

ORDINANCE NO. O2012-16

AN ORDINANCE TO CONTINUE TO IMPOSE A ONE-QUARTER PERCENT INCOME TAX ON AND AFTER JANUARY 1, 2013 TO BE USED SOLELY FOR THE OPERATION OF THE DIVISIONS OF POLICE AND FIRE AND TO AMEND CHAPTER 890 OF THE CODIFIED ORDINANCES OF THE CITY OF MIDDLETOWN, AS AMENDED.

WHEREAS, City Council adopted Ordinance No. O2007-59 on August 21, 2007 imposing a one-quarter percent increase in the city income tax for a period of five (5) years to be used for police and fire operations; and

WHEREAS, the voters of the City of Middletown approved said tax increase at the November 6, 2007 general election; and

WHEREAS, City Council concluded it is necessary and proper to continue this tax as a permanent measure;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

Effective January 1, 2013, Chapter 890 of the Codified Ordinances of the City of Middletown, as amended, is further amended, in part, as follows:

1. Section 890.03 is amended to read in full as set forth in Exhibit "A", attached hereto.
2. Section 890.04 is amended to read in full as set forth in Exhibit "B", attached hereto.

Section 2

Effective January 1, 2013, the existing Sections 890.03 and 890.04 of the Codified Ordinances of the City of Middletown are hereby repealed, subject to the approval of the electors of the City of Middletown as provided in §718.01 of the Ohio Revised Code; provided, however, that if such approval is not obtained, the aforesaid sections shall remain in full force and effect as presently written.

Section 3

No provisions of this Ordinance, including the repeal in Section 2 hereof, shall in any way affect any rights or obligations of the City, any taxpayer, or any other person, official or entity, with respect to the tax in effect through December 31, 2012.

Section 4

This ordinance shall be effective at the earliest time permitted by law.

/s/ Lawrence P. Mulligan, Jr.
Lawrence P. Mulligan, Jr., Mayor

1st Reading: **April 3, 2012**

2nd Reading: **April 5, 2012**

Adopted: **April 5, 2012**

Effective: **May 6, 2012**

Attest: **/s/ Betsy Parr**
Clerk of the City Council

EXHIBIT "A"

§ 890.03 IMPOSITION OF TAX.

(a) *Taxable income.* Subject to the provisions of § 890.15, an annual tax for the purposes specified in § 890.01 is hereby imposed on and after June 1, 1986 at the rate of 1.5% per year. On or after January 1, 2008 and until December 31, 2012 **2013**, an additional annual tax for the purpose of operating the divisions of Police and Fire is imposed at the rate of one quarter of one percent (0.25%) per year. Both taxes shall be imposed upon the following:

- (1) On all qualifying wages, commissions, other compensation and other taxable income earned or received during the effective period of this Chapter by residents of the City; (Ord. O86-22, approved by voters 5-6-1989)
- (2) On all qualifying wages, commissions, other compensation and other taxable income earned or received during the effective period of this Chapter by nonresidents for work done or services performed or rendered in the City. (Ord. O95-57, passed 5-16-1995)
- (3) On the portion attributable to the City of the net profits earned by all resident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered, and business or other activities conducted in the City. On the portion of the distributive share of the net profits earned by a resident owner of a resident unincorporated business entity or pass-through entity not attributable to the City and not levied against such unincorporated business entity or pass-through entity.
- (4) On the portion attributable to the City on the net profits by all nonresident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered and business or other activities conducted in the City, whether or not such unincorporated business entity has an office or place of business in the City. On the portion of the distributive share of the net profits earned by a resident owner of a nonresident unincorporated business entity or pass-through entity not attributable to the City and not levied against such unincorporated business entity or pass-through entity.
- (5) On the portion attributable to the City of the net profits earned during the effective period of this Chapter of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the City, whether or not such corporations have an office or place of business therein.
- (6) On all income received as gambling winnings as reported on IRS Form W-2G, Form 5754 and or any other Form required by the Internal Revenue Service that reports winnings from gambling, prizes and lottery winnings.

(b) *Businesses both in and outside the municipal boundaries.* This section does not apply to taxpayers that are subject to and required to file reports under Chapter 5745, of the Ohio R.C. Except as otherwise provided in division (d) of this section, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable sites in such municipal corporation for purposes of municipal income taxation in the same proportion as the average ratio of the following:

(1) Multiply the entire net profits of the business by a business apportionment percentage formula to be determined by:

A. The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in such municipal corporation 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 division, 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.

B. Qualifying wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in such municipal corporation to qualifying wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the municipal corporation under § 718.011 of the Ohio R.C.

C. Gross receipts of the business or profession from sales made and services performed during the taxable period in such municipal corporation to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

D. Adding together the percentages determined in accordance with divisions (b)(1)A., B. and C. hereof, or such of the aforesaid percentages as are applicable to the particular taxpayer and dividing the total so obtained by the number of percentages used in deriving such total.

1. A factor is applicable even though it may be apportioned entirely in or outside the City.

2. Provided however, that in the event a just and equitable result cannot be obtained under the business apportionment percentage formula provided for herein, the Superintendent of Taxation shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

(c) As used in division (b) of this section, *SALES MADE IN A MUNICIPAL CORPORATION* mean:

(1) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes if shipped or delivered from a stock of goods within such municipal corporation.

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

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

(d) Except as otherwise provided in division (e) of this section, net profit from rental activity not constituting a business or profession shall be subject to tax only by the municipal corporation in which the property generating the net profit is located.

(e) This section does not apply to individuals who are residents of the City and, except as otherwise provided in § 718.01 of the Ohio R.C., the City may impose a tax on all income earned by residents of the City to the extent allowed by the United States Constitution.

(f) *Operating loss carry forward.*

(1) The portion of a net operating loss sustained in any taxable year apportioned to the City may be applied against the portion of the profit of succeeding tax year(s) apportioned to the City, until exhausted, but in no event for more than five taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

(2) The portion of a net operating loss sustained shall be apportioned to the City in the same manner as provided herein for apportioned net profits to the City.

(3) The Superintendent shall provide by rules and regulations the manner in which such net operating loss carry forward shall be determined.

(4) The net operating loss of a taxpayer that loses its legal identity, by any means such as merger or consolidation, shall not be allowed as a carry forward loss deduction to the surviving or new taxpayer.

(5) The net operating loss sustained by a business or profession is not deductible from employee earnings, but may be carried forward as provided in division (f). However, if a taxpayer is engaged in two or more taxable business activities to be included in the same return, the net loss of one unincorporated business activity (except any portion of a loss reportable for municipal income tax purposes to another municipality) may be used to offset the profits of another for purposes of arriving at overall net profits.

(g) *Consolidated returns.*

(1) A consolidated return may be filed by a group of corporations who are affiliated through stock ownership if that affiliated group filed for the same tax period a consolidated return for Federal income tax purposes pursuant to § 1501 of the Internal Revenue Code. A consolidated return must include all companies that are so affiliated.

(2) Once a consolidated return has been filed for any taxable year, consolidated returns shall continue to be filed in subsequent years unless the applicable requirements of the Rules and Regulations for discontinuing the filing of consolidated returns have been met.

(h) *Exclusions.* The provisions of this Chapter shall not be construed as levying a tax upon the following:

(1) Proceeds from welfare benefits, unemployment insurance benefits, pensions, social security benefits and qualified retirements plans as defined by the Internal Revenue Service.

(2) Proceeds of insurance, annuities, worker's compensation insurance, permanent disability benefits, compensation for damages for personal injury and like reimbursements, not including damages for loss of profits and wages.

(3) Compensation attributable to a plan or program described in § 125 of the Internal Revenue Code.

(4) Dues, contributions and similar payments received by charitable, religious, educational organizations, or labor unions, trade or professional associations, lodges and similar organizations.

(5) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations and income of a decedent's estate during the period of administration (except such income from the operation of a business).

(6) Alimony.

(7) Compensation for damage to property by way of insurance or otherwise.

(8) Interest and dividends from intangible property.

(9) Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard. (ORC 718.01)

(10) Income of any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio R.C. 718.01 to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

(11) Any association or organization falling in the category listed in the preceding division receiving income from non-exempt real estate, tangible or intangible personal property, or business activities of a type ordinarily conducted for profit by taxpayers operating for profit shall not be excluded hereunder.

(12) In the event any association or organization receives taxable income as provided in the preceding division from real or personal property ownership or income producing business located both within and without the corporate limits of the City, it shall calculate its income apportioned to the City under the method or methods provided above.

(13) If exempt from federal income tax purposes, fellowship and scholarship grants are excluded from Municipal income tax.

(14) The rental value of a home furnished to a minister of the gospel as part of his or her compensation, or the rental allowance paid to a minister of the gospel as part of his or her compensation, to the extent used by him or her to rent or provide a home pursuant to § 107 of the Internal Revenue Code.

(15) Compensation paid under Ohio R.C. 3501.28 or 3501.36 to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000.00) annually. Such compensation in excess of one thousand dollars (\$1,000.00) may be subjected to taxation. The payer of such compensation is not required to withhold Municipal tax from that compensation.

(16) Compensation paid to an employee of a transit authority, regional transit authority, or a regional transit commission created under Ohio R.C. Chapter 306 for operating a transit bus or other motor vehicle for the authority or commission in or through the City, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such tax by reason of residence or domicile in the City, or the headquarters of the authority or commission is located with the City.

(17) The City shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the City on 12 or fewer days in a calendar year unless one of the following applies:

A. The individual is an employee or another person, the principal place of business of the individual's employer is located in another municipality in Ohio that imposes a tax applying to compensation paid to the individual for services paid on those days and the individual is not liable to that other municipality for tax on the compensation paid for such services.

B. The individual is a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such promoter, all as may be reasonably defined by the City.

(18) The income of a public utility, when that public utility is subject to the tax levied under 5727.24 or 5727.30 of the Ohio R.C., except a municipal corporation may tax the following, subject to Chapter 5745 of the Ohio R.C.

A. The income of an electric company or combined company.

B. The income of a telephone company

C. As used in division (f)(18) of this section, *COMBINED COMPANY*, *ELECTRIC COMPANY* and *TELEPHONE COMPANY* have the same meanings as in 5727.01 of the Ohio R.C.

(19) An S corporation shareholder's distributive-share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in § 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in § 1402(a) of the Internal Revenue Code, to the extent such distributive share would not be allocated or apportioned to this state under division (B)(1) and (2) of 5733.05 of the Ohio R.C. if the S corporation were a corporation subject to the taxes imposed under Chapter 5733 of the Ohio R.C.

(20) An S corporation shareholder's distributive share of the net profits and losses of the S corporation.

(21) Generally the above noted items in this section are the only forms of income not subject to the tax. Any other income, benefits, or other forms of compensation shall be taxable.

(Ord. O2004-28, passed 4-6-2004; Am. Ord. O2007-59, approved by voters 11-6-2007)

EXHIBIT “B”

§ 890.04 EFFECTIVE PERIOD.

The tax provided for in this Chapter shall be levied, collected and paid with respect to the salaries, qualifying wages, commissions and other compensation earned, and with respect to the net profits of businesses, professions or other activities earned on and after June 1, 1986, except that the one-quarter of one percent (0.25%) of the tax imposed for the sole purpose of operating the Divisions of Police and Fire shall be effective January 1, ~~2008 through December 31, 2012~~ **2013**.

(Ord. O86-22, approved by voters 5-6-1986; Am. Ord. 2001-118, passed 12-18-2001; Am. Ord. O2004-28, passed 4-6-2004; Am. Ord. O2007-59, approved by voters 11-6-2007)