taxpayer that does meet the foregoing criteria.

(b)..... Assessments shall be served in the manner authorized by Revised Code Section 718.18. A taxpayer may appeal such decision within sixty days after receipt of such service.

(c)..... The Board of Tax Review shall consist of three members. Two members shall be appointed by the Council, but such appointees may not be employees, elected officials, or contractors with the Village at any time during their term or in the five years immediately preceding the date of appointment. One member shall be appointed by the Mayor. This member may be an employee of the Village, but may not be the Fiscal Officer, the Income Tax Clerk, or an employee directly involved in municipal tax matters, or any direct subordinate thereof. The term for members of the board of tax review appointed by the Council shall be two years. There is no limit on the number of terms that a member may serve if the member is reappointed by Council. The board member appointed by the Mayor shall serve at the discretion of the Mayor.

Members of the board of tax review appointed by Council may be removed by Council by majority vote for malfeasance, misfeasance, or nonfeasance in office. To remove such a member, the Council authority must give the member a copy of the charges against the member and afford the member an opportunity to be publicly heard

in person or by counsel in the member's own defense upon not less than ten days' notice. The decision by the Council on the charges is final and not appealable.

A member of the board who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.

A vacancy in an unexpired term shall be filled in the same manner as the original appointment within sixty days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the board shall impair the power and authority of the remaining members to exercise all the powers of the board.

If a member is temporarily unable to serve on the board due to a conflict of interest, illness, absence, or similar reason, another individual may be appointed to temporarily serve on the board in the member's place. The appointment of such an individual shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.

All members of said Board shall serve without compensation.

(d) A majority of the members of the Board of Tax Review shall constitute as a quorum. The Board of Review shall adopt its own procedural rules and shall keep a record of its transactions in the form of minutes, in a bound book, and shall list members present at each meeting. All hearings of the Board shall be conducted privately and the provisions of Section 181.06 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board of Tax Review on appeal.

(e) Whenever the Fiscal Officer issues a decision regarding a municipal income tax obligation of a taxpayer by way of an Assessment or the denial of a request for refund, the Income Tax Clerk shall notify the taxpayer at the same time of the taxpayer's right to appeal and the manner in which the appeal may be taken. Any person who is aggrieved by a decision of the Income Tax Clerk and who has filed with the Village the required returns or other documents pertaining to the municipal income tax obligation at issue may appeal that decision to the Board of Tax Review by filing a request with the Board; such a request shall be in writing, shall state why the decision should be deemed incorrect or unlawful, and shall be filed within sixty days after the Income Tax Clerk issues the decision complained of.

(f) The Board shall schedule a hearing within sixty days after receiving a request, unless hearing is waived by the taxpayer; and the taxpayer may appear before the Board and be represented by an attorney at law, a certified public accountant, or another representative. The board may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within one hundred twenty days after the first day of the hearing, unless the parties agree otherwise. The Board may affirm, reverse, or modify the decision of the Income Tax Clerk or any part thereof and shall issue a written decision within ninety days after the Board's final hearing on the appeal, which shall be sent by ordinary mail to the petitioner within fifteen days after issuing the decision. Any person dissatisfied with any ruling or decision of the Board of Tax Review may appeal therefrom in accordance with Revised Code Section 5717.011.

### **181.11 APPLICABILITY.**

This chapter shall not apply to any person, firm, corporation or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for. The singular shall include the plural and the masculine shall include the feminine and the neuter.

### **181.12 SEVERABILITY.**

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 provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section part thereof not been included herein.

### **181.13 INCOME NOT SUBJECT TO TAX.**

The provisions of this chapter shall not be construed as levying a tax upon the following:

- (a) ~~The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state.~~
- (b) Poor relief, pensions, social security, ~~railroad retirement benefits, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan~~ unemployment compensation except for supplemental unemployment benefits or similar payments, disability benefits received from private industry or local, state or Federal governments, or from charitable, religious or educational organizations, ~~and the proceeds of sickness, accident, or liability insurance policies.~~
- (c) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations.
- (d) ~~The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities recognized under federal or state law.~~
- (e) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business.
- (f) Earnings and income of all persons under eighteen years of age, whether residents or non-residents.

- (g) "Intangible income," which shall mean income of any of the following types: income yield, interest, capital gains, 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 Chapter 5701 of the Revised Code, and patents, copyrights, trademarks, tradenames, investments in real estate, investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.
- (h) Unreimbursed employee business expenses (2106 expenses) which the employee has deducted as an itemized deduction on the Federal tax return, subject to the limitation imposed by section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation. Taxpayer must furnish a copy of the Form 2106 and Schedule "A" as filed with IRS.
- (i) Compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the municipal corporation on not more than twenty days in a taxable year, except and unless either the individual's base of operation is located within the Village; or the individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For these purposes, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in section 718.011 of the Revised Code. Compensation to which this exemption applies shall be treated as earned or received at the individual's base of operation; or, if the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled. For these purposes "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.
- (j) Items excluded from Federal gross income pursuant to Section 107 of the Internal Revenue Code, commonly referred to as "parsonage allowances".
- (k) Compensation paid under Section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually. Such compensation in excess of one thousand dollars shall be subjected to taxation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.
- (l) The income of a public utility, when that public utility is subject to the tax levied under Section 5727.24 or 5727.30 of the Revised Code.

- (m) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to New London pursuant to Section 709.023 of the Revised Code, unless the person is subject to such taxation because of residence or domicile within New London. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.
- (n) Alimony and child support received.
- (o) Compensation for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or compensation from punitive damages.
- (p) Employee compensation that is not qualifying wages as defined in Section 181.01.
- (q) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.
- (r) an S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code.
- (s) Any item of income that is exempt income of a pass-through entity under division (C) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.
- (t) "Qualifying wages," to the extent that they are not subject to withholding for the Village, as specified in Section 118.012; provided, however, that this exemption does not apply if the employee resided in the Village of New London at the time the employee earned the wages; or if the employer elects to withhold taxes; or, if the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located, and the employee receives a refund of the tax on the basis of not performing services in the municipal corporation.
- (u) Income the taxation of which is prohibited by the constitution or laws of the United States.
- (v) Income of any member or employee of the Ohio general assembly including the lieutenant governor which income is received as a result of services rendered as

- such member or employee and is paid from appropriated funds of this state, unless such member or employee is a resident of New London.
- (w) Income of the chief justice or a justice of the supreme court received as a result of services rendered as the chief justice or justice, unless such justice is a resident of New London.

#### 181.14 REFUNDS.

(a) Should it appear that any taxpayer has paid more than the amount of the tax to which the Village of New London is entitled under the provisions of this chapter, a refund of the amount so overpaid shall be made, provided a proper claim for refund of such overpayment of tax has been filed by the taxpayer, or same may be applied toward the declaration of tax due for the ensuing year. Claims for refunds shall be made on forms prescribed by and obtainable from the income Tax Clerk. The Income Tax Clerk may require the requestor to file with the request any documentation that substantiates the requestor's claim for a refund.

(b) If the Income Tax Clerk denies in whole or in part a refund request, the Income Tax Clerk 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 appeal.

(c) All applications for refunds shall be made within three years of the date when a final return was due or the tax was paid, whichever is later.

(d) No refund will be made for an amount less than ten dollars (\$10.00).

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

(1) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request.

(2) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request, and the request is received within seven days of such last day.

(3) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible, and the request is received within seven days of the last day for making the request.

(f) Interest at the Applicable Interest Rate shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety days after the final filing date of the annual return or ninety days after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time for filing that return.

### **181.15 ANNUAL RETURN AND PAYMENT OF TAX.**

(a) Effective January 1, 1997, each taxpayer eighteen years of age or older whose earnings or profits are subject to the tax imposed by this chapter shall, whether or not tax is due but, subject to paragraph (b) following, on or before April 15th of each year make and file a return with the Income Tax Clerk on a form furnished by or obtainable from the Income Tax Clerk setting forth the aggregate amount of salary, wages or other compensation and net profits earned by him during the preceding year and subject to the tax, together with other pertinent information as the Income Tax Clerk may require. However, when the final return is made for a fiscal year or other period different from the calendar year, the return shall be made within 105 days from the end of such fiscal year or other period whether or not a tax is due thereon. The tax due shall be computed on the return and the taxpayer shall pay the tax due at the time of filing. No remittance is required if the amount shown to be due is ten dollars or less. A person may round to the nearest whole dollar all amounts the person is required to enter on any return, report, voucher, or other document required under this chapter. Any fractional part of a dollar that equals or exceeds fifty cents shall be rounded to the next whole dollar, and any fractional part of a dollar that is less than fifty cents shall be dropped. If a person chooses to round amounts entered on a document, the person shall round all amounts entered on the document.

Such return shall be deemed filed when postmarked by the United States Post Office or delivered during normal business hours to the Tax office. Notwithstanding any filing deadlines prescribed by this section, an annual income tax return or report due to the Village may be filed within the time prescribed in the federal income tax code for the corresponding tax reporting period if such period is later than the time allowed in this section.

(b) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent. If an individual is unable to complete and file a return or notice required, 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. Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust. Spouses may file a joint return.

(c) 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. Each return required to be filed 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. When income tax returns, reports, or other documents require the signature of a tax return preparer, a facsimile of such a signature shall be acceptable in lieu of a manual signature.

(d) The Income Tax clerk may require a taxpayer who is an individual 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. The Income Tax Clerk may require a taxpayer that is not an individual to include with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return. A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio business gateway or in some other manner shall either mail the documents required under this division to the tax administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio business gateway. After a taxpayer files a tax return, the Income Tax Clerk may request, and the taxpayer shall provide, any information, statements, or documents required by the municipal corporation to determine and verify the taxpayer's municipal income tax liability.

(e) The return of an employer or employers showing the amount of tax deducted by such employer or employers from the salaries, wages, or compensation of any employee and paid by him or them to the Income Tax Clerk, shall be accepted as the return required of any employee whose sole income subject to the tax is such salary, wages or compensation.

(f) Extension of time for filing returns. Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates. An extension of time to file under this division is not an extension of the time to pay any tax due unless the tax administrator grants an extension of that date. If the State Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of section 5747.08 of the Revised Code, a taxpayer shall automatically receive an extension for the filing of a municipal income tax return. The

extended due date of the municipal income tax return shall be the same as the extended due date of the state income tax return. A member of the national guard of any state, or of a reserve component of the armed forces of the United States called to active duty, or a civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces, may apply to the income tax clerk for both an extension of time for filing of the return and an extension of time for payment of taxes pursuant to the provisions of Revised Code Section 718.052.

(g) "Pass-through entities" (e.g., partnerships, limited liability companies and S corporations) as that term is defined in Ohio R.C. 718.01, must file an annual return and shall pay the applicable tax on the income of the pass-through entity in the hands of that entity, and the same income shall not be taxed, nor a return filed, for said income in the hands of the owners of the entity.

(h) If a taxpayer operates a business (including rentals or leasing) which sustains a net operating loss during the taxable year and has no other source of business income which is subject to the tax, the net operating loss may be carried forward for a period of up to five consecutive years subsequent to the year of the loss to be used against future profits generated by a business; but such net operating business losses shall not be deducted from any individual's "qualifying wages" or nonbusiness income under any circumstances.

(i) Subject to subsection (h), if a taxpayer has multiple sources of income subject to the tax, he or she may combine the sources of income to arrive at the income subject to New London income tax. This includes income from husbands and wives which may be combined to arrive at the income subject to New London income tax.

(j) In lieu of the forms adopted by the Income Tax Clerk as provided in paragraph (a) above, a taxpayer may file a generic form of any return, report, or other document if the generic form, once completed and filed, contains all of the information required to be submitted in the standard form prescribed by the Income Tax Clerk, so long as the taxpayer complies with the rules or ordinances of the Village governing the filing of returns, reports, or other documents.

(k) The Village of New London shall accept for filing a consolidated income tax return from any affiliated group of corporations subject to the Village's tax if that affiliated group filed for the same tax reporting period a consolidation return for Federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code; the rules, conditions or eligibility, and calculations prescribed in Revised Code 718.06 shall govern any such consolidated returns.

(l) On and after January 1, 2005, the Village will accept a return, an estimated return, and payments of tax, which have been properly submitted in accordance with the Ohio Business Gateway.

(m) A taxpayer shall file an amended return with the Income Tax Clerk if any of the facts, figures, computations, or attachments required in the taxpayer's annual return to determine the tax due levied by the Village must be altered as the result of an adjustment to the taxpayer's federal income tax return, whether initiated by the taxpayer or the internal revenue service, and such alteration affects the taxpayer's tax liability under this chapter. If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated

return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the Income Tax Clerk before filing the amended return.

#### **181.16 CONTRACTOR COMPLIANCE.**

No building permit shall be issued by the Village and no building or fixture construction or repair work shall be undertaken within the Village, including but not limited to plumbing, sewer, heating, electrical, water proofing, siding, roofing, blacktop, landscaping, lawn maintenance, tree work and any other work relating to real estate, building or fixture construction or repair, until the contractor and/or sub-contractor, has first registered his name, address, Social Security number, E.I.N. and principal place of business with the Village Income Tax Department and obtained a Certificate of Registration from said Department.

(a) In the case where a sub-contractor's name is unknown at the time of initial registration of the contractor, such registration shall be permitted and thereafter, within five days for obtaining such information, the contractor and subcontractor shall each register with the Village Income Tax Department.

(b) Failure of the contractor to provide registration information as provided above shall result in the revocation of any registration and certificate previously issued. Revocation shall also occur in the event of failure to file tax return, including withholding returns, failure to withhold and/or pay any taxes, interest or penalties owed to the Village, failure to be current in the obligation to pay any taxes, interest or penalties owed to the Village, or for other good cause articulated by the Income Tax Department. Otherwise, said registration of the change in any relevant information as set forth herein to be declared, or the same shall be revoked, subject to re-registration in compliance with this section.

(c) Any fees for the above shall be set by the Tax Department and shall bear a reasonable relation to the work and/or forms expense involved in such registration and issuing of said certificate.

(d) In cases of transient and/or temporary work being done in the Village, persons, firms, partnership or corporations performing the same shall be subject to registration, but the Tax Department is authorized to charge a reasonable blanket amount to said contractor and/or subcontractor to cover registration fees and any taxes likely to be incurred for said work being done in the Village. However, this shall not include the responsibility and liability for employees' withholding taxes, which still shall be required under this chapter, unless the same has specifically been included. If said taxpayer does not wish to pay said blanket amount, suggested by the Tax Department, said taxpayer shall be charged the registration fee as set forth herein and be responsible for filing all returns and paying all taxes, penalties and interest under this chapter.

#### **181.17 EXEMPTIONS FROM FILING ANNUAL TAX RETURNS.**

If any of the exemptions shown below apply, such person need not complete the balance of the form, except for the Declaration and signature at the bottom thereof. Income Tax Form shall have the following exemptions language thereon:

1. \_\_\_\_\_ Retired. No income subject to the Village of New London Income Tax for the entire year of 20 \_\_\_\_\_. I received only Social Security, Pension, Interest, or Dividend Income. I do not own rental property in my name or as a partner or Sub-S Corporation shareholder.  
Date retired: \_\_\_\_\_ Former Employer
2. \_\_\_\_\_ Unemployed. No earned income for the entire year 20 \_\_\_\_\_.
3. \_\_\_\_\_ Homemaker.
4. \_\_\_\_\_ Disabled.
5. \_\_\_\_\_ Welfare.
6. \_\_\_\_\_ A.D.C.
7. \_\_\_\_\_ A member of the Armed Forces of the United States for the entire year 20 \_\_\_\_\_. And on active duty military status. (This does not include civilians employed by the Military or National Guard.)
8. \_\_\_\_\_ Non-resident. I never lived in New London, Ohio and I do not work in or receive income from New London, Ohio.
9. \_\_\_\_\_ I have moved from New London, Ohio before this tax year and have no income subject to New London, Ohio Village Income Tax.  
Date moved: . \_\_\_\_\_

**181.18 COLLECTION AT SOURCE; WITHHOLDING BY EMPLOYER.**

(a) It is required of each employer within the Village of New London (as defined in Section 181.01(f)) who employs one or more persons on a salary, wage, commission or other compensation basis, to deduct from compensation paid to such employee subject to this chapter at the time of such payment, the tax imposed in Section 181.02 on such salary, wage, bonus, incentive payment, commission or other compensation due by said employer to said employee.

(b) Notwithstanding the provisions of subsection (a) hereof, when, an employer within the Village of New London employs a Village of New London resident in another taxing municipality which requires the employer to deduct the tax from such taxing municipality from the New London resident employed there, such employer shall withhold and remit to the Village of New London the difference, if any, between the tax imposed by such other taxing municipality and the tax imposed by this chapter or shall withhold New London tax on one hundred percent (100%) of the income subject to New London tax if the New London resident/employee is employed in a location which does not impose municipal tax.

(c) (1) Each employer shall make and file a withholding tax return with the Income Tax Clerk and pay to the Income Tax Clerk the taxes deducted and withheld on the fifteenth day of the month following the end of each calendar quarter, i.e., April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup> and January 15<sup>th</sup>.

(2) Notwithstanding the foregoing, 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 municipal corporation in any month of the preceding calendar quarter exceeded two hundred dollars. Taxes required to be deducted and withheld shall be remitted monthly to the tax administrator. Payment shall be made so that the payment is received by the tax administrator not later than fifteen days after the last day of each month.

(d) Such return shall be on a form or forms prescribed by and obtainable from the Income Tax Clerk and shall be deemed filed when postmarked by the United States Post Office or delivered to the Tax office during normal business hours. Such employer, in collecting the tax, shall be deemed to hold the same as Trustee for the benefit of the City until payment is made by such employer to the City and any such tax collected by such employer from his employees shall, until the same is paid to the City, be deemed a trust fund in the hands of such employer.

(e) The officer or employee having control or supervision or charged with the responsibility of filing the return and making the payment, shall be personally liable for failure to file the return and making the payment, or pay the taxes, penalty and interest due as required herein. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to file a return or pay taxes and penalty and interest due.

(f) On or before the last day of February of each year, an employer shall file a withholding reconciliation return with the Income Tax Clerk 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 municipal corporation during the preceding calendar year, the amount of tax withheld, if any, from each such employee, 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 Income Tax Clerk. At the time of filing this return, the employer shall pay over any amount deducted or which should have been deducted or withheld during the preceding year but which was not remitted.

(g) All individuals, businesses, employers, brokers or others who are required under the Internal Revenue Code to furnish forms 1099 to IRS for individuals or businesses to whom or which they have paid nonemployee compensation, shall furnish copies of the said form 1099s to the Income Tax Clerk or in lieu thereof, a listing containing the same information as required by IRS on the 1099s on or before the due date for such forms 1099 as established by IRS. Failure to provide the foregoing information will result in any deduction for payment by the taxpayer taken on the taxpayer's tax return to be disallowed.

(1) The deducting and withholding of personal service compensation of all other employees (including officers of corporations) shall attach to the portion of the personal service compensation of such employee which

the total number of working days employed within the Village bears to the total number of working days employed within and outside the Village.

(2) If it is impossible to apportion the earnings as provided above, because of the peculiar nature of the service of the employee, or the unusual basis of compensation, apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly.

(3) The occasional entry into the Village of a nonresident employee who performs the duties for which he is employed entirely outside the Village, but enters the Village for the purpose of reporting, receiving instructions, accounting, etc., incidental to his duties outside the Village, shall not be deemed to take such employee out of the class of those rendering their service entirely outside the Village.

(h) An employer shall withhold the tax on the full amount of any advance made to an employee on account of commissions where such advances are in excess of commissions earned.

(i) An employer, required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid by the employer to the employee for expense necessarily and actually incurred by the employee in the actual performance of his services, provided, that such expense must be of the kind and in the amount recognized and allowed as deductible expense for Federal income tax purposes.

(j) The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation received. However, if the tax has been withheld but has not been paid over to the Village, the employee is relieved of responsibility to the extent of the taxes withheld, unless the employee colluded with the employer in connection with the failure to remit payment.

(k) Commissions and fees paid to professional men, brokers, and others who are independent contractors and not employees of the payor, are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file returns and pay the tax pursuant to the provisions of Section 181.02.

(l) The failure of any employer, residing either within or outside the Village, to collect the tax and to make any return prescribed herein, shall not relieve the employer from the payment of such tax in compliance with this chapter respecting the making of returns and the payment of taxes.

(m) The requirements of this section shall apply to any nonresident employer, or to the agent of such a nonresident employer, or to any other nonresident payer, who pays an individual any item included in the taxable income of that individual employee or payee, if the total amount of tax required to be deducted and withheld for the Village on account of all of the employer's employees or payer's payees exceeds one hundred fifty dollars (\$150.00) for the calendar year.

(n) For tax years 2004 and thereafter, the obligations to withhold taxes described herein shall extend only to qualifying wages as defined in this chapter.

#### **181.18.1 COLLECTION AT SOURCE: LANDLORD PROVISIONS.**

Every owner of one or more rental units is hereby directed to furnish to the Income Tax Administrator, a semi-annual roster of the names of all persons considered by that owner to be the tenant and/or lessee in such rental unit and shall also file a statement of any changes in the roster at the end of each month. The semi-annual statement provided for herein shall be filed with the Income Tax Clerk on or before the thirty-first day of January and the thirty-first day of July, unless an extension of time is granted by the Tax Administrator.

### **181.18.1 COLLECTION AT SOURCE: WINNINGS FROM CASINO OR VIDEO LOTTERY TERMINAL**

Each casino facility or casino operator, as defined in Section 6(C)(9) of Article XV, Ohio Constitution, and section 3772.01 of the Revised Code, respectively, and each lottery sales agent conducting video lottery terminals on behalf of the state is hereby required to withhold and remit municipal income tax to the Income Tax Clerk, with respect to amounts other than qualifying wages, as provided in Section 718.031 of the Revised code and subject to the procedures, requirements, and penalties stated therein.

### **181.19 DECLARATIONS.**

(a) An employee whose entire wages, salaries or other compensation for any taxable year will be subjected to the withholding provisions under Section 181.18 and whose tax will accordingly be withheld as to this entire earnings for such year by his employer, and who during such taxable year expects to derive no other compensation or other income which is subject to tax under this chapter, need not file a declaration as provided in this section.

(b) All other taxpayers, as defined in this chapter subject to the taxes imposed in Section 181.02, and every taxpayer who anticipates any income or net profits not subject to total withholdings as provided in the next preceding paragraph, shall file with the Village Income Tax Clerk a declaration of his estimated tax as follows: On or before April 30 of each calendar year, taxpayer shall file a declaration of his estimated tax for the taxable period beginning January 1, and ending December 31 of the calendar year. Taxpayers filing joint returns shall file joint declarations of estimated taxes.

(c) Taxpayers that are not individuals, who are permitted pursuant to the provisions of Section 181.03 to file a return and pay their tax upon a fiscal year basis, shall file their declaration on or before the fifteenth day of the fourth month following the beginning of each such fiscal year. Those taxpayers on a fiscal year basis shall make payments as follows:

- 22½% by the 15th day of the fourth month of the taxpayer's taxable year;
- 45% by the 15th day of the sixth month;
- 67½% by the 15th day of the ninth month; and
- 90% by the 15th day of the 12th month.

(d) The estimated tax for calendar year taxpayers may be paid in full with the filing of the declaration or in installments as follows:

- (1) For calendar year taxpayers that are individuals:
  - 22½% by April 30
  - 45% by July 31
  - 67½% by October 31
  - 90% by January 31

Any amounts deducted and withheld for taxes from the compensation of an individual shall be considered as estimated taxes paid in equal amounts on each of the payment dates.

- (2) For calendar year taxpayers that are not individuals:
  - 22½% by the taxpayer's Federal return filing date
  - 45% by June 15
  - 67½% by September 15
  - 90% by December 15

(e) The declarations so required shall be filed upon a form furnished by or obtainable from the Clerk-Treasurer. Any taxpayer who has filed an estimate for Federal Income Tax purposes may, in making the declaration required hereunder, simply state therein that the figures therein contained are the same figures used by the taxpayer in making the declaration of his estimate for the Federal Income Tax. However, in addition to such statement, any such taxpayer may, in such declaration, modify and adjust such declared income so as to exclude therefrom income which is not subject to tax under this chapter.

(f) Any estimate filed hereunder may be amended by the filing of an amended estimate at the time prescribed for the payment of any installment of tax paid in accordance with subsection (g) hereof.

(g) If any such taxpayer shall, on or before any of the installment payment dates specified herein, file an amended declaration showing an increase or decrease of the estimated tax, the installments then and thereafter due shall be increased or diminished (as the case may be) in such manner that the balance of the estimated tax shall be fully paid on or before the last date of payment for the taxable year.

(h) An underpayment of any portion of tax liability shall be deemed due to reasonable cause and no penalty shall be added to the taxes for the taxable year if any of the following apply:

- (1) The amount of estimated taxes that were paid equals at least ninety per cent of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.
- (2) The amount of estimated taxes that were paid equals at least one hundred per cent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a return with the Village for that year.
- (3) The taxpayer is an individual who resides in the municipal corporation but was not domiciled there on the first day of January of the calendar year that includes the first day of the taxable year.

(i) The Income Tax Clerk may waive the requirement for filing a declaration of estimated taxes for any class of taxpayers after finding that the waiver is reasonable and proper in view of administrative costs and other factors.

#### **181.20 RECORDS TO BE KEPT BY EMPLOYERS AND TAXPAYER.**

Employers and others subject to the tax under this chapter are required to keep such records as will enable the filing of true and accurate returns, whether of taxes withheld at source or of taxes payable upon earnings or net profits, or both, and such records are to be preserved to enable the Fiscal Officer, or any agent or employee of the Fiscal Officer, to verify the correctness of the returns filed.

#### **181.21 INCOME TAX FUND.**

The Fiscal Officer shall cause to be created a separate fund to be known as the Income Tax Fund, into which receipts of Village Income Tax shall be deposited.

#### **181.22 COLLECTION OF UNPAID TAXES; CIVIL LITIGATION; CRIMINAL PROSECUTION.**

(a) All taxes imposed by this chapter remaining unpaid when the same have become due, together with all interest and penalties therefor, become a debt due the Village from the taxpayer, and are recoverable as other debts by suit instituted by the Village Solicitor.

(b) Civil actions to recover municipal income taxes and penalties and interest on municipal income taxes shall be brought within the later of:

(i) Three years after the tax was due or the return was filed, whichever is later; provided, however, that this time limit may be extended at any time if both the Income Tax Clerk and the employer, agent of the employer, other payer, or taxpayer consent in writing to the extension; or

(ii) One year after the conclusion of the qualifying deferral period, if any. "Qualifying deferral period" means a period of time beginning and ending as follows:

(A) Beginning on the date a person who is aggrieved by an assessment files an appeal with a local board of tax review. That date shall not be affected by any subsequent decision, finding, or holding by any administrative body or court that the local board of tax review with which the aggrieved person filed the request did not have jurisdiction to affirm, reverse, or modify the assessment or any part of that assessment.

(B) Ending the later of the sixtieth day after the date on which the final determination of the local board of tax review becomes final or, if any party appeals from the determination of the local board of tax review, the sixtieth

day after the date on which the final determination of the local board of tax review is either ultimately affirmed in whole or in part or ultimately reversed and no further appeal of either that affirmation in whole or in part or that reversal is available or taken.

No civil action to recover municipal income tax or related penalties or interest shall be brought during either the period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties, or the period during which an appeal related to the imposition of that tax or interest or those penalties is pending.

(b) Civil actions to recover City tax, interest and penalties on City tax shall be brought within three years after the tax was due or the return was filed, whichever is later.

(c) Prosecutions for an offense made punishable under this chapter shall be commenced within three years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of the income required to be reported, prosecutions may be commenced within six years after the commission of the offense.

(d) Within sixty days after the final determination of any federal or state tax liability affecting the taxpayer's municipal tax liability, that taxpayer shall make and file an amended municipal return showing income subject to the municipal income tax based upon such final determination of federal or state tax liability, and pay any additional municipal income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is less than ten dollars.

(e)(1) Notwithstanding the fact that an appeal is pending, the petitioner may pay all or a portion of the assessment that is the subject of the appeal. The acceptance of a payment by the municipal corporation does not prejudice any claim for refund upon final determination of the appeal.

(2) If upon final determination of the appeal an error in the assessment is corrected by the tax administrator, upon an appeal so filed or pursuant to a final determination of the local board of tax review created under section 718.11 of the Revised Code, of the Ohio board of tax appeals, or any court to which the decision of the Ohio board of tax appeals has been appealed, so that the amount due from the party assessed under the corrected assessment is less than the amount paid, there shall be issued to the appellant or to the appellant's assigns or legal representative a refund in the amount of the overpayment, with interest on that amount at the Stated Interest Rate.

### **181.23 IDENTIFICATION REQUIRED.**

Agents and employees charged with the duty of inspection or auditing of records of employers and taxpayers will carry proper identification which shall be subject to examination by any person whose records are sought to be examined.

### **181.24 SAVINGS CLAUSE; COMPLIANCE WITH STATE LAW.**

(a) If any provision, sentence, clause, section or part of this chapter is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only that particular sentence, clause, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid provision, sentence, clause, section or part thereof had not been included herein.

(b) This chapter, all subsequent tax ordinances and all preceding tax ordinances, including all amendments thereto, shall continue to be effective insofar as the collection of taxes levied thereunder until all said taxes and all penalties and interest thereon are fully paid, and any and all suits and prosecutions for the collection of said taxes, penalties and interest, or for the punishment or violation of said ordinances shall have been fully terminated.

(c).....The intention of the Council of the Village of New London is that this Chapter 181 of the Codified Ordinances shall be in full compliance with the provisions and express limitations of Revised Code Chapter 718; the Village of New London is levying this income tax in accordance with the limitations specified in Revised Code Chapter 718, and Revised Code Chapter 718 is hereby incorporated herein by reference as if fully rewritten. In the event of a clear conflict between this Chapter and Revised Code Chapter 718, the provisions of the Revised Code shall be followed.

(d).....The tax levied under this Chapter 181 is an annual tax on the income of every person residing in or earning or receiving income in the Village and the tax shall be measured by "municipal taxable income, as defined in Revised Code Section 718.011(A)(1).

(e).....The rate of the tax is as specified in Section 181.02.

(f).....A reciprocity credit is allowed as specified in Section 181.04.

(g).....The purpose of this tax is as specified in Section 181.09.

Section 2. The foregoing provisions shall apply to municipal taxable years beginning on or after January 1, 2016. For municipal taxable years beginning before January 1, 2016, the Fiscal Officer and Income Tax Clerk shall continue to administer, audit, and enforce the income tax under those ordinances and resolutions which existed before January 1, 2016.

Section 3. That this Ordinance shall take effect at the earliest period allowed by law.

PASSED: \_\_\_\_\_

11-23-2015

  
\_\_\_\_\_  
Council President

ATTEST:

  
\_\_\_\_\_  
FISCAL OFFICER