

RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 39-11

Passed April 11, 20 11

3/22/11-gmk
(Finance & Property)

Ordinance No. 39-11

An ordinance amending Chapter 191 Administrative Code, specifically, Section 191.04 IMPOSITION OF TAX ON RESIDENTS, 191.05 IMPOSITION OF TAX ON NON-RESIDENTS, and 191.16 COLLECTION OF TAX AT SOURCE, of the Codified Ordinances of the City of North Canton, Ohio and declaring the same to be an emergency.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, STATE OF OHIO:

Section 1. That Chapter 191 Administrative Code, specifically, Section 191.04 IMPOSITION OF TAX ON NON-RESIDENTS, 191.05 IMPOSITION OF TAX ON NON-RESIDENTS, AND 191.16 COLLECTION OF TAX AT SOURCE, of the Codified Ordinances of the City of North Canton, be, and the same are hereby amended to read as follows:

"191.04 IMPOSITION OF TAX ON RESIDENTS

- (a) In the case of residents of the City an annual tax of one and one-half percent (1.5%) is imposed on all salaries, qualifying wages, commissions, other compensation, and other income (including earnings deposited by the employee into deferred compensation or medical coverage plans) earned or received during the effective period of the Ordinance. For the purpose of determining the tax on the income of resident taxpayers, the source of the income and the place or places in or at which the services were rendered or the income was earned or received, are immaterial. All such income wherever earned or received is taxable.
- (b) The following are items which are subject to the tax:
 - (1) Gross income, including but not limited to income, salaries, qualifying wages, bonuses and incentive payments earned by an individual, whether directly or through an agent, and whether in cash or in property for services rendered during the tax period as an officer, director or employee of a corporation (including charitable and other nonprofit organizations), or association or any other entity or person; an officer or employee (whether elected, appointed, or commissioned) of the United States Government or any of its agencies or of the State of Ohio or any of its political subdivisions or agencies thereof; or any foreign country or dependency. For clarification, effective January 1, 2005, "income" includes lottery, gambling and sports winnings, and games of chance. No deductions shall be allowed against income from lottery, gambling and sports winnings, and games of chance unless the taxpayer is considered a professional gambler for federal income tax purposes, in which case related deductions as permitted by the Internal Revenue Code shall be allowed against gambling and sports winnings.

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- (2) Commissions earned or received by a taxpayer, whether directly or through an agent, and whether in cash or in property for services rendered during the effective period of the Ordinance, regardless of how computed or by whom or wheresoever paid.
 - A. If amounts received as a drawing account exceed the commissions earned and the excess is not subject to the demand of the employer for repayment, the tax is payable on the amounts received as a drawing account.
 - B. Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation if the employer deducts such expenses or advances as such from his gross income for the purpose of determining his net profits taxable under federal law, and the employee is not required to include such receipts as income on his federal income tax return.
 - C. If commissions are included in the net earnings of the trade, business, profession, enterprise or activity, carried on by an unincorporated entity or association of which the individual receiving such commissions is owner or part owner and therefore subject to Section 191.06 and/or 191.07, they shall not be subject to Section 191.04.
- (3) Fees, unless such fees are properly includible as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity or association owned or partly owned by said individual and such net profits are subject to Section 191.06 and/or 191.07.
- (4) Other compensation and income, as reported on W-2's or 1099's, including but not limited to tips, bonuses, lump sum distribution from qualified pension and profit sharing trusts not made pursuant to employee's retirement, profit sharing, "non-competition" covenants, portions of stock options that are not considered capital gains by the City, lottery winnings, including the Ohio State Lottery and Multi-State Lotteries, sports winnings, gambling winnings of any type, or gifts of any type in connection with services rendered.
- (5) Payments made to an employee by an employer as sick leave, vacation pay, or any other types of payments made under a wage or salary continuation plan, "including sub" pay (such as pay received from unions by individuals in lieu of wages), during periods of absence from work are taxable when paid.
- (6) Payments made to an employee by an employer as separation or severance payouts (including but not limited to separation pay, termination pay, and early retirement incentives) and reportable as earned income (including, but not limited to, sick pay and vacation pay) are taxable when paid if applicable tax has not previously been paid. Ongoing retirement benefits, such as pension payments, are exempt from North Canton income tax.

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- (7) Moving expenses, to the extent that they are reimbursed by employers, are not taxable if deducted on federal return.
- (8) For taxable years 2004 and later, if any of the items listed in subsections (b)(1)-(7) hereof are not considered taxable for Internal Revenue Code Section 3121(a) withholding, those items shall not be considered taxable for North Canton.
- (9) Effective for tax years 2004 and later, the distributive share of income paid to an S corporation shareholder shall be taxable in the following manner:
 - (A) If no portion of the net profits of the S corporation are allocated or apportioned to the State of Ohio, the distributive share is taxable only to the extent that it represents wages or net earnings from self-employment.
 - (B) If any portion of the net profits of the S corporation are allocated or apportioned to the State of Ohio, the full amount of the distributive share is taxable.
- (c) Domestic employees are not subject to employer withholding under North Canton Income Tax, but such employees shall be subject to all of the requirements of the ordinance regarding individual filing.
- (d) When a resident receives compensation for services for sales of real estate or insurance from an employer whose sit-as is the City, that total compensation is taxable at City's tax rate and is payable to the City. The site of the property sold or residence of the purchaser of insurance has no bearing on the taxing of the compensation.

191.05 IMPOSITION OF TAX ON NON-RESIDENTS

- (a) In the case of individuals who are non-residents of North Canton, there is imposed an annual tax at the rate of one and one-half (1.5%) per annum on all qualifying wages, commissions, other compensation and other income (including earnings deposited by the employee into deferred compensation or medical coverage plans) earned or received during the effective period of the Ordinance for work done or services performed or rendered within the City, whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location of the place from which payment is made is immaterial.
- (b) The items subject to tax under this section are the same as those listed and defined in Section 191.04. For methods of computing the extent of such work or services performed within the City, and cases involving compensation for personal services partly within and partly outside the City.

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- (c) 12-day occasional entry rule:
- (1) A non-resident individual who works in the City twelve (12) or fewer days per year shall be considered an occasional entrant, and shall not be subject to North Canton municipal income tax for those 12 days. For the purposes of the 12-day calculation, any portion of a day worked in North Canton shall be counted as one day worked in North Canton.
 - (2) Beginning with the thirteenth day, the employer of said individual shall begin withholding North Canton income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to North Canton in accordance with Section 191.16. Since the individual can no longer be considered to have been occasional entrant, the employer is further required to remit taxes on income earned in North Canton by the individual for the first twelve days.
 - (3) If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the City.
 - (4) The 12-day occasional entry rule does not apply to entertainers or professional athletes, their employees or individuals who perform services on their behalf, or to promoters and booking agents of such entertainment events and sporting events.
- (d) When a non-resident receives compensation for services for sales of real estate or insurance, and the real estate sold or purchaser of the insurance are resident to North Canton, the total compensation related to the sales is taxable at North Canton's tax rate and is payable to the City of North Canton.
- (e) On all qualifying wages earned by persons employed by the City of North Canton, whether residents or non-residents of the City of North Canton, for work done or services performed or rendered for the City of North Canton.

191.16 COLLECTION OF A TAX AT SOURCE.

- (a) It is the duty of each employer (as hereinbefore defined) who employs one or more persons on a salary, wage, commission, other compensation or other income basis, to deduct from compensation paid to any employee subject to the Ordinance, the tax at its then applicable rate from such salary, qualifying wage, bonus, incentive payment, commission or other compensation or other income due by said employer to said employee. The tax shall be deducted by the employer from:
- (1) All compensation paid to employees who are non-residents of the City for services rendered, work performed, or other activities engaged in within the City; and
 - (2) From the gross amount of all income, qualifying wages, bonuses, incentive payments, commissions or other form of compensation paid to employees who are residents of the City, regardless of the place where the services are rendered.

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(3) For taxable years 2004 and later, tax shall be withheld only from qualifying wages as defined in Section 191.01(v), with the following adjustments:

- A. Deduct 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. Add any amount not included in wages solely because the employee was employed by the employer prior to April 1, 1986, and thereby exempt from the Medicare tax. The wages shall be taxed as if they were subject to the Medicare tax.
- C. Add 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. This subsection applies only to those amounts constituting ordinary income. Further, an employer is not required to make any withhold with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued.
- D. Add any amount not included in wages if the amount is an amount described in Section 401(k) or 457 of the Internal Revenue Code. This subsection applies only to employee contributions and employee deferrals.
- E. Add any amount that is supplemental unemployment compensation benefits described in Section 3402(o)(2) of the Internal Revenue Code and not included in wages.

- (b) All employers who or which maintain an office or other place of business in North Canton are required to make the collections and deductions in this section specified, regardless of the fact that the services on account of which any particular deduction is required as to residents of the City, were performed at a place of business of any such employer situated outside the City.
- (c) 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. If the employer has withheld the tax and failed to pay the tax withheld to the Commissioner, the employee is not liable for the tax so withheld.

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- (d) Commissions and fees paid to professionals, 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 191.14 et seq.
- (f) Where a non-resident receives compensation for personal services rendered or performed partly within and partly outside North Canton, the withholding employer shall deduct, withhold and remit that portion of the compensation which is earned with North Canton in accordance with the following rules of apportionment:
 - (1) If the non-resident is a salesman, agent or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted or chiefly affected by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the City bears to the total volume of business transacted by him, except as clarified in Sections 191.04(d) and 191.05(d).
 - (2) The deducting and withhold 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 number of working days employed within the City bears to the employee's total number of working days.
 - (3) If it is impossible to apportion the earnings as provided above because of the nature of the service or the basis of compensation, the percentage of time worked in North Canton shall be computed on the basis of a forty-hour week.
- (f) An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions (whether by way of drawing account or otherwise).
- (g) For taxable years prior to 2004, 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 expenses necessarily and actually incurred by the employee in the actual performance of his services, provided that such expenses are incurred in earning compensation, including commissions, and are not deducted as business expense by the employee.
- (h) All employers that provide any contractual service within the City, and who employ subcontractors in conjunction with that service, shall provide the City the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax withhold requirements under this ordinance.
- (i) All businesses that issue a Federal Form 1099 to any person or entity, for any contractual service performed within the City, shall notify the City Income Tax Department of the name and address of such person or entity and the amount listed on the Federal Form 1099.

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Section 2. That if a provision of this ordinance is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety, and peace of the City of North Canton and further necessary for the timely implementation of the changes to the City's income tax code; wherefore, provided it receives the affirmative vote of six (6) or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

North Canton, OH

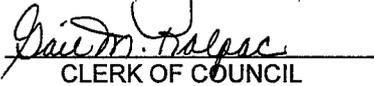
Passed: 4/11/11



MAYOR

SIGNED: 4/11, 2011

ATTEST:


CLERK OF COUNCIL