

INCOME TAX RULES AND REGULATIONS

ARTICLE I

WITHHOLDING

1. It is the duty of each employer within the City of Parma Heights who employs one or more persons on a salary, wage, commission or other compensation basis, to deduct tax of three percent (3%) as of 1/1/05 of such salary, wage, bonus, incentive payment, commission or other compensation due by said employer to said employee in accordance with Title Nine, Chapter 193.36 of the Codified Ordinances of the City of Parma Heights and the Ohio Revised Code. The tax shall be deducted by the employer from:
 - (a) The gross amount of all salaries, qualified wages as defined in ORC 718.03, bonuses, incentive payments, commissions or other forms of compensation paid to employees.
2. All employers within the City of Parma Heights are required to make the collections and deductions regardless of the fact that the services were performed outside the City of Parma Heights unless withheld allocation is based solely on where services were performed.
3. Where compensation of personal services rendered or performed partly within and partly outside Parma Heights, the withholding employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within Parma Heights in accordance with the following rules of apportionment
 - (a) If the salesman, agent or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted 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 of Parma Heights bears to the volume of business transacted by him within and outside of the City of Parma Heights.
 - (b) If it is impossible to apportion the earnings as provided above, because of (1) the peculiar nature of the service of the employee, or (2) the unusual basis of compensation, apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly. With respect to each such employee (or group of employees similarly or identically circumstanced) the employer shall furnish the Administrator a detailed statement of facts.

4. Commissions and fees paid to professional persons, brokers, and others that are independent contractors and not employees of the payer may not be subject to withholding or collection of tax at the source. However copies of the 1099's issued to the independent contractors must be submitted to the Tax Administrator on or before February 28th following the year such commissions and fees are paid. Such taxpayers must in all instances file a return and pay the tax pursuant to the provisions of Chapters 193.37 through 193.41 of Title Nine of the Municipal Income Tax Ordinance.

All real estate agents whose license is held by a broker located in Parma Heights are required to file and/or pay taxes on net profit to Parma Heights regardless of where real estate sold was located. A net loss would not exempt filing a tax return.

5. The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying tax due on compensation received and deemed taxable.
6. Employers who do not maintain a permanent office or place of business in the City of Parma Heights, but who are subject to tax on net profits attributable to Parma Heights under the formula or separate accounting method provided for in Title Nine Chapter 193.24 through 193.26 of the Codified Ordinances of the City of Parma Heights may be required to make the collections and deductions in accordance with the Ohio Revised Codes 718.03 (\$150 Deminimus) and 718.01 (12-Day Occasional Entry).

\$150 DEMINIMUS REQUIREMENT: Effective January 1, 2001 through December 31, 2003 only (O.R.C. 718.03)

If not currently required to withhold Parma Heights income tax, then a non-resident employer, agent of such employer, or other payer not situated in Parma Heights shall not further be required to withhold Parma Heights income tax from remuneration paid to employees of the employer until the **collective tax liability** of the employees working in Parma Heights initially exceeds \$150.

All payees, including independent contractors, of a non-resident employer performing work in Parma Heights on behalf of the employer, are not excluded from taxation and are responsible for payment of the tax (O.R.C. 718.01).

When the collective tax liability exceeds \$150, the employer is required to begin withholding the appropriate income tax for Parma Heights on behalf of all the employees performing work in Parma Heights. The withheld income tax shall be remitted in accordance with Title Nine, Chapter 193.36 of the Municipal Income Tax Ordinance.

Once the collective tax liability has exceeded \$150, the employer must withhold income tax for Parma Heights (i.e. for work performed in Parma Heights) for the remainder of that calendar year and for three subsequent years, even if the liability in subsequent years does not exceed \$150. However, if the tax liability for each of the three consecutive years (subsequent to that year in which the employer became liable for withhold the income tax) does not exceed \$150, the employer will be considered as not having performed work in Parma Heights in regard to further tax liability, and will again be subject to the \$150 de minimus rule.

12-DAY OCCASIONAL ENTRY RULE: Effective January 1, 2001 (ORC 718.01)

On and after January 1, 2001, Parma Heights shall not tax the compensation paid to a non-resident individual for personal services or work performed by the individual in the municipal corporation on twelve (12) or fewer days in a calendar year unless one of the following applies:

- A. If the individual's employer is located in another municipal corporation that imposes a tax on compensation paid to the individual for services performed, but for some reason the individual is not liable to that municipal corporation for tax on the compensation paid for such services. .
- B. The individual is a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the municipal corporation.

Beginning with the thirteenth day, the employer of said individual shall begin withholding Parma Heights income tax from remuneration paid by the employer to the individual and shall remit the withheld income tax to Parma Heights in accordance with Title Nine, Chapter 193.36 of the codified Ordinance of the City of Parma Heights (Collection at Source). Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in Parma Heights by the individual for the first twelve days. If the individual is self-employed or an independent contractor, it shall be the responsibility of the individual to remit the appropriate income tax to the City.

For purposes of the 12-day calculation, any portion of the day worked in Parma Heights shall be counted as one day worked.

ARTICLE II

REMITTANCE OF WITHHOLDING TAX

The deductions from salaries, qualified wages and other compensation required to be made by employers for withheld tax are to be remitted as follows (Title Nine, Chapter 193.36 of the Municipal Income Tax Ordinance):

MONTHLY - withholding tax equals \$250 or more in one month:

- (a) An employer who deducts the tax in the amount of \$250 or more in the first or second month of a calendar quarter shall, on or before the 20th day of the following month, pay the Administrator the amount of taxes so deducted. Said payment shall be on an Employer's Monthly Withholding Form No. PH W-1 furnished by or obtainable upon request from the Administrator, setting forth the amount of tax deducted for the month. Checks should be made payable to the City of Parma Heights.
- (b) An employer who makes payments on a monthly basis (in addition to any estimated payment required to be filed with respect to his own earnings or net profits) shall pay such tax deducted for the third month of a calendar quarter at the regular time for filing the Employer's Quarterly Return of Income Tax Withheld.

QUARTERLY - withholding tax equals less than \$250 a month:

- (a) An employer who deducts tax less than \$250 a month shall pay such tax deducted (in addition to any estimated payment required to be filed with respect to his own earnings or net profits) on or before the last day of the month next following each quarterly period. Said payment shall be on an Employer's Quarterly Return of Tax Withheld – Form No. PH W-1 furnished by or obtainable upon request from the Administrator, setting forth the amount of tax deducted for the quarter. Checks should be made payable to the City of Parma Heights.

No part of such tax so withheld and so reported may be paid to the Administrator in installments. Penalty and interest will be assessed on late payments. (10% and 1.5% per month respectively)

RECONCILIATION OF CITY OF PARMA HEIGHTS

INCOME TAX WITHHELD FROM WAGES

FORM W-3

The reconciliation form must be filed with the City of Parma Heights Income Tax Department at the same time as your Employer's quarterly tax return, Form PHW-1, for the fourth quarter of the year (due date 1/31/XX). This form must be accompanied by all copies of employee's wage statements - W2's (including those employees under 18 that had no tax withheld) showing: (1) Name and Address of employee (The employees residence address should show the correct political subdivision – NOT CLEVELAND AND A ZIP CODE NUMER); (2) Social Security Number; (3) Gross Earnings PAID BEFORE ANY PAYROLL DEDUCTIONS; (4) Amount of Parma Heights and any other city income tax withheld; and name, address and Federal Identification Number of the employer. W2's for employees under 18 even though withholding tax is not taken out provide explanation of no withholding tax.

An adding machine tape, listing the amounts of Parma Heights income tax withheld, as indicated by individual employees statements (W2's) should be attached. If there is a difference between the amount on Line 3 and the amount on Line 5, IT MUST BE FULLY EXPLAINED IN AN ATTACHED STATEMENT.

If Line 6 indicates a balance due, check the appropriate box and remit the amount due with the reconciliation form. If Line 6 indicates an overpayment, check the appropriate box for a refund.

The amount of tax withheld for Parma Heights should equal the gross wages times (x) the tax rate for the tax year reported. In the event the tax withheld is less than the tax rate, the difference must be fully explained in an attached statement. In the event that the tax was withheld in excess of the tax rate, IT MUST BE PAID TO PARMA HEIGHTS; the employee should apply to the Parma Heights Income Tax Department for a refund.

ARTICLE III

LIMITATION ON CREDIT FOR TAX PAID AT SOURCE

Credit for taxes paid at source for residents will only be given if the employer has withheld appropriate taxes for cities in which the employee has worked. The failure of any employer, residing either within or outside the city of Parma Heights, to collect the tax prescribed herein, shall not relieve the employee from the payment of such tax.

ARTICLE IV

STATUS AND LIABILITY OF EMPLOYERS

Every employer is deemed to be a trustee of the City of Parma Heights in collecting and holding the tax required to be withheld and the funds so collected by such withholding are deemed to be trust funds.

Every such employer required to deduct and withhold the tax at the source is liable directly to the City for payment of such tax whether actually collected by such employer or not.

ARTICLE V

FRACTIONAL PARTS OF CENT

In deducting and withholding the tax at source and in the payment of any tax due, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

ARTICLE VI

AVOIDANCE OF DOUBLE WITHHOLDING

In the event that two municipalities (i.e. City of Parma Heights and another city) both make demand upon an employer to withhold their respective income taxes from the salary, qualified wages, or compensation of a given employee an incident of double taxation would arise. In order to avoid a double withholding and remitting from such an employee the following method of withholding will be recognized by the City Parma Heights conditioned upon the employer advising the respective cities of the amount of salaries, qualified wages or other compensation earned within such cities on a form approved by the Administrator:

- (a) All resident employers shall withhold and remit to Parma Heights on salaries, qualified wages and other compensation earned in Parma Heights by employees performing services in Parma Heights.

ARTICLE VII

QUESTIONNAIRE AND DECLARATION OF EARNINGS

It shall be mandatory for every resident 18 years or older, non-resident property owners, businesses located in the City of Parma Heights and all non-resident entities (Partnerships, S corporations and Limited Liability Companies) allocating business in Parma Heights to complete a questionnaire.

It shall be mandatory every year for all of the above to file a Declaration of Earnings estimating their income or net profit. Declaration shall include the following:

1. Name and address
2. Social Security Number or Federal Identification Number
3. Estimated amount of income subject to income tax
4. Whether or not municipal income tax is being withheld

ARTICLE VIII

LOSS CARRY-FORWARD/OFFSETS

LOSS CARRY FORWARD

Losses on a Schedule C, rental income Schedule E (Page 1) and pass through entity losses Schedule E (Page 2) may be applied against future profits in succeeding tax years allocable to the City of Parma Heights, until exhausted, but in no event for more than five taxable years immediately following the year in which the loss occurred (Title Nine, Chapter 193.28 of the Municipal Income Tax Ordinance).

No Schedule loss is applied to W2 earned income

OFFSETS

Loss and their offsets are recorded city specific. Schedule C and Schedule E rental income (Page 1) are filed under the taxpayer's social security number. A loss on either the Schedule C or Schedule E (Page 1) CAN OFFSET each other if they ARE LOCATED in the SAME city. A loss on rental property in one city cannot offset a profit on rental property in another city even if bottom line on Schedule E is a loss.

Partnership and S corporation (K-1) distributive share income and/or losses are treated as separate entities, filing under their own federal identification numbers. Offsets are NOT PERMITTED regardless of city and may NOT offset income or losses from Schedule C and/or Schedule E (Page 1) activity.

ARTICLE IX

DOMICILE

There is a distinction between domicile and residence. Your domicile is that place where one has voluntarily fixed his habitation, not for a temporary or special purpose, but with the intention of making it his permanent home and to which whenever he is absent, he intends to return.

A person shall not be considered to have gained a residence in another city into which he comes for temporary purposes only, without the intention of making such city his permanent place of abode.

If any person attends any institution of learning, his residence and the residence of his spouse, if any, shall be determined according to the place where he resided prior to admission to such institution, unless such person shall establish or acquire a home for permanent residence.

If a person removes from this city to engage in the services of the United States government, the person shall not be considered to have lost the person's residence in this city during the period of such service, and likewise should the person enter the employment of the city, the place where such person resided at the time of the person's removal shall be considered to be the person's place of residence.

Except in the above mentioned paragraph, if a person removes from this city and continuously resides outside this city for a period of four years or more, the person shall be considered to have lost the person's residence in this city, notwithstanding the fact that the person may entertain an intention to return at some future period.

ARTICLE X

**EXTENSIONS
TAX LIABILITY AND PENALTIES**

A copy of the Federal Extension must be filed with the Tax Department on or before the original due date of the return.

- (a) Late Paying Penalty, in accordance with Title Nine, Chapter 193.43(a), shall be assessed from the original due date of the return in those cases in which 80 % of the final tax liability is not paid by the original due date of the return, not the extension date.
- (b) Late Filing Penalty in accordance with Title Nine, Chapter 193.43 (c), shall be assessed from the original due date of the return in those cases in which the return is not filed within the period as extended.
- (c) Interest will be assessed in accordance with Title Nine, Chapter 193.42, from the original due date of the return in those cases in which 80 % of the final tax liability is not paid by the due date of the return, not the extension date.
- (d) The penalty for the underpayment of estimated taxes shall be assessed as required by Title Nine, Chapter 193.43 (d).

ARTICLE XI

HOUSING OR PARSONAGE ALLOWANCE

As of January 1, 2003 cities may not tax income excludable from federal gross income under IRC Section 107. This income is commonly referred to as a "Housing or Parsonage Allowance".

Internal Revenue Code, Section 107 – Rental value of Parsonages

"In the case of a minister of the gospel, gross income does not include:

- (1) The rental value of a home furnished to him as a part of his compensation; or
- (2) The rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home.

Definition of "Minister"

Four-point test: If a taxpayer is ordained, commissioned or licensed by a church and meets the following four tests, he or she will be considered a "minister" for income tax purposes:

- Administers the sacraments
- Considered to be a religious leader by a church
- Conducts worship services
- Has management responsibility in the control, conduct or maintenance of a church

Teaching & Administrative ministers: The IRS will give consideration to ordained, licensed or commissioned ministers in teaching or administrative positions when:

Teaching in private, religious schools, colleges and universities that are under the authority of a church

Ministering to a Para church organization based upon assignment by a church; if a church does not assign the services, a taxpayer should still qualify for ministerial treatment if the services substantially involve conducting religious worship.

Ordained deacons: Under PLR 199910055 Ordained deacons, who are designated as ministers of the education, music and stewardship respectively by their church, are allowed “minister” status by the IRS. The IRS has ruled favorably because such individuals are ordained ministers by the church and are authorized to conduct worship. It does not appear that the mere designation as a minister is adequate to receive the “minister” status for income tax purposes.

What is Excludable?

Limitations: IRS Revenue Ruling 71-280 limits the amount that may be excluded from taxable income to the lesser of:

- The amount officially designated by the church as a “Parsonage allowance.”
- The actual amount of the allowed expenses
- The fair market rental value of the home, furnishings and utilities provided.

Parsonage allowance: This amount is the amount officially designated by the church as the housing or parsonage allowance. It is usually listed on the W2 form in box 14.

Allowed expenses: The IRS has allowed a broad list of expenses. Generally the expense must be provided and/or maintained a home. Allowable expenses include:

- Rent (or house payments including principal and down payment)
- Taxes and interest on the minister’s home (also allowed on Sch. A)
- Insurance on the home and its contents
- Furniture and appliances
- Decorations
- Utilities
- Repair and maintenance on the home and its contents.

If the designated allowance exceeds the actual expenses, the excess is taxable income.

ARTICLE XII**COMPUTATION OF ADJUSTED FEDERAL TAXABLE INCOME**

Computation of Municipal Adjusted Federal Income: Begin with federal taxable income (FTI) as determined under the IRC for C Corporations line entitled: "Taxable income before net operating loss deduction and special deductions" and make the following adjustments.

In the case of a taxpayer that is not a C Corporation and is not an individual (i.e. pass-through entities), the taxpayer shall compute FTI as if the taxpayer were a C Corporation and, in addition to adjustments A through D, I and K below, adjustments E, F and L also apply. Note: Begin with line entitled: "Ordinary income (loss) from trade or business activities". *

Items not Deductible – Add

- A. Add back any losses that relate to the sale, exchange or disposition of an asset described in Section 1221 or 1231 of the IRC (i.e., capital-type assets).
- B. Add 5% of the amount deducted as intangible income, but not the portion of the intangible income related to the sale, exchange or disposition of property described in section 1221 of the Internal Revenue Code (IRC)
- C. Add back taxes, State, Local, Ohio Franchise and other taxes paid or accrued based on net income.
- D. In the case of a real estate investment trust (REIT) or regulated investment company, add back all dividends, distributions, or amounts set aside for the benefit of investors.
- E. Add back guaranteed payment to partners
- F. Add back payments to a qualified self-employed retirement plan, payments for health or life insurance for an owner or owner-employee, or federal self-employment tax.

Items not Taxable – Deduct

- I. Deduct income or gain that relate to the sale, exchange or disposition of an asset described in Section 1221 or 1231 of IRC. This does not apply to the recapture of depreciation described in section 1245 or 1250 of IRC.

- K. Deduct intangible income to the extent it is included in FTI. “Intangible income” means 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, trade names, 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 or other similar games of chance

- L. Other Deductions: S Corporations may deduct items reported on Schedule K such as Section 179 depreciation and charitable contributions not to exceed 10% of the federal taxable income computed in accordance with federal regulations. Partnerships may only deduct Section 179 depreciation.

Note: To the extent that any particular item may fall into more than one adjustment, the taxpayer is prohibited from adding or deducting any amount more than once.

* The lettering below matches the Schedule X entries on the Parma Heights Net Profit Tax return.

ARTICLE XIII**PROCEDURE FOR FILING AN APPEAL TO THE
DECISION OF THE ADMINISTRATOR**

Reasonable people can and do sometimes disagree on tax issues. For this reason, the City of Parma Heights has provided a system of Appeal.

1. Board of Tax Appeals

Your right of appeal is to the Board of Tax Appeals. If you wish to exercise your rights of appeal in the City of Parma Heights, you must, within thirty (30) days from the announcement of any ruling or decision of the Administrator file a protest with the Board of Tax Appeals.

2. How to Prepare a Protest

The protest must be filed in duplicate and should contain:

- A. Your name and address (individuals should show the residence address, corporations and associations the address of the principal office or place of business);
- B. The date on the letter, which transmitted the decision of the Administrator;
- C. The taxable year(s) involved;
- D. A statement that you desire an oral hearing before the Board of Tax Appeals;
- E. An itemized schedule of the findings to which you take exception;
- F. A statement of the facts upon which you rely concerning each contested issue where the facts are in dispute. Such statement and all evidence submitted must be declared true under penalties of perjury. This requirement may be satisfied by adding to the protest the following statement signed by the taxpayer (by an authorized officer in the case of a corporation or association):

“Under the penalties of perjury, I declare that the statement of facts presented in this protest and in any accompanying schedules and statements has been examined by me and to the best of my knowledge and belief, is true, correct and complete.”
- G. A statement outlining the law or other authority upon which you rely.

3. A sample Protest is attached as Exhibit A

ARTICLE XIV

Taxable – Tangible Property/Income

“Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. “Tangible personal property” includes motor vehicles, electricity, water, gas, steam and prewritten computer software.* (Royalties coming from “the ground” such as gas, oil etc. would be taxable income.)

Not Taxable - Intangible Income

“Intangible Income” means 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 Ohio Revised Code, and patents, copyrights, trademarks, trade names, 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 or other similar games of chance.**

Exhibit A
SAMPLE PROTEST

Date:

Board of Tax Appeals
City of Parma Heights
6281 Pearl Road
Parma Heights, Ohio 44130

Ladies and Gentlemen:

Protest is hereby made to the decision of the Administrator reached on January 1, 1967

- A. John and Mary Smith
4432 Wengler Road
Brook Park, Ohio 44142
- B. Date of Administrator's Letter – January 1, 1967
- C. Taxable Years Involved – 1966 and 1967
- D. An oral hearing is requested
- E. Taxpayer object to Administrator's decision that they are liable for the Municipal Income Tax.
- F. Facts upon which taxpayers rely. Taxpayers reside in the City of Brook Park and have resided there continuously since 1942. Taxpayers are both employed at the Theatrical Grill, Cleveland, Ohio. They are employed as kitchen help at said restaurant. They have been continuously employed for said employer in Cleveland, Ohio since 1960.
- G. Statement of the law involved. Section 183.22 of the Codified Ordinances of the City of Parma Heights provides for the imposition of the income tax and the rate and income taxable. Nowhere in said section is provision made for the imposition of the income tax on the wages earned by non-residents, whose wages are earned exclusively outside the City of Parma Heights. Section 183.23 provides for the effective period of the tax to be January 1, 1967. The Administrator should not have considered the year 1966.

Respectfully submitted,

Under the penalties of perjury, we declare that the statement of facts presented in this protest and in any accompanying schedules and statements has been examined by us and to the best of our knowledge and belief, is true, correct and complete.
