

2
3 CITY OF CUYAHOGA FALLS, OHIO

4
5 ORDINANCE NO. *68* - 2016

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7 AN ORDINANCE AMENDING CHAPTER 164, MUNICIPAL INCOME
8 TAX, TO COMPLY WITH STATE LAW, AND DECLARING AN
9 EMERGENCY.

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11 WHEREAS, the Home Rule Amendment of the Ohio Constitution, Article XVII, Section 3,
12 provides that "municipalities shall have authority to exercise all powers of local self-government,"
13 and the municipal taxing power is one of such powers of local self-government delegated by the
14 people of the State to the people of municipalities; and

15
16 WHEREAS, Article XIII, Section 6 of the Ohio Constitution provides that the General
17 Assembly may restrict a municipality's power of taxation to the extent necessary to prevent
18 abuse of such power, and Article XVIII, Section 13 of the Ohio Constitution states that "laws
19 may be passed to limit the powers of municipalities to levy taxes and incur debts for local
20 purposes;" and

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22 WHEREAS, the General Assembly has determined that it is necessary and appropriate to
23 amend Chapter 718 of the Ohio Revised Code, setting forth statutory amendments for
24 municipal income tax codes in Ohio; and

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26 WHEREAS, more specifically, the General Assembly enacted S. B. 172 in June 2016, and
27 mandated that municipal income tax codes be amended to extend the deadline for payments
28 of quarterly municipal withholding taxes, and to modify the rules for when municipal income
29 tax withholding payments are considered to have been made.

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31 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls, County
32 of Summit, and State of Ohio, that:

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34 Section 1, Title 7, Taxation, Chapter 164, Municipal Income Tax of the Codified Ordinances
35 of the City of Cuyahoga Falls is hereby amended as follows (new text in double underline; deleted
36 text in ~~strike through~~):

37
38 **164.10 WITHHOLDING FROM QUALIFYING WAGES.**

- 39
40 a) (1) Each employer, agent of an employer, or other payer located or doing business in
41 the Municipality shall withhold from each employee an amount equal to the
42 qualifying wages of the employee earned by the employee in the Municipality
43 multiplied by the applicable rate of the Municipality's income tax, except for
44 qualifying wages for which withholding is not required under Section 164.11 of this
45 Chapter or Division (d) or (f) of this Section. An employer, agent of an employer, or
46 other payer shall deduct and withhold the tax from qualifying wages on the date
47 that the employer, agent, or other payer directly, indirectly, or constructively pays
48 the qualifying wages to, or credits the qualifying wages to the benefit of, the
49 employee.
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51 (2) In addition to withholding the amounts required under Division (a)(1) of this
52 Section, an employer, agent of an employer, or other payer may also deduct and
53 withhold, on the request of an employee, taxes for the municipal corporation in
54 which the employee is a resident.
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- b) An employer, agent of an employer, or other payer shall remit to the Tax Administrator of the Municipality the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer, along with any report required by the Tax Administrator to accompany such payment, according to the following schedule:
 - (1) Any employer, agent of an employer, or other payer not required to make payments under Division (b)(2) of this Section of taxes required to be deducted and withheld shall make quarterly payments to the Municipality not later than the ~~fifteenth~~ last day of the month following the ~~end~~ last day of each calendar quarter.
 - (2) Taxes required to be deducted and withheld shall be remitted monthly to the Municipality if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer in the preceding calendar year exceeded two thousand three hundred ninety-nine dollars, or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the Municipality in any month of the preceding calendar quarter exceeded two hundred dollars. Payments under Division (b)(2) of this Section must be received by shall be made to the Municipality not later than fifteen days after the last day of each month.
 - c) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator.
 - d) An employer, agent of an employer, or other payer is not required to withhold municipal income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.
 - e)
 - (1) An employee is not relieved from liability for a tax by the failure of the employer, agent of an employer, or other payer to withhold the tax as required under this Chapter or by the employer's, agent's, or other payer's exemption from the requirement to withhold the tax.
 - (2) The failure of an employer, agent of an employer, or other payer to remit to the Municipality the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.
 - f) Compensation deferred before June 26, 2003, is not subject to any municipal corporation income tax or municipal income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.
 - g) Each employer, agent of an employer, or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such taxes have been withheld. The taxes withheld shall be deemed to be held in trust for the Municipality until such time as the withheld amount is remitted to the Municipality.
 - h) On or before the last day of February of each year, every employer is required to file a Withholding Reconciliation Return with the Tax Administrator which must include:

- 110 (1) A list of the names, addresses, and social security numbers of all employees from
111 whom qualifying wage tax was withheld or should have been withheld for the
112 Municipality during the preceding calendar year.
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- 114 (2) The amount of tax withheld, if any, from each such employee's qualifying wage, the
115 total amount of qualifying wages paid to such employee during the preceding
116 calendar year.
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- 118 (3) The name of every other municipal corporation for which tax was withheld or should
119 have been withheld from such employee during the preceding calendar year.
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- 121 (4) Any other information required for federal income tax reporting purposes on
122 Internal Revenue Service form W-2 or its equivalent form with respect to such
123 employee, and other information as may be required by the Tax Administrator.
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- 125 i) The officer or the employee of the employer, agent of an employer, or other payer with
126 control or direct supervision of or charged with the responsibility for withholding the tax
127 or filing the reports and making payments as required by this Section, shall be personally
128 liable for a failure to file a report or pay the tax due as required by this Section. The
129 dissolution of an employer, agent of an employer, or other payer does not discharge the
130 officer's or employee's liability for failure of the employer, agent of an employer, or other
131 payer to file returns or pay any tax due.
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- 133 j) An employer is required to deduct and withhold municipal income tax on tips and
134 gratuities received by the employer's employees and constituting qualifying wages only to
135 the extent that the tips and gratuities are under the employer's control. For the purposes
136 of this Division, a tip or gratuity is under the employer's control if the tip or gratuity is
137 paid by the customer to the employer for subsequent remittance to the employee, or if
138 the customer pays the tip or gratuity by credit card, debit card, or other electronic means.
139
- 140 k) The Tax Administrator shall consider any tax withheld by an employer at the request of
141 an employee when such tax is not otherwise required to be withheld by this Chapter to
142 be tax required to be withheld and remitted for the purposes of this Section.
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144 **164.13 RETURN AND PAYMENT OF TAX.**
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- 146 a) (1) An annual return with respect to the income tax levied on Municipal Taxable
147 Income by the Municipality shall be completed and filed by every taxpayer for any
148 taxable year for which the taxpayer is subject to the tax, regardless of whether or
149 not income tax is due.
150
- 151 (2) The Tax Administrator shall accept on behalf of all nonresident individual
152 taxpayers a return filed by an employer, agent of an employer, or other payer
153 located in the Municipality under subsection 164.10(c) of this Chapter when the
154 nonresident individual taxpayer's sole income subject to the tax is the qualifying
155 wages reported by the employer, agent of an employer, or other payer, and no
156 additional tax is due to the Municipality.
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- 158 (3) All resident individual taxpayers, who turn eighteen years of age during a tax year
159 or are older than eighteen, are required to file an annual municipal income tax
160 return with the Municipality, regardless of income or liability.
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- 162 b) If an individual is deceased, any return or notice required of that individual must be
163 completed and filed by that decedent's executor, administrator, or other person charged
164 with the property of that decedent.
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- c) If an individual is unable to complete and file a return required by the Municipality in accordance with this Chapter, the return required of that individual must be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual. Such duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual must provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations, and contact information including name, address, and phone number of the duly authorized agent, guardian, conservator, fiduciary, or other person.
- d) Returns or notices required of an estate or a trust must be completed and filed by the fiduciary of the estate or trust. Such fiduciary shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations, and contact information including name, address, and phone number of the fiduciary.
- e) Spouses are permitted to file a joint return.
- f)
 - (1) Each return required to be filed under this Section must contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer. The return must also include the taxpayer's social security number or taxpayer identification number. Each return must be verified by a declaration under penalty of perjury.
 - (2) A taxpayer who is an individual is required to include, with each annual return, amended return, or request for refund required under this Section, copies of 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 and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return. An individual taxpayer who files the annual return required by this Section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.
 - (3) A taxpayer that is not an individual is required to include, with each annual net profit return, amended net profit return, or request for refund required under this Section, copies of the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.
 - (4) A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio business gateway or in some other manner shall either mail the documents required under this Division to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio business gateway.
 - (5) After a taxpayer files a tax return, the Tax Administrator shall request, and the taxpayer must provide, any information, statements, or documents required by the Municipality to determine and verify the taxpayer's municipal income tax liability. The requirements imposed under Division (f) of this Section apply

222 regardless of whether the taxpayer files on a generic form or on a form prescribed
223 by the Tax Administrator.
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225 (6) Any other documentation, including schedules, other municipal income tax
226 returns, or other supporting documentation necessary to verify credits, income,
227 losses, or other pertinent factors on the return shall also be included to avoid
228 delay in processing, or disallowance by the Tax Administrator of undocumented
229 credits or losses.
230

231 g) (1) Except as otherwise provided in this Chapter, each individual income tax return
232 required to be filed under this Section shall be completed and filed as required by
233 the Tax Administrator on or before the date prescribed for the filing of state
234 individual income tax returns under Division 5747.08(G) of the Ohio Revised
235 Code. The taxpayer shall complete and file the return or notice on forms
236 prescribed by the Tax Administrator or on generic forms, together with remittance
237 made payable to the Municipality
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239 (2) Except as otherwise provided in this Chapter, each annual net profit income tax
240 return required to be filed under this Section by a taxpayer that is not an
241 individual shall be completed and filed as required by the Tax Administrator on
242 or before the fifteenth day of the fourth month following the end of the taxpayer's
243 taxable year or period. The taxpayer shall complete and file the return or notice
244 on forms prescribed by the Tax Administrator or on generic forms, together with
245 remittance made payable to the Municipality
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247 (3) In the case of individual income tax return required to be filed by an individual,
248 and net profit income tax return required to be filed by a taxpayer who is not an
249 individual, no remittance is required if the amount shown to be due is ten dollars
250 or less.
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252 h) (1) For taxable years beginning on or after January 1, 2016, the Municipality shall
253 not require a taxpayer to remit tax with respect to net profits if the amount due is
254 ten dollars or less.
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256 ²
~~(2)~~ Any taxpayer not required to remit tax to the Municipality for a taxable year
257 pursuant to Division (h)(1) of this Section must file with the Municipality an
258 annual net profit return under Division (f)(3) and (4) of this Section.
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260 ~~i) This Division shall not apply to payments required to be made under Section 164.10(b)~~
261 ~~of this Chapter.~~
262 ~~(1)~~
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264 i) If any report, claim, statement, or other document required to be filed, or any payment
265 required to be made, within a prescribed period or on or before a prescribed date under
266 this Chapter is delivered after that period, the date of the postmark stamped on the cover
267 in which the report, claim, statement, or other document, or payment is mailed shall be
268 deemed to be the date of delivery or the date of payment. "The date of postmark" means,
269 in the event there is more than one date on the cover, the earliest date imprinted on the
270 cover by the postal service.
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272 j) The amounts withheld for the Municipality by an employer, the agent of an employer, or
273 other payer as described in Section 164.10 of this Chapter shall be allowed to the
274 recipient of the compensation as credits against payment of the tax imposed on the
275 recipient unless the amounts withheld were not remitted to the Municipality and the
276 recipient colluded with the employer, agent, or other payer in connection with the failure
277 to remit the amounts withheld.

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- k) Each return required by the Municipality to be filed in accordance with this Section shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the Tax Administrator to contact the preparer or other person concerning questions that arise during the examination or other review of the return. The return or instructions accompanying the return must also indicate that by checking the box the taxpayer authorizes the preparer or other person to provide the Tax Administrator with information that is missing from the return, to contact the Tax Administrator for information about the examination or other review of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the Tax Administrator and has shown to the preparer or other person. Authorization by the taxpayer of another person to communicate with the Tax Administrator about matters pertaining to the return does not preclude the Tax Administrator from contacting the taxpayer regarding such matters.
- l) The Tax Administrator of the Municipality shall accept for filing a generic form of any income tax return, report, or document required by the Municipality in accordance with this Chapter, provided that the generic form, once completed and filed, contains all of the information required by ordinance and the rules and regulations adopted by the Municipality, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this Chapter.
- m) When income tax returns, reports, or other documents require the signature of a tax return preparer, the Tax Administrator shall accept a facsimile of such a signature in lieu of a manual signature.
- n)
 - (1) As used in this Division, "worksite location" has the same meaning as in Section 164.11 of this Chapter.
 - (2) A person may notify the Tax Administrator that the person does not expect to be a taxpayer with respect to the municipality for a taxable year if both of the following conditions apply:
 - i. The person was required to file a tax return with the municipality for the immediately preceding taxable year because the person performed services at a worksite location within the municipality, and the person has filed all appropriate and required returns and remitted all applicable income tax and withholding payments as provided by this Chapter. The Tax Administrator is not required to accept an affidavit from a taxpayer who has not complied with the provisions of this Chapter.
 - ii. The person no longer provides services in the municipality, and does not expect to be subject to the municipality's income tax for the taxable year. The person is required to provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the municipality. The affidavit also shall include the following statement: "The affiant has no plans to perform any services within the municipality, make any sales in the municipality, or otherwise become subject to the tax levied by the municipality during the taxable year. If the affiant does become subject to the tax levied by the municipality for the taxable year, the affiant agrees to be considered a taxpayer and to properly register as a taxpayer with the municipality, if such a registration

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is required by the municipality's ordinances or rules and regulations." The person shall sign the affidavit under penalty of perjury.

- iii. If a person submits an affidavit described in Division (n)(2) of this Section, the Tax Administrator shall not require the person to file any tax return for the taxable year unless the Tax Administrator possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change, or the taxpayer has engaged in activity which results in work being performed, services provided, sales made, or other activity that results in municipal taxable income reportable to the Municipality in the taxable year. It shall be the responsibility of the taxpayer to comply with the provisions of this Chapter relating to the reporting and filing of municipal taxable income on an annual municipal income tax return, even if an affidavit has been filed with the Tax Administrator for the taxable year. Nothing in Division (n) of this Section prohibits the Tax Administrator from performing an audit of the person.


o) If a payment under this chapter is made by electronic funds transfer, the payment shall be considered to be made on the date of the timestamp assigned by the first electronic system receiving that payment.

Section 2. Any ordinances or resolutions or portions of ordinances and resolutions inconsistent herewith are hereby repealed, but any ordinances and resolutions not inconsistent herewith and which have not previously been repealed are hereby ratified and confirmed.


Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all requirements including Chapter 107 of the Codified Ordinances.

Section 4. This ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, convenience and welfare of the City of Cuyahoga Falls and the inhabitants thereof, and provided it receives the affirmative vote of two-thirds of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force at the earliest period allowed by law.

Passed: 9-26-16



President of Council



Clerk of Council

Approved 9-27-2016



Mayor