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Introduced: 01/16/2018  
Revised: 02/16/2018  
Adopted: 02/20/2018  
Effective: 03/23/2018 \*

## **ORDINANCE O-04-2018**

### **AN ORDINANCE TO AMEND CHAPTER 181 OF THE CITY INCOME TAX CODE TO ADOPT SECTIONS 718.80 THROUGH 718.95 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY ~~WAIVING THE THIRTY-DAY WAITING PERIOD~~ \***

**WHEREAS**, House Bill (H.B.) 49 of the 132nd General Assembly, the State's general appropriations bill for the biennium, includes uncodified Section 803.100 purporting to require that municipalities, on or before January 31, 2018, adopt certain municipal income tax provisions that are also adopted within H.B. 49 to authorize State officials to collect and administer municipal net profits taxes; and

**WHEREAS**, Section 803.100 of H.B. 49 references and relies upon Section 718.04(A) of the Ohio Revised Code, which purports to make municipal income taxing authority conditional upon a municipality's adoption of code sections as dictated by the State; and

**WHEREAS**, on December 21, 2017, Judge David Cain of the Franklin County Court of Common Pleas issued an order in Franklin County Common Pleas Case Number 17CV 10258 extending the deadline set by Section 803.100 of H.B. 49 to February 24, 2018; and

**WHEREAS**, on February 12 and 13, 2018, Judge Cain held a hearing on the motion for preliminary injunction made by the coalition of municipalities challenging H.B. 49's municipal income tax provisions, and the Judge stated his intention to issue a decision prior to February 24, 2018; and

**WHEREAS**, although the municipal income tax provisions of H.B. 49 and Section 718.04(A) of the Ohio Revised Code violate the Home Rule Amendment, the city nevertheless is compelled to adopt H.B. 49's municipal income tax provisions on or before February 24, 2018 to avoid any doubt or taxpayer challenge as to its ability to impose a municipal income tax under the terms of Section 803.100 of H.B. 49 and Section 718.04(A) of the Ohio Revised Code; and

**WHEREAS**, the city is a party to ongoing litigation seeking a declaration that the H.B. 49 municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, and other provisions of Ohio law that usurp the powers of local self-government are unconstitutional and to enjoin all actions by state officials to implement the H.B. 49 municipal income tax provisions; and

**WHEREAS**, the city, by enacting this ordinance, does not concede the legality of H.B. 49's municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, or any other law that is subject to the suit in which the city is participating, and reserves its right to continue prosecution of that lawsuit.

**WHEREAS**, this ordinance constitutes an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the city and for the further reason that this ordinance is required to protect the city from coercive provisions of state law and to preserve the city's taxing authority.

**NOW, THEREFORE, BE IT ORDAINED** by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

**Section 1.** Chapter 181 of the city's Codified Ordinances, entitled "Income Tax" is hereby amended to read as set forth in Exhibit A, attached hereto and incorporated by reference herein for tax years starting on or after January 1, 2018.

**Section 2.** Council hereby expressly finds and determines that it does not concede the legality of H.B. 49's municipal income tax provisions; Section 803.100 of H.B. 49; Section 718.04(A) of the Ohio Revised Code; or any other law that is the subject of the action pending in Case Number 2017 CV 10258 in the Franklin County Court of Common Pleas, and that the city reserves its rights to continue its participation in and prosecution of said litigation, and any other litigation challenging the state's authority to dictate municipal tax collection and administration, and that adoption of this ordinance shall not prejudice the claims of the city therein.

**Section 3.** It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of the council and/or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

**Section 4.** This ordinance is declared to be emergency legislation, (waiving the thirty (30) day waiting period) necessary for the immediate preservation of the public peace, health, and safety, which shall be effective ~~upon passage~~, such emergency arising from the coercive provisions of law found in H.B. 49 and Section 718.04(A) of the Ohio Revised Code and the need for the City to preserve its taxing authority in the event that the H.B. 49 municipal income tax provisions and Section 718.04(A) of the Ohio Revised Code are not declared to be unconstitutional.

**Section 5.** If any provision of the H.B 49 municipal income tax provisions is found unconstitutional, or is stayed or enjoined as a result of the litigation referenced in Section 2 herein, that the corresponding amendment adopted in Section 1 of this ordinance shall likewise be stayed.

**Section 6.** Pursuant to Article VI, Section 6.07(a) of the Charter of the City of New Albany, this ordinance shall be in effect ~~immediately upon passage~~. \*

CERTIFIED AS ADOPTED this 20 day of February, 2018.

Attest:

  
Sloan T. Spalding  
Mayor

  
Jennifer H. Mason  
Clerk of Council

Approved as to form:

  
Mitchell H. Banchefsky  
Law Director

\* Ordinance effective as non-emergency legislation pursuant to New Albany Charter section 6.04 (B). See minutes.  
~ JHM, Council Clerk

## **Exhibit A - O-04-2018**

### **181.30      Filing net profit taxes; election to be subject to provisions of chapter.**

(A) A taxpayer may elect to be subject to sections 181.30 to 181.45 of the Codified Ordinances in lieu of the provisions set forth in the remainder of this chapter. Notwithstanding any other provision of this chapter, upon the taxpayer's election, both of the following shall apply:

(1) The state tax commissioner shall serve as the sole administrator of the municipal net profit tax for which the taxpayer as defined in 181.31(C) of the Codified Ordinances is liable for the term of the election;

(2) The commissioner shall administer the tax pursuant to sections 718.80 to 718.95 of the Revised Code, sections 181.30 to 181.45 of the Codified Ordinances, and any applicable provision of Chapter 5703. of the Revised Code.

(B)

(1) A taxpayer shall make the initial election on or before the first day of the third month after the beginning of the taxpayer's taxable year by notifying the tax commissioner and the City, on a form prescribed by the tax commissioner.

(2)

(a) The election, once made by the taxpayer, applies to the taxable year in which the election is made and to each subsequent taxable year until the taxpayer notifies the tax commissioner and the City of its termination of the election.

(b) A notification of termination shall be made, on a form prescribed by the tax commissioner, on or before the first day of the third month of any taxable year.

(c) Upon a timely and valid termination of the election, the taxpayer is no longer subject to sections 181.30 to 181.45 of the Codified Ordinances and is instead subject to the provisions set forth in the remainder of this chapter.

(C) The tax commissioner shall enforce and administer sections 181.30 to 181.45 of the Codified Ordinances. In addition to any other powers conferred upon the tax commissioner by law, the tax commissioner may:

(1) Prescribe all forms necessary to administer those sections;

(2) Adopt such rules as the tax commissioner finds necessary to carry out those sections;

(3) Appoint and employ such personnel as are necessary to carry out the duties imposed upon the tax commissioner by those sections.

(D) The tax commissioner shall not be considered a tax administrator, as that term is defined in section 718.01 of the Revised Code and Section 181.03(44) of the City Codified Ordinances.

### **181.31 Definitions.**

If a term used in sections 181.30 to 181.45 of the Codified Ordinances that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall have control over the use of the term in Title LVII of the Revised Code, unless the term is defined in Chapter 5703. of the Revised Code, in which case the definition in that chapter shall control. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States related to federal income taxes. If a term is defined in both this section and section 181.03 of the Codified Ordinances, the definition in this section shall control for all uses of that term in sections 181.30 to 181.45 of the Codified Ordinances.

As used in sections 181.30 to 181.45 of the Codified Ordinances only:

(A) "Municipal taxable income" means income apportioned or situated to the municipal corporation under section 181.32 of the Codified Ordinances, as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the municipal corporation.

(B) "Adjusted federal taxable income," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation as described in division (D)(5) of section 718.01 of the Revised Code and section 181.03 of the Codified Ordinances, 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 (B)(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 (B)(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 (B)(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) Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.

(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 181.36 of the Codified Ordinances.

(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 181.36 of the Codified Ordinances.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in section 718.01(L)(2) of the Revised Code, and is not a publicly traded partnership that has made the election described in division (23)(D)(5) of section 181.03 of the Codified Ordinances, 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.

Nothing in division (B) 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.

(C) "Taxpayer" has the same meaning as in section 181.03(47)(A) of the Codified Ordinances, except that "taxpayer" does not include natural persons or entities subject to the tax imposed under Chapter 5745. of the Revised Code. "Taxpayer" may include receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of a taxpayer.

(D) "Tax return" or "return" means the notifications and reports required to be filed pursuant to sections 181.30 to 181.45 of the Codified Ordinances for the purpose of reporting municipal income taxes, and includes declarations of estimated tax.

(E) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the calculation of the taxpayer's adjusted federal taxable income is based pursuant to this chapter. If a taxpayer's taxable year is changed for federal income tax purposes, the taxable year for purposes of sections 181.30 to 181.45 of the Codified Ordinances is changed accordingly but may consist of an aggregation of more than one taxable year for federal income tax purposes. The tax commissioner may prescribe by rule an appropriate period as the taxable year for a taxpayer that has had a change of its taxable year for federal income tax purposes, for a taxpayer that has two or more short taxable years for federal income tax purposes as the result of a change of ownership, or for a new taxpayer that would otherwise have no taxable year.

(F) "Assessment" means a notice of underpayment or nonpayment of a tax issued pursuant to section 181.19 of the Codified Ordinances.

#### **181.32 Applicability; taxable situs; apportionment.**

This section applies to any taxpayer that is engaged in a business or profession in the City and that has made the election under section 181.30 of the Codified Ordinances.

(A) Except as otherwise provided in division (B) of this section, net profit from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable situs in the City for purposes of municipal income taxation in the same proportion as the average ratio of the following:

(1) 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 City during the taxable period to the average original cost of all of 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;

(2) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the City to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under section 1181.06(b)(1)(B) of the Codified Ordinances;

(3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the City to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

(B)

(1) If the apportionment factors described in division (A) of this section do not fairly represent the extent of a taxpayer's business activity in the City, the taxpayer may request, or the tax commissioner 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:

(a) Separate accounting;

(b) The exclusion of one or more of the factors;

(c) 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;

(d) A modification of one or more of the factors.

(2) 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 commissioner denies the request in an assessment issued within the period prescribed by division (A) of section 181.19 of the Codified Ordinances.

(3) The tax commissioner may require a taxpayer to use an alternative apportionment method as described in division (B)(1) of this section only by issuing an assessment to the taxpayer within the period prescribed by division (A) of section 181.19 of the Codified Ordinances.

(C) As used in division (A)(2) 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:

(1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:

(a) The employer;

(b) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;

(c) A vendor, customer, client, or patient of a person described in division (C)(1)(b) of this section, or a related member of such a vendor, customer, client, or patient.

(2) 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;

(3) Any other location, if the tax commissioner determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (C)(1) or (2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If the tax commissioner makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the tax commissioner's determination was unreasonable.

(D) For the purposes of division (A)(3) of this section, receipts from sales and rentals made and services performed shall be situated to the City as follows:

(1) Gross receipts from the sale of tangible personal property shall be situated to the City only if, regardless of where title passes, the property meets either of the following criteria:

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

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

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

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

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

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

(E) Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the City in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the City based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the City to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.

(F) 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 sections 718.01 (C)(12) and (R)(1) of the Revised Code by the City or substantially similar provision of the codified ordinances of another municipal corporation, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to the City. In no case shall a taxpayer be required to add to its net profit that was apportioned to the City 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 the City under this section.

(G) When calculating the ratios described in division (A) of this section for the purposes of that division or division (B) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

**181.33**      **Information provided to tax administrators; confidentiality.**

(A) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by sections 181.30 to 181.45 of the Codified Ordinances is confidential, and no person shall disclose such information, except for official purposes, in accordance with a proper judicial order, or as provided in section 4123.271 or 5703.21 of the Revised Code. The tax commissioner may furnish the internal revenue service with copies of returns filed. This section does not prohibit the publication of statistics in a form which does not disclose information with respect to particular taxpayers.

(B) In May and November of each year, the tax commissioner shall provide the City tax administrator with the following information for every taxpayer that filed tax returns with the commissioner under sections 181.30 to 181.45 of the Codified Ordinances and that had municipal taxable income apportionable to the City under this chapter for any prior year:

- (1) The taxpayer's name, address, and federal employer identification number;
- (2) The taxpayer's apportionment ratio for, and amount of municipal taxable income apportionable to, the City pursuant to section 181.06(b) of the Codified Ordinances;
- (3) The amount of any pre-2017 net operating loss carryforward utilized by the taxpayer;
- (4) Whether the taxpayer requested that any overpayment be carried forward to a future taxable year;
- (5) The amount of any credit claimed under section 718.94 of the Revised Code.

(C) Not later than thirty days after each distribution made to municipal corporations under section 718.83 of the Revised Code, the tax commissioner shall provide to the City a report stating the name and federal identification number of every taxpayer that made estimated payments that are attributable to the City and the amount of each such taxpayer's estimated payment.

(D) The information described under divisions (B) and (C) of this section shall be provided to the individual or individuals designated by the City tax administrator under section 718.83(D) of the Revised Code.

(E)

(1) The City expects that the tax commissioner will, pursuant to section 718.84(E) of the Revised Code, provide tax returns and other information it receives in the performance of its administration of the municipal net profits tax for taxpayers making the election provided in section 181.30 of the Codified Ordinances. The tax administrator shall review these returns and information, as well as the information received pursuant to

divisions (B) and (C) of this section, and has discretion to refer any taxpayer for audit by the tax commissioner. Such referral shall be made on a form prescribed by the commissioner and shall include any information that forms the basis for the referral.

(2) If the tax commissioner declines to audit a taxpayer referred by the tax administrator under this section, the City reserves its right to pursue any and all remedies, whether at law or in equity, to ensure that the correct tax liability has been calculated and paid by the taxpayer.

**181.34            Filing of annual return; remittance; disposition of funds.**

(A)

(1) For each taxable year, every taxpayer shall file an annual return. Such return, along with the amount of tax shown to be due on the return less the amount paid for the taxable year under section 181.07 of the Codified Ordinances, shall be submitted to the tax commissioner, on a form and in the manner prescribed by the commissioner, on or before the fifteenth day of the fourth month following the end of the taxpayer's taxable year.

(2) If a taxpayer has multiple taxable years ending within one calendar year, the taxpayer shall aggregate the facts and figures necessary to compute the tax due under this chapter, in accordance with sections 181.31(E), 181.32, and, if applicable, 181.36 of the Codified Ordinances onto its annual return.

(3) The remittance shall be made payable to the treasurer of state and in the form prescribed by the tax commissioner. If the amount payable with the tax return is ten dollars or less, no remittance is required.

(B)

(1) Each return required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's identification number. Each return shall be verified by a declaration under penalty of perjury.

(2)

(a) The tax commissioner may require a taxpayer to include, with each annual tax return, amended return, or request for refund filed with the commissioner under sections 181.30 to 181.45 of the Codified Ordinances, copies of any relevant documents or other information.

(b) A taxpayer that files an annual tax return electronically through the Ohio business gateway or in another manner as prescribed by the tax commissioner shall either submit the documents required under this division electronically as prescribed at the time of filing or, if electronic submission is not available, mail the documents to the tax commissioner. The department of taxation shall publish a method of electronically submitting the documents required under this division on or before January 1, 2019.

(3) After a taxpayer files a tax return, the tax commissioner may request, and the taxpayer shall provide, any information, statements, or documents required to determine and verify the taxpayer's municipal income tax.

(C) Intentionally Left Blank

(D)

(1)

(a) Any taxpayer that has duly requested an automatic extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a tax return with the commissioner under this section. The extended due date of the return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates.

(b) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the commissioner grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the commissioner receives the request on or before the date the municipal income tax return is due, the commissioner shall grant the taxpayer's extension request.

(c) An extension of time to file under division (D)(1) of this section is not an extension of the time to pay any tax due unless the tax commissioner grants an extension of that date.

(2) If the commissioner considers it necessary in order to ensure payment of a tax imposed in accordance with section 181.01 of the Codified Ordinances, the commissioner may require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.

(E) Each return required 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 commissioner about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the commissioner 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 commissioner with information that is missing from the return, to contact the commissioner 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 commissioner and has shown to the preparer or other person.

(F) When income tax returns or other documents require the signature of a tax return preparer, the tax commissioner shall accept a facsimile or electronic version of such a signature in lieu of a manual signature.

#### **181.35 Electronic filing.**

(A) All taxpayers that have made the election allowed under section 181.30 of the Codified Ordinances shall file any tax return or extension for filing a tax return, and shall make payment of amounts shown to be due on such returns, electronically, either through the Ohio business gateway or in another manner as prescribed by the tax commissioner.

(B) A taxpayer may apply to the commissioner, on a form prescribed by the commissioner, to be excused from the requirement to file returns and make payments electronically. For good cause shown, the commissioner may excuse the applicant from the requirement and permit the applicant to file the returns or make the payments by nonelectronic means.

(C) The tax commissioner may adopt rules establishing the following:

(1) The format of documents to be used by taxpayers to file returns and make payments by electronic means;

(2) The information taxpayers must submit when filing tax returns by electronic means.

**181.36 Consolidated returns.**

(A) As used in this section:

(1) "Affiliated group of corporations" means an affiliated group as defined in section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.

(2) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

(3) "Consolidated federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. "Consolidated federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (A)(1) of this section.

(4) "Incumbent local exchange carrier" has the same meaning as in section 4927.01 of the Revised Code.

(5) "Local exchange telephone service" has the same meaning as in section 5727.01 of the Revised Code.

(B)

(1) A taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated tax return for a taxable year if at least one member of the affiliated group of corporations is subject to municipal income tax in that taxable year and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated tax returns under division (B)(2) of this section or a taxpayer receives permission from the tax commissioner. The tax commissioner shall approve such a request for good cause shown.

(2) An election to discontinue filing consolidated tax returns under this section must be made on or before the fifteenth day of the fourth month of the year following the last year of a five-year consolidated tax return election period in effect under division (B)(1) of this section. The election to discontinue filing a consolidated tax return is binding for a five-year period beginning with the first taxable year of the election.

(3) An election made under division (B)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(4) When a taxpayer makes the election allowed under section 181.30 of the Codified Ordinances, a valid election made by the taxpayer under division (B)(1) or (2) of section 181.30 of the Codified Ordinances is binding upon the tax commissioner for the remainder of the five-year period.

(5) When an election made under section 181.30 of the Codified Ordinances is terminated, a valid election made under this section is binding upon the tax administrator for the remainder of the five-year period.

(C) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated tax return for that taxable year if the tax commissioner determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to a municipal corporation. A taxpayer that is required to file a consolidated tax return for a taxable year shall file a consolidated tax return for all subsequent taxable years unless the taxpayer requests and receives written permission from the commissioner to file a separate return or a taxpayer has experienced a change in circumstances.

(D) A taxpayer shall prepare a consolidated tax return in the same manner as is required under the United States department of treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(E)

(1) Except as otherwise provided in divisions (E)(2), (3), and (4) of this section, corporations that file a consolidated tax return shall compute adjusted federal taxable income, as defined in section 181.31 of the Codified Ordinances, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated tax return shall make any adjustment otherwise required under division (B) of section 181.31 of the Codified Ordinances to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.

(3) If the net profit or loss of a pass-through entity having at least eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that

affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

(a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in section 181.32 of the Codified Ordinances, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in section 181.32 of the Codified Ordinances, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.

(4) If the net profit or loss of a pass-through entity having less than eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:

(a) The corporation filing the consolidated tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in section 181.32 of the Codified Ordinances, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation;

(b) The pass-through entity shall be subject to municipal income taxation as a separate taxpayer in accordance with sections 181.30 to 181.45 of the Codified Ordinances on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(F) Corporations filing a consolidated tax return shall make the computations required under section 181.32 of the Codified Ordinances by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(G) Each corporation filing a consolidated tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts applicable under section 181.30 to 181.45 of the Codified Ordinances or Chapter 5703. of the Revised Code to the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

#### **181.37 Failure to pay tax.**

If a taxpayer that has made the election allowed under 181.30 to 181.45 of the Codified Ordinances fails to pay any tax as required under sections 181.30 to 181.45 of the Codified Ordinances, or any portion of that tax, on or before the date prescribed for its payment, interest shall be assessed, collected, and paid, in the same manner as the tax, upon such unpaid amount at the rate per annum prescribed by section 5703.47 of the Revised Code from the date prescribed for its payment until it is paid or until the date an assessment is issued under section 181.19 of the Codified Ordinances, whichever occurs first.

**181.38 Declaration of estimated taxes.**

(A) As used in this section:

(1) "Combined tax liability" means the total amount of a taxpayer's income tax liabilities to all municipal corporations in this state for a taxable year.

(2) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's combined tax liability for the current taxable year.

(B)

(1) Except as provided in division (B)(4) of this section, every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the tax commissioner, if the amount payable as estimated taxes is at least two hundred dollars.

(2) Except as provided in division (B)(4) of this section, a taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the commissioner.

(3) The declaration of estimated taxes shall be filed on or before the fifteenth day of the fourth month after the beginning of the taxable year or on or before the fifteenth day of the fourth month after the taxpayer becomes subject to tax for the first time.

(4) The tax commissioner 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.

(C) Each taxpayer shall file the declaration of estimated taxes with, and remit estimated taxes to, the tax commissioner at the times and in the amounts prescribed in division (C)(1) of this section. Remitted taxes shall be made payable to the treasurer of state.

(1) The required portion of the combined tax liability for the taxable year that shall be paid through estimated taxes shall be as follows:

(a) On or before the fifteenth day of the fourth month after the beginning of the taxable year, twenty-two and one-half per cent of the combined tax liability for the taxable year;

(b) On or before the fifteenth day of the sixth month after the beginning of the taxable year, forty-five per cent of the combined tax liability for the taxable year;

(c) On or before the fifteenth day of the ninth month after the beginning of the taxable year, sixty-seven and one-half per cent of the combined tax liability for the taxable year;

(d) On or before the fifteenth day of the twelfth month of the taxable year, ninety per cent of the combined tax liability for the taxable year.

(2) If the taxpayer determines that its declaration of estimated taxes will not accurately reflect the taxpayer's tax liability for the taxable year, the taxpayer shall increase or decrease, as appropriate, its subsequent payments in equal installments to result in a more accurate payment of estimated taxes.

(3)

(a) Each taxpayer shall report on the declaration of estimated taxes the portion of the remittance that the taxpayer estimates that it owes to each municipal corporation for the taxable year.

(b) Upon receiving a payment of estimated taxes under this section, the commissioner shall immediately forward the payment to the treasurer of state. The treasurer shall credit the payment in the same manner as in division (B) of section 718.85 of the Revised Code.

(D)

(1) In the case of any underpayment of estimated taxes, there shall be added to the taxes an amount determined at the rate per annum prescribed by section 5703.47 of the Revised Code upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section. The amount of the underpayment shall be determined as follows:

(a) For the first payment of estimated taxes each year, twenty-two and one-half per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;

(b) For the second payment of estimated taxes each year, forty-five per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;

(c) For the third payment of estimated taxes each year, sixty-seven and one-half per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;

(d) For the fourth payment of estimated taxes each year, ninety per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment.

(2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently due.

(3) All amounts collected under this section shall be considered as taxes collected under sections 181.30 to 181.45 of the Codified Ordinances and shall be credited and distributed to municipal corporations in accordance with section 718.83 of the Revised Code.



(E) An underpayment of any portion of a combined tax liability shall be due to reasonable cause and the penalty imposed by this section shall not 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 combined 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 municipal income tax return for that year.

### **181.39 Additional penalties.**

(A) In addition to any other penalty imposed by sections 181.30 to 181.45 of the Codified Ordinances or Chapter 5703. of the Revised Code, the following penalties shall apply:

(1) If a taxpayer required to file a tax return under sections 181.30 to 181.45 of the Codified Ordinances fails to make and file the return within the time prescribed, including any extensions of time granted by the tax commissioner, the commissioner may impose a penalty not exceeding twenty-five dollars per month or fraction of a month, for each month or fraction of a month elapsing between the due date, including extensions of the due date, and the date on which the return is filed. The aggregate penalty, per instance, under this division shall not exceed one hundred fifty dollars.

(2) If a person required to file a tax return electronically under sections 181.30 to 181.45 of the Codified Ordinances fails to do so, the commissioner may impose a penalty not to exceed the following:

(a) For each of the first two failures, five per cent of the amount required to be reported on the return;

(b) For the third and any subsequent failure, ten per cent of the amount required to be reported on the return.

(3) If a taxpayer that has made the election allowed under section 181.30 of the Codified Ordinances fails to timely pay an amount of tax required to be paid under this chapter, the commissioner may impose a penalty equal to fifteen per cent of the amount not timely paid.

(4) If a taxpayer files what purports to be a tax return required by sections 181.30 to 181.45 of the Codified Ordinances that does not contain information upon which the substantial correctness of the return may be judged or contains information that on its face indicates that the return is substantially incorrect, and the filing of the return in that manner is due to a position that is frivolous or a desire that is apparent from the return to delay or impede the administration of sections 181.30 to 181.45 of the Codified Ordinances, a penalty of up to five hundred dollars may be imposed.

(5) If a taxpayer makes a fraudulent attempt to evade the reporting or payment of the tax required to be shown on any return required under sections 181.30 to 181.45 of the Codified Ordinances, a penalty may be

imposed not exceeding the greater of one thousand dollars or one hundred per cent of the tax required to be shown on the return.

(6) If any person makes a false or fraudulent claim for a refund under section 181.15 of the Codified Ordinances, a penalty may be imposed not exceeding the greater of one thousand dollars or one hundred per cent of the claim. Any penalty imposed under this division, any refund issued on the claim, and interest on any refund from the date of the refund, may be assessed under section 181.19 of the Codified Ordinances without regard to any time limitation for the assessment imposed by division (A) of that section.

(B) For purposes of this section, the tax required to be shown on a tax return shall be reduced by the amount of any part of the tax paid on or before the date, including any extensions of the date, prescribed for filing the return.

(C) Each penalty imposed under this section shall be in addition to any other penalty imposed under this section. All or part of any penalty imposed under this section may be abated by the tax commissioner. The commissioner may adopt rules governing the imposition and abatement of such penalties.

(D) All amounts collected under this section shall be considered as taxes collected under sections 181.30 to 181.45 of the Codified Ordinances and shall be credited and distributed to municipal corporations in the same proportion as the underlying tax liability is required to be distributed to such municipal corporations under section 718.83 of the Revised Code.

#### **181.40**      **Assessments against taxpayer.**

(A) If any taxpayer required to file a return under section 181.30 to 181.45 of the Codified Ordinances fails to file the return within the time prescribed, files an incorrect return, or fails to remit the full amount of the tax due for the period covered by the return, the tax commissioner may make an assessment against the taxpayer for any deficiency for the period for which the return or tax is due, based upon any information in the commissioner's possession.

The tax commissioner shall not make or issue an assessment against a taxpayer more than three years after the later of the date the return subject to assessment was required to be filed or the date the return was filed. Such time limit may be extended if both the taxpayer and the commissioner consent in writing to the extension. Any such extension shall extend the three-year time limit in section 181.19 of the Codified Ordinances for the same period of time. There shall be no bar or limit to an assessment against a taxpayer that fails to file a return subject to assessment as required by sections 181.30 to 181.45 of the Codified Ordinances, or that files a fraudulent return. The commissioner shall give the taxpayer assessed written notice of the assessment as provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the taxpayer assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment signed by the authorized agent of the taxpayer assessed having knowledge of the facts, the assessment becomes final,

and the amount of the assessment is due and payable from the taxpayer to the treasurer of state. The petition shall indicate the taxpayer's objections, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the tax commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the taxpayer has an office or place of business in this state, the county in which the taxpayer's statutory agent is located, or Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment against the taxpayer assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for municipal income taxes," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

If the assessment is not paid in its entirety within sixty days after the day the assessment was issued, the portion of the assessment consisting of tax due shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the commissioner issues the assessment until the assessment is paid or until it is certified to the attorney general for collection under section 131.02 of the Revised Code, whichever comes first. If the unpaid portion of the assessment is certified to the attorney general for collection, the entire unpaid portion of the assessment shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the date of certification until the date it is paid in its entirety. Interest shall be paid in the same manner as the tax and may be collected by issuing an assessment under this section.

(D) All money collected under this section shall be credited to the municipal income tax fund and distributed to the municipal corporation to which the money is owed based on the assessment issued under this section.

(E) If the tax commissioner believes that collection of the tax will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the taxpayer liable for the tax. Immediately upon the issuance of the jeopardy assessment, the commissioner shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (C) of this section. Notice of the jeopardy assessment shall be served on the taxpayer assessed or the taxpayer's legal representative in the manner provided in section 5703.37 of the Revised Code within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the taxpayer assessed files a petition for reassessment in accordance with division (B) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.

(F) Notwithstanding the fact that a petition for reassessment is pending, the taxpayer may pay all or a portion of the assessment that is the subject of the petition. The acceptance of a payment by the treasurer of state does not prejudice any claim for refund upon final determination of the petition.

If upon final determination of the petition an error in the assessment is corrected by the tax commissioner, upon petition so filed or pursuant to a decision of the board of tax appeals or any court to which the determination or decision has been appealed, so that the amount due from the taxpayer under the corrected assessment is less than the portion paid, there shall be issued to the taxpayer, its assigns, or legal representative a refund in the amount of the overpayment as provided by section 181.19 of the Codified Ordinances, with interest on that amount as provided by that section.

#### **181.41 Refund applications.**

(A) An application to refund to a taxpayer the amount of taxes paid on any illegal, erroneous, or excessive payment of tax under sections 181.30 to 181.45 of the Codified Ordinances, including assessments, shall be filed with the tax commissioner within three years after the date of the illegal, erroneous, or excessive payment of the tax, or within any additional period allowed by division (A) of section 181.19 of the Codified Ordinances. The application shall be filed in the form prescribed by the tax commissioner.

(B)

(1) On the filing of a refund application, the tax commissioner shall determine the amount of refund to which the applicant is entitled. The amount determined shall be based on the amount overpaid per return or assessment. If the amount is greater than ten dollars and not less than that claimed, the commissioner shall certify that amount to the director of budget and management and the treasurer of state for payment from the tax refund fund created in section 5703.052 of the Revised Code. If the amount is greater than ten dollars but less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

(2) Upon issuance of a refund under this section, the commissioner shall notify each municipal corporation of the amount refunded to the taxpayer attributable to that municipal corporation, which shall be deducted from the municipal corporation's next distribution under section 718.83 of the Revised Code.

(C) Any portion of a refund determined under division (B) of this section that is not issued within ninety days after such determination shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the ninety-first day after such determination until the day the refund is paid or credited. On an illegal or erroneous assessment, interest shall be paid at that rate from the date of payment on the illegal or erroneous assessment until the day the refund is paid or credited.

#### **181.42 Amended returns.**

(A) If any of the facts, figures, computations, or attachments required in an annual return filed by a taxpayer that has made the election allowed under section 181.30 of the Codified Ordinances and used to determine the tax due under sections 181.30 to 181.45 of the Codified Ordinances 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 those sections, the taxpayer shall file an amended return with the tax commissioner in such form as the commissioner requires. The amended return shall be filed not later than sixty days after the adjustment is agreed upon or finally determined for federal income tax purposes or after any federal income tax deficiency or refund, or the abatement or credit resulting therefrom, has been assessed or paid, whichever occurs first. 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 commissioner before filing the amended return.

(B) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due together with any penalty and interest thereon. An amended return required by this section is a return subject to assessment under section 181.19 of the Codified Ordinances for the purpose of assessing any additional tax due under this section, together with any applicable penalty and interest. The amended return shall not reopen those facts, figures, computations, or attachments from a previously filed return no longer subject to assessment that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal tax return.

(C) In the case of an overpayment, an application for refund may be filed under this division within the sixty-day period prescribed for filing the amended return, even if that period extends beyond the period prescribed in section 181.19 of the Codified Ordinances, if the application otherwise conforms to the requirements of that section. An application filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return unless it is also filed within the time prescribed in section 181.19 of the Codified Ordinances. The application shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return.

#### **181.43**      **Examination of records and other documents and persons.**

(A) The tax commissioner, or any authorized agent or employee thereof, may examine the books, papers, records, and federal and state income tax returns of any taxpayer or other person that is subject to sections 181.30 to 181.45 of the Codified Ordinances for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due as required under those sections. Upon written request by the commissioner or a duly authorized agent or employee thereof, every taxpayer or other person subject to this section is required to furnish the opportunity for the commissioner, authorized agent, or employee to investigate and examine such books, papers, records, and federal and state income tax returns at a reasonable time and place designated in the request.

(B) The records and other documents of any taxpayer or other person that is subject to sections 181.30 to 181.45 of the Codified Ordinances shall be open to the tax commissioner's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents relate, unless the commissioner, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The commissioner may require any person, by notice served on that person, to keep such records as the commissioner determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by a municipal corporation.

(C) The tax commissioner may examine under oath any person that the commissioner reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The commissioner may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and federal income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant,

bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.

(D) No person issued written notice by the tax commissioner compelling attendance at a hearing or examination or the production of books, papers, records, or federal income tax returns under this section shall fail to comply.

#### **181.44 Credits.**

(A) A credit, granted by resolution or ordinance of the City pursuant to section 718.15 or 718.151 of the Revised Code, shall be available to a taxpayer that has made the election allowed under section 181.30 of the Codified Ordinances, against the municipal corporation's tax on income. A municipal corporation shall submit the following information to the tax commissioner on or before the later of January 31, 2018, or the thirty-first day of January of the first year in which the taxpayer is eligible to receive the credit:

(1) A copy of the agreement entered into by the City and taxpayer under section 718.15 or 718.151 of the Revised Code;

(2) A copy of the ordinance or resolution authorizing the agreement entered into between the City and the taxpayer.

(B)

(1) Each taxpayer that claims a credit shall submit, with the taxpayer's tax return, documentation issued by the City granting the credit that confirms the eligibility of the taxpayer for the credit, the amount of the credit for which the taxpayer is eligible, and the tax year to which the credit is to be applied.

(2) Such documentation shall be provided in the form prescribed by the tax commissioner.

(3) Nothing in this section shall be construed to authorize the tax commissioner to enter into an agreement with a taxpayer to grant a credit, to determine if a taxpayer meets the conditions of a tax credit agreement entered into by the City and taxpayer under section 186.06(d) and/or 186(e) of the Codified Ordinances, or to modify the terms or conditions of any such existing agreement.

#### **181.45 Reckless violations; penalties.**

(A) Except as provided in division (B) of this section, whoever recklessly violates division (A) of section 181.99 of the Codified Ordinances shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollars or imprisonment for a term of up to six months, or both.

(B) Each instance of access or disclosure in violation of division (A) of section 181.99 of the Codified Ordinances constitutes a separate offense.

(C) These specific penalties shall not be construed to prevent the City from prosecuting any and all other offenses that may apply.



Prepared: 02/07/2018  
Introduced: 02/20/2018  
Revised:  
Adopted: 02/20/2018  
Effective: 02/20/2018

## RESOLUTION R-07-2018

### A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ADVERTISE, BID, AWARD AND EXECUTE CONTRACTS RELATED TO THE THURSTON HALL BLVD AT JOHNSTOWN RD (US 62) TRAFFIC SIGNAL PROJECT

**WHEREAS**, council desires to make infrastructure improvements to Thurston Hall Boulevard at Johnstown Road (US 62) that includes the installation of a traffic signal; and

**WHEREAS**, the subject project will include the construction of a southbound left turn lane on the north side of the intersection; and

**WHEREAS**, the engineer's estimate for the base bid is Three Hundred Thirty-Five Thousand Dollars (\$335,000); and

**WHEREAS**, the completion of the infrastructure improvements will provide for enhanced vehicular and pedestrian access at the intersection.

**NOW, THEREFORE**, be it resolved by the Council of the City of New Albany, Counties of Franklin and Licking, State of Ohio, that;


**Section 1.** The city manager is hereby authorized and directed to advertise for bids, award contracts, and execute all contractual documents necessary to accomplish the construction of the Thurston Hall Boulevard at Johnstown Road (US 62) traffic signal project.

**Section 2.** It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

**Section 3.** Pursuant to Article VI, Section 6.07(a) of the charter of the City of New Albany, this resolution shall be in effect on and after the earliest period allowed by law.


CERTIFIED AS ADOPTED this 20<sup>th</sup> day of February, 2018.

**Attest:**

  
\_\_\_\_\_  
Sloan T. Spalding  
Mayor

  
\_\_\_\_\_  
Jennifer H. Mason  
Clerk of Council

**Approved as to form:**

  
\_\_\_\_\_  
Mitchell H. Banchefsky  
Law Director





Prepared: 02/07/2018  
Introduced: 02/20/2018  
Revised:  
Adopted: 02/20/2018  
Effective: 02/20/2018

## RESOLUTION R-08-2018

**A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH THE RIGHT OF WAY CONSULTING FIRM DUNROBIN ASSOCIATES, LLC, FOR THE PURPOSE OF OBTAINING EASEMENTS NECESSARY TO SUPPORT THE INSTALLATION OF THE BLACKLICK SANITARY SEWER**

**WHEREAS**, final engineering design of the Blacklick Sanitary sewer is nearing completion; and

**WHEREAS**, the proposed alignment of the Blacklick Sanitary sewer traverses portions of private property, and easements are necessary for the construction and long term maintenance of the utility; and

**WHEREAS**, the construction of the Blacklick Sanitary sewer is necessary to provide the additional sanitary sewer capacity to support the continued growth and expansion of the business campus; and

**WHEREAS**, it is necessary for the city to engage a professional right of way consulting firm to perform the necessary acquisitions due to the very specific, technical nature of the work itself; and

**WHEREAS**, the cost of the professional easement acquisition services will not exceed \$60,621.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of New Albany, State of Ohio, Counties of Franklin and Licking, that:

**Section 1.** The city manager is hereby authorized to enter into a contract with Dunrobin Associates, LLC, for professional easement acquisition services related to the Blacklick Sanitary sewer in an amount not to exceed \$60,621.

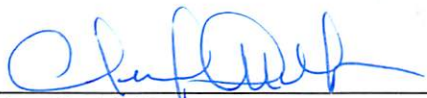
**Section 2.** It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

**Section 3.** Pursuant to Article VI, Section 6.07(a) of the charter of the City of New Albany, this resolution shall be in effect on and after the earliest period allowed by law.

**CERTIFIED AS ADOPTED** this 20 day of FEB, 2018.

**Attest:**

  
\_\_\_\_\_  
Sloan T. Spalding  
Mayor

  
\_\_\_\_\_  
Jennifer H. Mason  
Clerk of Council

**Approved as to form:**

  
\_\_\_\_\_  
Mitchell H. Banchefsky  
Law Director



EXHIBIT A - R-08-2018

## DunrobinAssociates, LLC

Working Towards Greener, Safer, Improved Communities

**VIA ELECTRONIC MAIL:** [mbarker@newalbanyohio.org](mailto:mbarker@newalbanyohio.org)

January 18, 2018

Michael Barker  
Development Services Manager  
City of New Albany  
99 West Main Street  
New Albany, OH 43054

SUBJECT: Blacklick Creek Trunk Sewer  
Right-of-Way Services Proposal

Dear Mike:

Thank you for the opportunity to submit this cost proposal to provide right-of-way services for the referenced project. The cost proposed for completing the necessary right-of-way services for the referenced project is \$60,621. Please note that approximately 16% of this estimated cost is contingencies and direct costs as follows: due to the unconfirmed alignment for the Blacklick Creek Trunk Sewer, and pending formal appraisal scoping to confirm property impacts, contingencies of \$6,660 or approximately 11% of the overall costs are included in this proposal; and, direct costs estimated at \$3,321 or approximately 5% of the overall costs are also included. Attached is a spreadsheet providing a breakdown of per parcel cost, an explanation of contingencies, and an explanation of direct cost.

### SCOPE OF SERVICES

Dunrobin Associates, LLC will provide project management; title research; appraisal/valuation services; negotiations with property owners; preliminary property owner meetings; closing services; and, recording services. These projects involve the acquisition of permanent and temporary construction easements on twelve parcels for the construction of a trunk sewer and seven parcels for the construction of water improvements.

Thank you so much for the opportunity to provide right-of-way services to the City of New Albany. If you have any questions, please do not hesitate to contact me. I am most readily available by cell: (513) 479-9237.

Respectfully Submitted:

*L. Beth Sutherland*  
L. Beth Sutherland  
Managing Member

### CITY OF NEW ALBANY - ACCEPTANCE OF PROPOSAL

BY: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_



### **CONTINGENCIES**

Should an impasse require appropriation of a parcel, the title should be examined for 40 years to ensure clear title to the easement is acquired. It is standard practice to assume 1/3<sup>rd</sup> of the parcels will require appropriation. The fee for a full 40-year title is \$750. The fee for the ownership check is \$275. The amount of \$1,900 is the difference between the cost of the ownership check and the full title report (\$475) x ~1/3<sup>rd</sup> of the total parcels. This amount will only be billed should a parcel require appropriation.

The appraisal cost of \$1,500/parcel assumes that the compensation to a property owner will not exceed \$65,000, which is the threshold value for a Value Finding. Due to the higher property values in the New Albany market, it is possible that the compensation paid to some property owners may exceed the \$65,000 threshold, requiring a Summary Appraisal report at a cost of \$3,000/report. An additional \$1,500 for 3 parcels (\$1,500 x 3 parcels = \$3,500) has been included as a contingency to address any such instances. The actual cost for appraisal services will be confirmed once the exact areas to be acquired have been confirmed and formal appraisal scoping has been conducted.

This cost proposal includes a contingency cost of \$400/parcel for any required right of entry, work agreement or RE-95. Rights of entry may be an option for accessing the property for construction purposes should a parcel be referred to appropriation or closings are delayed due to ongoing negotiations. Work agreements provide the City of New Albany access to private property to make improvements or perform construction activities required to clear a parcel where the work to be performed is located beyond the scope of the construction and specifications included in the approved construction plans. RE-95s are used to identify improvements in the take area and to determine if the improvements are real property or personal property. Where property is leased, identify who owns the improvements so that compensation can be allocated appropriately among the fee owner and the tenant. Improvements classified as real property are valued in the appraisal process. Items classified as personal property will be relocated as deemed appropriate by the City of New Albany. Until the exact areas to be acquired have been confirmed and formal appraisal scoping has been conducted, the need for RE 95s cannot be confirmed. These contingencies have been included for 3 parcels.

### **DIRECT COSTS**

Recording fees are the cost paid to the County Recorder for recording instruments. It is assumed that each parcel will require a permanent easement and temporary construction easement. Each easement is assumed to be 6 pages. Recording costs are \$28 for the first two pages and \$8 for each additional page for a total of \$60/easement. \$60 x 24 easements = \$1,440.00. These are actual costs for which reimbursement will be requested accompanied by receipts.

Mailing costs are included for the mailing of the offer to the property owner. Typically, mailings are required to be sent by certified or parcel service in order to verify receipt at an approximate cost of \$25/ mailing. The cost included assumes 2 certified mailing per parcel. These are actual costs for which reimbursement will be requested accompanied by receipts.

Copy costs are primarily associated with the cost to retrieve copies from the County Recorder's Office in preparing title reports. These costs range anywhere from \$0.10 to \$2.00/page. The cost included assumes \$25/title report or ownership check. \$25 x 12 parcels = \$300.00. These are actual costs for which reimbursement will be requested accompanied by receipts. Please note that some Recorder's Offices` require self-pay for copies and receipts are not available.

Mileage is calculated at \$0.545/mile and assumes 3 trips/parcel from our Columbus office in Upper Arlington to New Albany. 50 miles roundtrip x \$0.545 = \$27.25 x 36 trips = \$981.00

CITY OF NEW ALBANY - RIGHT-OF-WAY COST PROPOSAL  
Dunrobin Associates, LLC Cost Proposal - Right-of-Way Services  
January 18, 2018  
Allocation of Proposed Costs

PROJECT	Acquisition Services	Contingencies	Direct Costs	TOTAL ESTIMATED COST
BLACKLICK CREEK	\$ 50,700	\$ 6,600	\$ 3,321	\$ 60,621
% of Estimated Costs	84%	11%	5%	