

ORDINANCE NO: 35-76

By: 

To levy a tax to provide funds for the purpose of general municipal operations, maintenance, new equipment and capital improvements, on all salaries, wages, commissions and other compensation earned by residents of the City of Bexley; on all salaries, wages, commissions and other compensation earned by non-residents of the City of Bexley for work done or services performed or rendered in the City of Bexley; on the net profits earned on all business, professions or other activities conducted in the City of Bexley by non-residents, and on the net profits earned by all corporations as the result of work done or services performed or rendered in the City of Bexley; requiring the filing of returns and furnishing of information by employers and all those subject to said tax; imposing on employers the duty of collecting the tax at the source and paying the same to the City of Bexley; providing for the audit, collection and enforcement of said tax; declaring violation thereof to be a misdemeanor and imposing penalties therefor.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. Application. As used in this chapter, the following words shall have the meanings ascribed to them in this chapter, except as and if the context clearly indicates or requires a different meaning:

A. Singular and plural; gender. The singular shall include the plural. The masculine gender shall include the feminine and the neuter genders.

B. Association. "Association" means a partnership, limited partnership or any other form of unincorporated enterprise owned by two or more persons.

C. Business. "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, fiduciary, trust, association, corporation or any other entity.

D. Corporation. "Corporation" means a corporation or joint stock association organized under the laws of the United States, the State of Ohio or any other state, territory or foreign country or dependency.

E. Employer. "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency or any other entity whether or not organized for profit, that employs one or more persons on a salary, wage, commission, or other compensation basis.

F. Employee. "Employee" means one who works for wages, salary, commissions or other type of compensation in the service of an employer.

G. Gross receipts. "Gross receipts" means the total income from any source whatsoever.

H. Net profits. "Net profits" means the net gain from the operation of a business, profession, or enterprise or other activity (whether or not such business, profession, enterprise or other activity is conducted for profit or is ordinarily conducted for profit) after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes without deduction of taxes imposed by this chapter, Federal, State and other taxes based on income; and in the case of an association, without deduction of salaries paid to partners, and other owners; and otherwise adjusted to the requirements of this chapter.

I. Person. "Person" means every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity shall mean the parties or members thereof, and as applied to corporations, the officers thereof.

J. Resident individual. "Resident individual" means any individual who is domiciled in the City of Bexley or whose usual place of abode is in the City.

K. Nonresident individual. "Nonresident individual" means an individual who is not domiciled in the City and whose usual place of abode is outside the City.

L. Resident unincorporated business entity. "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City.

M. Nonresident unincorporated business entity. "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the City.

N. Place of business. "Place of business" means any bona fide office (other than a mere statutory office), factory, warehouse or other place which is occupied and used by the taxpayer in carrying on any business activity individually or through any one or more of his regular employees regularly in attendance.

O. Taxable income. "Taxable income" means wages, salaries, commissions and other compensation paid by an employer or employers before any deductions and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of the chapter.

P. Taxable year. "Taxable year" means the calendar year or the fiscal year upon the basis of which the net profits are to be computed under this chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

Q. Fiscal year. "Fiscal year" means an accounting period of twelve (12) months or less ending on any day other than December 31.

R. Chapter. "Chapter" means this Ordinance.

Section 2. Imposition of tax. To provide for the purposes of general municipal operations, maintenance, new equipment, and capital improvements of the City, there is hereby levied a tax at the rate of one and one-half (1.5) percent per annum commencing January 1, 1977, upon the following:

A. On all salaries, wages, commissions, and other compensation earned by residents of the City.

B. On all salaries, wages, commissions, and other compensation earned by nonresidents of the City for work done or services performed or rendered in the City.

C. Net profits:

(1) On the net profits earned of all unincorporated businesses, professions, or other activities conducted by residents of the City.

(2) On the net profits earned of all unincorporated businesses, professions, or other activities conducted in the City by nonresidents.

(3) For the purposes of paragraphs A(1) and C(2) above, an association shall not be taxable as an entity, but any member thereof who is a resident of the City shall be taxed individually on his entire share whether distributed or not, of the annual net profits of the association, and any non resident member thereof shall be taxed individually only on that portion of his share, whether distributed or not, of the annual net profits of the association as is derived from work done, services performed or rendered, and business or other activities conducted in the City.

D. On the net profits of all corporations, estates, trusts and limited partnerships, derived from work done or services performed or rendered and business or other activities conducted in the City, whether or not such corporations, estates, trusts and limited partnerships, have their principal or any place of business located in the City.

Section 3. Allocation of net profits.

A. In the taxation of income which is subject to the tax, if the books and records of a taxpayer conducted a business or profession both within and without the boundaries of the City shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the City, then only such portion shall be considered as having a taxable situs in the City for purposes of the tax. In the absence of such records, 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 the tax in the same proportion as the average ratio of:

(1) The average net book value of the real 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 net book value 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, 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 persons employed in the business or professions for services performed in the City, to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed;

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

B. In the event that the foregoing allocation formula does not produce an equitable result, another basis may, under uniform regulations be substituted by the City Auditor so as to produce such result.

C. As used in this chapter, "sales made in the City" means:

(1) All sales of tangible personal property which is delivered within the City regardless of where title passes if shipped or delivered from a stock of goods within the City;

(2) All sales of tangible personal property which is delivered within the City regardless of where title passes even though transported from a point outside the City if the taxpayer is regularly engaged through his own employees in the solicitation or promotion of sales within the City and the sales result from such solicitations or promotion;

(3) All sales of tangible personal property which is shipped from a place within the City to purchasers outside the City regardless of where title passes if the taxpayer is not, through his own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

Section 4. Levy of tax. The income tax at the rate of one and one-half

(1.5) percent shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation earned on and after January 1, 1977, and with respect to the net profits of business, professions or other activities earned on and after January 1, 1977. Where the fiscal year of the business, profession or other activity differs from the calendar year, the tax rate of one and one-half (1.5) percent shall be applied to that portion of the fiscal year occurring on and after January 1, 1977.

Where the fiscal year of a business, profession or other activity is other than a calendar year, in computing the tax, the profits of such taxpayer shall be determined by dividing the annual profits by twelve (12) and multiplying the quotient by the number of months of the fiscal year between January 1, 1977, and thereafter and applying the tax rate.

Section 5. Return and payment of tax.

A. Each taxpayer who engages in business, or whose salaries, wages, commissions and other compensation are subject to the tax imposed by this chapter shall, whether or not a tax be due thereon, make and file a return on or before April 15th of each year with the City Auditor on a form furnished by or obtainable from the City Auditor, setting forth the aggregate amount of salaries, wages, commissions and other compensation earned and/or net profits earned and/or gross income from such business less allowable expenses in the acquisition of such gross income earned during the preceding year and subject to the tax, together with such other pertinent information as the City Auditor may require. Provided, however, that when the return is made for a fiscal year or other period different from the calendar year, the return shall be made on or before the 15th day of the fourth month after the close of said fiscal year or other period.

B. Each taxpayer whose salaries, wages, commissions and other compensation are subject to the tax imposed by this chapter may offset losses from any business or professional activity when conducted in this city or in any municipality that does not levy an income tax on net profits therefrom.

A husband and wife, in any taxable year, may elect to file separate or joint returns. If joint returns are filed, a husband or wife may offset losses from any business or professional activity when conducted in this city or in any municipality that does not levy an income tax on net profits therefrom.

C. If a net operating loss has been sustained in any taxable year such losses may not be carried forward or backward to any other taxable year.

D. The taxpayer making a return shall, at the time of the filing thereof, pay to the City Auditor the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 7, or where any portion of said tax has been paid by the taxpayer pursuant to the provisions of Section 8, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 14 hereof, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.

E. A taxpayer who has overpaid his income tax, in any taxable year may request a refund provided, however, there is no other tax liability and provided, further, that no amount of less than one dollar (\$1.00) will be refunded or collected.

F. The City Auditor shall have the authority to extend the time for filing of the annual return upon the request of the taxpayer for a period not to exceed six (6) months, or one (1) month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal Income Tax Return. The City Auditor may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. No penalty shall be assessed, in those cases in which the return is filed and the final tax paid within the period as extended.

Section 6. Amended return and refunds for overpayment. Where an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Section 5 E, such amended return shall be on a form obtainable on request from the City Auditor. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

Within three (3) months from the final determinations of any Federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City return showing income subject to the City tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make a claim for refund of any overpayment.

No refund shall be allowed unless a written request be presented to the City Auditor within three (3) years of the date the taxes were due.

Section 7. Collection at source. Each employer within or doing business within the City, shall deduct at the time of payment of such salaries, wages, commissions or other compensation, the tax of one and one-half (1.5) percent of the gross salaries, wages, commissions or other compensation due by the said employer to said employee and shall, on or before the last day of the month following the close of each calendar quarter, make a return showing the amount of taxes so deducted and a record of payments showing that all taxes deducted during the quarter have been paid to the City in accordance with the payment schedule prescribed by subsections A, B and C hereof. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

Employers shall pay to the City all income taxes withheld or required to be deducted and withheld on either a semi-monthly, monthly or quarterly basis depending on the amount of taxes involved according to the following payment schedule:

A. Semi-monthly payments of the taxes deducted are to be made by an employer if (1) the total taxes deducted in the prior calendar year were \$12,000 or more, or (2) the amount of taxes deducted for any month in the preceding quarter exceeded \$1,000. Such payment shall be paid to the City within five banking days after the fifteenth and the last day of each month.

B. Monthly payments of taxes withheld shall be made by an employer if the taxes withheld in the prior calendar year were less than \$12,000 but more than \$1,199 or if the taxes withheld during any month for the preceding quarter exceeded \$100. Such payments shall be paid to the City within fifteen days after the close of each calendar month. However, those taxes accumulated for the third month of a calendar quarter by employers making monthly payments pursuant to this paragraph need not be paid until the last day of the month following such quarter.

C. All employers not required to make semi-monthly or monthly payments of taxes withheld under A and B of this section shall make quarterly payments no later than the last day of the month following the end of each quarter.

Each employer who maintains a place of business in the City and another branch within Franklin County, must also withhold the tax from employees residing in the City but working at the employer's metropolitan area branch even though the payroll records and place of payment are outside the City.

The employer shall make and file a return on a form furnished by the City Auditor, showing the amount of tax deducted by said employer from the salaries, wages, commissions, or other compensation of any employee and paid by the employer to the City Auditor. Such employer's return shall be accepted as the return required of an employee whose sole income subject to the tax under this ordinance is the salaries, wages, commissions and other compensation returned by said employer.

Each employer, on or before the 31st day of January, unless written request for thirty (30) days extension is made to and granted by the City Auditor, following any calendar year in which such deductions have been made, or shall have been made by an employer, shall file with the City Auditor an information return (Bexley Withholding Statement of Wages Paid, and Bexley

Income Tax Withheld), for each employee from whom income tax has been or should have been withheld showing the name and address of the employee, the total amount of salaries, wages, commissions and other compensation paid said employee during the year and the amount of City income tax withheld from each employee.

Where a resident of the City performs service for his employer in another municipality, which services are subject to withholding in the other municipality, the employer shall have the authority to reduce the withholding to the City to the extent of the tax liability in the other municipality.

Section 8. Declarations. Every person who anticipates any taxable income which is not subject to Section 7 hereof, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 2 C (1) and Section 2 C (2) hereof shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any; provided, however, if a person's income is wholly from wages, salaries, commissions or other compensation from which the tax will be withheld and remitted to the City in accordance with Section 7 hereof, such person need not file a declaration.

Such declarations shall be filed on or before April 15 of each year during the term of this chapter, or on or before the 15th day of the 4th month the taxpayer becomes subject to tax for the first time.

Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the 15th day of the 4th month after the beginning of each fiscal year or period.

Such declaration shall be filed upon a form furnished by, or obtainable from the City Auditor, provided, however, credit shall be taken for the City tax to be withheld from any portion of such income. In accordance with the provisions of Section 7 and Section 14 hereof, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality.

The original declaration (or any subsequent amendment thereof) may be increased or decreased on or before any subsequent quarterly payment day as provided for herein.

Such declarations of estimated tax to be paid the City shall be accompanied by a payment of at least one-fourth ($\frac{1}{4}$) of the estimated annual tax, and at least a similar amount shall be paid on or before the 15th day of the seventh, ninth and twelfth months after the beginning of the taxable year; provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

On or before the 15th day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City shall be paid therewith in accordance with the provisions of Section 5 hereof.

Section 9. Duties of the City Auditor. It shall be the duty of the City Auditor to collect and receive the tax imposed by this chapter in the manner prescribed by this chapter, and it shall also be his duty to keep an accurate record showing the payment received by him from each taxpayer and the date of such payment.

The City Auditor is hereby charged with the administration and enforcement of the provisions of this chapter and he is hereby empowered to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns and payments.

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

Section 10. Investigative powers of the Auditor. The City Auditor, or any authorized employee, is hereby authorized to examine the books, papers, records and Federal income tax returns of any employer or of any taxpayer or person subject to, or who the City Auditor believes is subject to the provisions of this chapter, for the purposes of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the City Auditor, or his duly authorized agent or employee, the means, facilities, and opportunity for making such examinations and investigations as are hereby authorized.

The City Auditor is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or would have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and Federal income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

Section 11. Tax information confidential; penalty. Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter, shall be confidential, except for official purposes, or except in accordance with proper judicial order. The City Auditor may furnish the Bureau of Internal Revenue, Treasury Department of the United States, with copies of the returns filed. Any person divulging such information, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500.00) or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense.

Section 12. Collection of unpaid taxes. All taxes imposed by this chapter, shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable.

The City Auditor is authorized, in addition to his other duties, to institute civil law suits to collect delinquent taxes due and owing the City by virtue of the provisions of this chapter. The City Auditor is authorized to waive penalties and interest and compromise tax liability and the right to accept waiver of State statutes of limitations.

Section 13. Violations; general penalty. Any person subject to the provisions of this chapter, who shall fail, neglect, or refuse to make any return or declaration, or any employer who shall fail, neglect, or refuse to deduct and withhold the taxes or pay the taxes imposed by this chapter, or any taxpayer who shall fail, neglect or refuse to pay the tax, interest and penalties imposed by this chapter, or any person who shall refuse to permit the City Auditor or his duly authorized agent or employee to examine the books, records and papers of a taxpayer or any person who shall knowingly make an incomplete, false, or fraudulent return, or who shall attempt to do anything whatever to avoid the payment of the whole or any part of the tax under this chapter, shall be deemed guilty of a misdemeanor and shall be fined not more than one hundred dollars (\$100.00) for the first offense, and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both, for a second or subsequent offense. The failure of an employee or taxpayer to receive or procure a return or declaration form, shall not excuse him from making a return or declaration or paying the tax levied under this chapter.

Section 14. Credit for Tax paid to another municipality. Every individual taxpayer who resides in the City but who received net profits, salaries, wages, commissions or other compensations for work done or services performed or rendered outside of the City, if it be made to appear that he has paid a municipal income tax or excise tax based on income, on such net profits, salaries, wages, commissions, or compensation in another municipality, shall be allowed a credit for the amount so paid by him or in his behalf in such other municipality, this credit to be applied only to the extent of the tax assessed by this chapter, by reason of such net profits, salaries, wages, commissions or compensation earned in such other municipality where such tax is paid.

Section 15. Exemptions. The provisions of this chapter shall not be construed to tax the military pay or allowances of members of the armed forces of the United States, or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property or tax-exempt activities.

The tax provided for herein shall not be levied on the personal earnings of any natural person under eighteen (18) years of age.

Section 16. Contract provisions. No contract on behalf of the City for works or improvements of the City shall be binding or valid unless such contract contains the following provisions:

"Said hereby further agrees to withhold all City income taxes due or payable under the provisions of Ordinance No. ___-76, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such City income taxes due under said chapter for services performed under this contract."

Section 17. Interest and penalties. All taxes imposed by this chapter, and remaining unpaid after they become due shall bear interest, in addition to the amount of the unpaid tax, at the rate of six (6) per cent per annum, and the taxpayers upon whom such taxes are imposed by this chapter, shall be liable, in addition thereto, to a penalty of ten (10) per cent of the amount of the unpaid tax.

A penalty shall not be assessed on an additional tax assessment made by the City Auditor when a return has been filed in good faith and the tax paid thereon within the time prescribed by the City Auditor; and provided further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, providing an amended return is filed and the additional tax is paid within three (3) months after final determination of the Federal tax liability.

Section 18. Allocation of funds. The funds collected under the provisions of this chapter shall be applied for the following purpose and in the following order, to-wit :

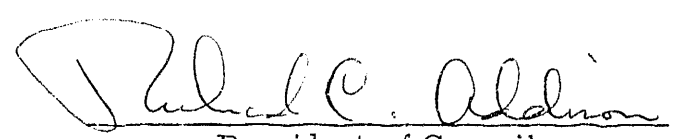
A. Such part thereof as shall be necessary to defray all costs of collecting the taxes levied by this ordinance, and enforcing the provisions hereof.

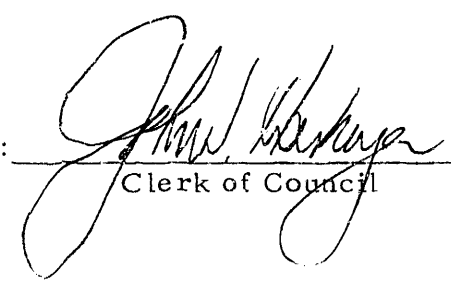
B. The balance of such funds shall be transferred to the general fund.

Section 19. Interest on unpaid withheld taxes. All taxes deducted by an employer or required to be deducted and withheld by an employer and remaining unpaid after they become due pursuant to Section 7 shall bear interest on the amount of such unpaid taxes at the rate of ten(10) percent per annum in addition to the amount of the unpaid taxes.

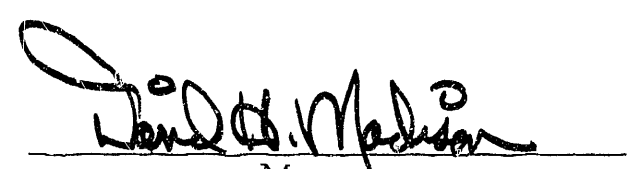
Section 20. That this ordinance shall take effect and be in force from and after the earliest period allowed by law, providing it receives a majority vote at the general election on November 2, 1976.

Passed July 27th 1976.


Richard C. Alderson
President of Council

Attest: 
John W. Kestner
Clerk of Council

Approved July 27th 1976


Donald H. Madison
Mayor

*passed
7/28/76*

First reading - July 13, 1976
Second reading - July 26, 1976
Third reading - July 27, 1976