

City of New Philadelphia, Ohio

Income Tax Ordinance Rules and Regulations

No. 51-2003

Effective January 1, 2004

City of New Philadelphia
Income Tax Department
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ORDINANCE NO. 51-2003

**ORDINANCE ENACTING TAX AND REPEALING ORDINANCE 3283
AND AMENDMENTS THERETO; AND TO DECLARE EMERGENCY**

WHEREAS, the City of New Philadelphia Earnings Tax Ordinance was originally enacted in 1970 and several amendments have thereafter been enacted; and

WHEREAS, in the opinion of the Tax Administrator, Law Director and City Council that the original Ordinance and subsequent amendments and changes in the law need to be recodified into one comprehensive Tax Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NEW
PHILADELPHIA, STATE OF OHIO:**

SECTION I. Ordinance No.3283 and subsequent amendments are hereby repealed effective January 1, 2004. Provided, however that any and all tax, interest and penalties generated in connection herewith shall remain in full force and effect.

SECTION II. The Tax Ordinance hereafter set forth as Chapter 191 is hereby adopted:

SECTION .01 PURPOSE.

To provide funds for the purposes of general municipal operations, there is hereby levied a tax on qualifying wages, commissions, and other compensation, and on net profits and other taxable income as hereinafter provided.

SECTION .02 DEFINITIONS.

- A. As used in this Chapter, the following words shall have the meanings ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning.
1. "Adjusted federal taxable income" means a C corporation's federal income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:
 - a. 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.
 - b. Add an amount equal to five percent (5%) of intangible income deducted under division (A)(1)(a) 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;
- c. 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;
 - d.(i) Except as provided in division (A)(1)(d)(ii) 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;
 - (ii) Division (A)(1)(d)(i) 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.
 - e. Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;
 - f. In the case of a real estate investment trust and 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;
 - g. If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except;
 - (i) Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and
 - (ii) Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner-employee shall not be allowed as a deduction.

Nothing in division (A)(1) 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.

Nothing in this chapter shall be construed as limiting or removing the ability of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.

2. "Administrator" - The individual designated by the ordinance, appointed to administer and enforce the provisions of the ordinance.
3. "Association" means a partnership, limited partnership, S Corporation any other form of unincorporated enterprise, owned by one or more persons.
4. "Board of Review" means the Board created by and constituted as provided in Section 14.
5. "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, including but not limited to the renting or leasing of property, real, personal, or mixed.
6. "Corporation" means a corporation, Sub-S 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.
7. "Day" means a full day or any fractional part of a day.
8. "Domicile" means the place where a taxpayer has his true, fixed, and permanent home, and to which, whenever the taxpayer is absent, he has the intention of returning. Factors to be considered when determining domicile are, but are not limited to: registration of vehicles; current driver's license; address on Federal and State income tax returns; address of voter's registration; attendance at schools by taxpayer's family; county of taxpayer's estate if deceased.
9. "Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.
10. "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or which employs one or more persons on a salary, wage, commission or other compensation basis.
11. "Fiduciary" means a guardian, trustee, executor, administrator, or any other person acting in any fiduciary capacity for any individual, trust, or estate.
12. "Fiscal year" means an accounting period of twelve months ending on any day other than December 31.
13. "Generic form" means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability or for filing a

refund claim that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income.

14. "Gross receipts" means the total income of a taxpayer from any source whatsoever.
15. "Income from a pass-through entity" means partnership income of partners, membership interests of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership shares of income from other pass-through entities.
16. "Intangible Income" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Ohio Revised Code, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.
17. "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
18. "Internet" means the international computer network of both Federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.
19. "Joint Economic Development District" means districts created under the Ohio Revised Code sections 715.70 **through 715.83**, as amended from time to time.
20. "Limited liability company" means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.
21. "Municipality" means the City New Philadelphia.
22. "Net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than amounts described in division (F) of section 191.03, required to be reported on schedule C, schedule E, or schedule F.
23. "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.

24. "Nonresident" means an individual domiciled outside the City.
25. "Nonresident incorporated business entity" means an incorporated business entity not having an office or place of business within the Municipality.
26. "Nonresident unincorporated business entity" means an unincorporated business entity not having any office or place of business within the City.
27. "Other payer" means any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual.
28. "Owner" means a partner of a partnership, a member of a limited liability company, a shareholder of an S corporation, or other person with an ownership interest in a pass-through entity.
29. "Owner's proportionate share", with respect to each owner of a pass-through entity, means the ratio of (a) the owner's income from the pass-through entity that is subject to taxation by the municipal corporation, to (b) the total income from that entity of all owners whose income from the entity is subject to taxation by that municipal corporation.
30. "Pass-through entity" means a partnership, limited liability company, S corporation, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.
31. "Pension" means income earned or received as a result of retirement from employment from an IRS qualified retirement plan and which is generally, although not exclusively, reported to the taxpayer by the payor on a Form 1099-R or similar form.
32. "Person" includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity.
33. "Place of business" means any bona fide office, other than a mere statutory office, factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his employees or agents.
34. "Principal place of business" means in the case of an employer having headquarters' activities at a place of business within a taxing municipality, the place of business at which the headquarters is situated. In the case of any employer not having its

headquarters' activities at a place of business within a taxing municipality, the term means the largest place of business located in a taxing municipality.

35. "Qualified plan" means a retirement plan satisfying the requirements under section 401 of the Internal Revenue Code as amended.
36. "Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with section 718.03(A) of the Ohio Revised Code.
37. "Resident" means an individual domiciled in the City.
38. "Resident incorporated business entity" means an incorporated business entity whose office, place or operations or business situs is within the Municipality.
39. "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City.
40. "Return preparer" means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.
41. "Schedule C" means Internal Revenue Service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.
42. "Schedule E" means Internal Revenue Service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.
43. "Schedule F" means Internal Revenue Service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.
44. "S corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.
45. "Tax Administrator" means the person appointed to administer the Municipality's Income Tax Ordinance and to direct the operation of the Municipal Income Tax Department or the person executing the duties of the Tax Administrator.
46. "Taxable Year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.
47. "Taxing Municipality" means a municipality levying a tax on income earned by nonresidents working within such municipality or on income earned by its residents.
48. "Taxpayer" means a person subject to a tax on income levied by a municipal corporation. "Taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer"

includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.

- B. The singular shall include the plural, and the masculine shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates.

SECTION .03 IMPOSITION OF TAX.

A. Basis of Imposition

Subject to the provisions of this ordinance, an annual tax for the purposes specified in Section 1 hereof, is hereby imposed at the rate of one percent (1 %) per year upon the following:

1. On all qualifying wages, commissions, spousal support, other compensation, and other taxable income earned or received by residents of the municipality.
2. On all qualifying wages, commissions, other compensation and other taxable income earned or received by nonresidents for work done or services performed or rendered in the municipality.
3. On the portion attributable to the Municipality 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 Municipality. On the portion of the distributive share of the net profits earned by a resident owner a resident unincorporated business entity or pass-through entity not contributable to the Municipality and not levied against such unincorporated business entity or pass-through entity.
4. On the portion attributable to the Municipality 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 Municipality, whether or not such unincorporated business entity has an office or place of business in the Municipality. 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 Municipality and not levied against such unincorporated business entity or pass-through entity.
5. On the portion attributable to the Municipality of the net profits earned by all corporations that are not pass-through entities from work done or services performed or rendered and business or other activities conducted in the

Municipality, whether or not such corporations have an office or place of business in the Municipality.

6. On all income received as gambling winnings from any state sponsored lottery winnings in excess of \$599.99.

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 Revised Code. 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 situs 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 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;

- b. 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 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 section 718.011 of the Ohio Revised Code;
 - 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 subsections 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 Municipality.

requirements of the Rules and Regulations for discontinuing the filing of consolidated returns have been met.

SECTION .04 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 retirement plans as defined by the Internal Revenue Service.
2. Proceeds of insurance, annuities, workers' 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 section 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. Compensation for damage to property by way of insurance.
7. Interest and dividends from intangible property.
8. 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).
9. Income of any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio Revised Code 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.
10. Any association or organization falling in the category listed in the preceding paragraph 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.
11. In the event any association or organization receives taxable income as provided in the preceding paragraph from real or personal property ownership or income producing business located both within and without the corporate limits of the

Municipality, it shall calculate its income apportioned to the Municipality under the method or methods provided above.

12. If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from Municipal income tax.
13. The rental value of a home furnished to a minister of the gospel as part of his compensation, or the rental allowance paid to a minister of the gospel as part of his compensation, to the extent used by him to rent or provide a home pursuant to section 107 of the Internal Revenue Code.
14. Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually. Such compensation in excess of one thousand dollars may be subjected to taxation. The payer of such compensation is not required to withhold Municipal tax from that compensation.
15. Compensation paid to an employee of a transit authority, regional transit authority, or a regional transit commission created under Chapter 306 of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the Municipality, 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 Municipality, or the headquarters of the authority or commission is located within the Municipality.
16. The Municipality shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the Municipality on twelve (12) or fewer days in a calendar year unless one of the following applies:
 - a. The individual is an employee of 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 Municipality.
17. The income of a public utility, when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code, except a municipal corporation may tax the following, subject to Chapter 5745. of the Ohio Revised Code:
 - a. The income of an electric company or combined company;
 - b. The income of a telephone company.

As used in division (F)(18) of this section, “combined company”, “electric company”, and “telephone company” have the same meanings as in section 5727.01 of the Ohio Revised Code.

18. 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 section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 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 section 5733.05 of the Ohio Revised Code if the S corporation were a corporation subject to the taxes imposed under Chapter 5733. of the Ohio Revised Code.
19. An S corporation shareholder’s distributive share of net profits or losses of the S corporation.
20. 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.

SECTION .05 EFFECTIVE DATE.

The tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of persons, businesses, professions, or other activities, as defined in this chapter, earned or received on and after January 1, 2004.

SECTION .06 ANNUAL TAX RETURN AND PAYMENT OF TAX DUE.

- A. Each taxpayer or resident 18 years of age or older, who engages in business or other activity or whose qualifying wages, commissions or other compensation are subject to the tax imposed by this tax code, shall, whether or not a tax is due thereon, make and file a return on or before April 15th of each year with the Administrator. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or other period. Any person otherwise subject to the tax who is registered with the City as being retired with no earned income, shall be exempt from filing an annual tax return at the discretion of the Administrator.
- B. A husband and wife may, for any tax year, elect to file separate or joint returns. However, a loss from the business activity of one spouse may not be used to reduce the taxable income of the other spouse. Also, a loss from the operation of a business, including rental losses, may not be used to offset the income on a taxpayer's W-2 Form.

- C. The Administrator is hereby authorized to provide by regulation, subject to the approval of the Board of Review, that the W-2 form furnished by an employer or employers, for a nonresident employee showing the full amount of tax deducted by such employer or employers from the salaries, wages or commissions or other compensation, as required by Section 7 and paid to the City, or other municipality or state, imposing a tax equal to or greater than the New Philadelphia income tax, on the same taxable income, shall be accepted as the return required of a nonresident employee under this chapter, whose sole income subject to the tax or taxes under this chapter is such salary, wages, commissions or other compensation.
- D. Such return shall be filed with the Administrator on a form or forms furnished by or obtainable from the Administrator or on a suitable generic form, setting forth:
1. The aggregate amounts of qualifying wages, commissions and other compensation earned or received or other income defined by statute as taxable; and
 2. Gross income from such business less allowable expenses incurred in the acquisition of such gross income to arrive at a net profit; and
 3. The amount of the tax imposed by this ordinance thereon; and
 4. Any credits to which the taxpayer may be entitled under the provisions of this chapter; and
 5. Such other pertinent statements, information returns or other information as the Administrator may require.
- E. The taxpayer making a return required hereunder shall, at the time of the filing thereof, pay to the Administrator the balance of the tax, due, if it exceeds \$4.99.
1. Should the return or the records of the Administrator indicate an overpayment of the tax to which the City is entitled under the provisions of this ordinance, such overpayment shall be first applied against any existing tax liability, penalties, or interest, and the balance, if any, at the election of the taxpayer communicated to the Administrator, shall be refunded or applied against any subsequent liability hereunder; provided that an overpayment of less than five dollars (\$5.00) shall not be refunded.
 2. Where necessary, an amended return shall be filed in order to report additional income and pay any additional tax due, or claim a return of tax overpaid, subject to the requirements and/or limitations contained in Sections 12 and 16. Such amended return shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the annual return.

3. Within three months from the final determination of any Federal tax liability affecting the taxpayer's New Philadelphia tax liability, such taxpayer shall make and file an amended New Philadelphia return showing income subject to the New Philadelphia tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make claim for return of any overpayment.
- F. The officer or employee of such employer having control or supervision or charged with the responsibility of filing the return and making the payment, shall be personally liable for failure to file the return or pay the tax, penalties, or interest due as required herein. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to file a return or pay taxes, penalties, or interest due.
- G. The Tax Return Is Considered Received if mailed, on the date postmarked by the United States Postal Service or on the date delivered without mailing to the Municipal Tax Office.
- H. Extension of time for filing returns. Taxpayers granted extensions of time for filing their federal income tax returns may have an extension for filing their New Philadelphia Tax Return provided that a copy of the federal extension is filed with the Administrator on or before the original due date of the New Philadelphia Tax Return. The extended date for filing the New Philadelphia return will be the same as the extended date for the federal return regardless of the original due date of the tax return. Statutory interest of one-half percent (1/2%) per month or fraction thereof will be charged from the original due date of the return until date of actual payment. The extension is for extending the due date of the tax return and does not extend the time for paying any tax due. If a taxpayer wishes to extend the time for filing the New Philadelphia tax return to a date other than that provided by the automatic federal extension, the taxpayer must file such a request in writing to the Administrator prior to the due date of the automatic extension. The extension may be granted by the Administrator upon terms and conditions set forth by him or her. A taxpayer's extension request may be denied if the taxpayer is delinquent in the filing of any tax returns or payments of any taxes, penalties, or interest due. The granting of an extension does not extend the time for paying the tax, it only extends the time for filing the tax return.
- I. The failure of any taxpayer to receive or procure a return, declaration or other required form shall not excuse the taxpayer from filing such forms or from paying the tax due.
- J. Payments received for taxes due shall be allocated first to penalties due, then to interest due, and then to taxes due.

- K. The Administrator is authorized but is not required to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he/she is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him/her under the ordinance.

SECTION .07 COLLECTION AT SOURCE - WITHHOLDING BY EMPLOYER.

- A. Each employer within or doing business within the City who employs one or more persons on a salary, wage, commission or other compensation basis as defined herein, shall, at the time of the payment thereof, deduct the tax of one percent (1%) from the gross salaries, wages, commissions or other compensation earned or received by residents regardless of where such compensation was earned, and shall deduct the tax of one percent (1%) from the salaries, wages, commissions or other compensation as defined herein as earned or received within the City by nonresidents thereof.
- B. Notwithstanding the provisions of paragraph A. hereof, if such employer within or doing business within the City who or which employs a City resident in another taxing municipality requiring such employer to deduct its tax from all employees engaged therein, such employer shall withhold for and remit to the City only the difference, if any, between the tax on such City resident required to be withheld by such other taxing municipality and the tax imposed by this ordinance; or shall withhold City tax on 100% of the income subject to City tax if the City resident/employee is employed at a location where a municipal tax is not imposed.
- C. Each such employer shall, on or before the last day of the month following the close of each calendar quarter, make a return and remit the tax hereby required to be withheld to the Administrator. Such employer shall be liable for the payment of taxes hereby required to be deducted and withheld, whether or not such taxes have in fact been so deducted and withheld.
- D. Effective January 1, 2001, New Philadelphia shall not require any nonresident employer, agent of such nonresident employer, or other payor that is not situated in New Philadelphia to deduct and withhold New Philadelphia tax from the salaries, wages, and other compensation earned or received by an individual unless the total amount of New Philadelphia Tax required to be withheld and deducted for all of the nonresident employer's employees or other payor's payees exceeds One Hundred Fifty Dollars (\$150.00) for that calendar year. (O.R.C. 718.03 A.)
- E. Effective January 1, 2001, if the New Philadelphia tax required to be deducted and withheld from the salaries, wages, and other compensation of all of the nonresident employer's employees or other payor's payees exceeds One Hundred Fifty Dollars (\$150.00) for any calendar year beginning with the calendar year commencing on

January 1, 2001, and thereafter, then the said nonresident employer, agent of such employer, or other payor, is required to deduct and withhold New Philadelphia tax in each ensuing year, even if the amount of tax required to be withheld and deducted in each of those ensuing years is One Hundred Fifty Dollars (\$150.00) or less, except as provided in paragraph F following. (O.R.C. 718.03A).

- F. If a nonresident employer, agent of such employer, or other payor that is not situated in New Philadelphia is required to deduct and withhold New Philadelphia tax for an ensuing year as set forth at paragraph E immediately preceding, and the total amount of tax required to be deducted and withheld in accordance with said paragraph E in each of the three (3) consecutive ensuing years is One Hundred Fifty Dollars (\$150.00) or less, then New Philadelphia tax shall not be required to be deducted and withheld by the employer, employer's agent, or other payor in any subsequent year to the last of those three (3) consecutive ensuing years unless the amount required to be deducted and withheld and deducted in any such subsequent year exceeds One Hundred Fifty Dollars (\$150.00). (O.R.C. 718.03B).
- G. An "Other Payor" as used in the preceding three paragraphs means any person that pays an individual any item included in the taxable income of the individual, other than the individual's employer or that employer's agent. (O.R.C. 718.03.)
- H. Such employer in collecting such tax shall be deemed to hold the same, until payment is made by such employer to the City, as a trustee for the benefit of the City, and any such tax collected by such employer from its employees shall, until the same is paid to the City, be deemed a trust fund in the hands of such employer.
- I. The officer or the employee having control of or charged with the responsibility of filing the return and making payment, shall be personally liable for failure to file the return or pay the tax due as required by this section. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or pay taxes, penalties, or interest due.
- J. On or before January 31 following any calendar year, such employer shall file with the Administrator an annual reconciliation return along with an information return for such employee from whom New Philadelphia income tax has been or should have been withheld, providing the W-2s and name, address and Social Security number of the employee, the total amount of compensation paid during the year and the amount of municipal income tax withheld from the employee with the municipality for which said tax was withheld identified. The information return shall also include all of the information required to be reported by the employer to IRS on a W-2 form. At the time of filing the annual reconciliation return the employer shall pay over any amounts deducted or which should have been deducted during the preceding year but which was not remitted. The annual reconciliation form shall be obtained from the Administrator.

- K. All individuals, businesses, employers, brokers or others who are required under the Internal Revenue Code to furnish forms 1099 to IRS for individuals or businesses to whom or which they have non-employee compensation shall furnish copies of the said form 1099's to the Administrator or in lieu thereof, a list containing the same information as required by IRS on the 1099's on or before the due date for such forms 1099's as established by IRS. Failure to provide the foregoing information may result in any deduction for payment by the taxpayer taken on the taxpayer's return to be disallowed.
- L. Every employer shall retain all records necessary to compute withholding taxes due New Philadelphia for a period of five years from the date the Reconciliation Form, W-2 Forms, and 1099 forms are filed.
- M. THE RETURN IS CONSIDERED RECEIVED WHEN All returns and forms required to be filed by an employer are considered received on the date postmarked by the United States Postal Service or on the date delivered without mailing by the taxpayer to the City.
- N. The failure of any employer to receive or procure a return, or other required form shall not excuse the employer from preparing any information return, withholding tax returns or from filing such forms or from paying the tax due.
- O. Payments received for withholding taxes due shall be applied first to penalties due, then to interest due, and then to taxes due.

SECTION .08 DECLARATIONS - ESTIMATED TAX PAYMENTS.

- A. Every person who anticipates any taxable income which is not subject to Section 7 or who engages in any business, profession enterprise and activity subject to the tax imposed by Section 3, 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.
 - 1. Such declaration shall be filed on or before April 30th of each year during the life of this ordinance, or before the 30th day of the fourth month from the date in which the taxpayer becomes subject to tax for the first time.
 - 2. Those taxpayers reporting on a fiscal year basis shall file a declaration before the 30th day of the fourth month after the beginning of each fiscal year or period.
 - 3. Such declaration shall be filed upon a form furnished by, or obtainable from, the Administrator. Credit may be taken for New Philadelphia income tax to be withheld, if any, from any portion of such income. In addition, credit may be taken for tax paid to other municipalities in accordance with the provisions of Section 16.

4. The original declaration, or any subsequent amendment thereof, may be increased or decreased on or before any subsequent payment date provided for herein.
 5. If the net estimated tax due after the deduction for allowable credits is \$100.00 or more, such declaration shall be accompanied by a payment of at least one fourth of the net estimated annual tax due.
 6. At least a similar amount shall be paid on or before the 30th day of the seventh, tenth and thirteenth month after the beginning of the taxpayer's taxable year, provided that in case an amended declaration has been duly filed, or the taxpayer is taxable for a portion of the year only, the unpaid balance shall be paid in equal installments on or before the remaining payment dates.
- B. On or before the 30th 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 New Philadelphia shall be paid therewith in accordance with the provisions of Section 6.
- C. If a taxpayer's total tax payments made in accordance with this section including any credits available to the taxpayer per Sections 7 and 16 do not equal at least 90% (ninety percent) of the taxpayers current years annual tax liability or 100% (one hundred percent) of the taxpayers annual tax liability for the immediately preceding tax year, then interest shall be assessed on the underpayment of tax due as follows:
1. The taxpayers annual tax liability as established on the taxpayers annual return shall be divided by four (4) to determine the amount of tax that should have been paid quarterly on an estimated basis. The difference between that amount of tax which should have been paid quarterly on an estimated basis and the amount of tax actually paid on an estimated basis shall be subject to interest of one percent (1%) per month on portion thereof from the due date of the quarterly installment to the date that the annual return is due on the tax paid thereon, whichever is earlier.
 2. In the event that the taxpayer provides satisfactory evidence to the Tax Administrator that the taxpayer's income fluctuated in such a manner that the interest assessable should not be charged, the Tax Administrator may waive any portion of the interest upon request of the taxpayer and submission of evidence of the fluctuation.

SECTION .09 DUTIES OF THE ADMINISTRATOR.

It shall be the duty of the Administrator to:

- A. Collect and receive the tax imposed by this ordinance in the manner prescribed herein, to keep accurate records thereof and to record daily all moneys so received.
- B. Enforce payment of all taxes due the City hereunder, to keep accurate records for a period of not less than five years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld and to show the dates and amounts of payments thereof.
- C. The Administrator is hereby charged with the enforcement of the provisions of this ordinance, and is hereby empowered, subject to the approval of the Board of Review, to adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this ordinance, including provision for the reexamination and correction of returns.
- D. In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due the City from the taxpayer and shall send to such taxpayer by mail a written statement showing the amount of tax, if any, so determined together with interest and penalties thereon. Such determination may be modified or amended based upon information or data subsequently secured by or made available to the Administrator. If the taxpayer fails to respond to the assessment within 30 days, the tax, penalties, and interest assessed shall become due and payable and collectible as are other unpaid taxes.
- E. Subject to the consent of the Board of Review or pursuant to regulation approved by the said Board, the Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 11 of this ordinance.
- F. If the Administrator issues a decision or opinion to a taxpayer regarding a tax obligation that is subject to appeal, the Administrator shall notify the taxpayer of the taxpayer's right to appeal the decision and of the manner in which the appeal can be made.

SECTION .10 INVESTIGATIVE POWERS OF ADMINISTRATOR; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

- A. The Administrator, or any employee of the City designated by the Administrator, is hereby authorized to examine the books, papers, records, and Federal or State income tax returns of any employer or of any taxpayer or person subject to the tax for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this ordinance. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed, and required to furnish upon written request by the Administrator, or his duly authorized agent or employee,

the means, facilities and opportunity for making such examination and investigations as are hereby authorized.

- B. The Administrator is hereby authorized to order any person deemed by the Administrator to have knowledge or information pertinent to the tax liability of any taxpayer to appear before him or her and may examine such person, under oath, concerning any income which was or should 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 or State income tax returns and the attendance of all persons before him or her whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.
- C. The refusal to produce books, papers, records and Federal or State income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of this ordinance, punishable as provided in Section 13.
- D. Any information gained from, or as the result of, any declarations, returns, investigations, reports, hearings or verifications required or authorized by this ordinance shall be confidential, except for official purposes, which includes the exchange of information with other tax authorities or in accordance with proper judicial order. Any such person divulging such information in violation of this ordinance shall be subject to prosecution as provided in Section 13. Each disclosure shall constitute a separate offense. In addition, information may be released by the Administrator in accordance with and upon the execution by a taxpayer of a waiver and consent form or authorization form which form or forms shall be furnished by the Administrator. In addition to the penalty provided in Section 13 any employee of the City who violates the provisions hereof relative to the disclosure of confidential information shall be subject to immediate dismissal.
- E. Every taxpayer shall maintain, and retain for a period of five years after the date a declaration or return is due or withholding taxes paid, all records necessary to exhibit and compute his liability for taxes due or to be withheld under the provisions of this ordinance.

SECTION .11 INTEREST AND PENALTIES.

- A. All taxes imposed and moneys withheld or required to be withheld by employers under the provisions of this ordinance and remaining unpaid after they have become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of one percent (1%) per month, or fraction thereof.

- B. In addition to interest as provided in subsection A hereof, penalties based on the unpaid tax are hereby imposed as follows:
1. For failure to pay taxes due, other than taxes withheld; one percent (1%) per month or fraction thereof.
 2. For failure to remit taxes withheld from employees; three percent (3%) per month or fraction thereof.
 3. For failure to file a tax return by the date due, including due dates extended as set forth at Section 6.G there shall be due a penalty of twenty-five dollars (\$25.00) in addition to all other penalties and interest, even if no tax is due.
- C. The penalty provided in this section shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator nor, in the absence of fraud, shall either penalty or interest 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 months after the final determination of the Federal tax liability, whichever is later.
- D. Upon recommendation of the Administrator, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Administrator to recommend abatement of penalty or interest, the Board of Review may nevertheless abate penalty or interest, or both.

SECTION 12 COLLECTION OF UNPAID TAXES BY CIVIL LITIGATION; REFUNDS OF OVERPAYMENTS.

- A. All taxes imposed by this ordinance shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Such suit shall be brought within three (3) years after the tax was due or the return was filed, whichever is later in accordance with O.R.C. 718.12 A.
- B. Taxes erroneously paid shall not be refunded unless a claim for refund is made within the time limitation specified in Ohio R.C. 718.12 C. Amounts less than five dollars (\$5.00) shall not be refundable.
- C. A loss from the operation of a business or profession may be offset against net profits from other business or professional activities in the amount of the loss commensurate with the portion of profits, if profits existed, with respect to which credit could not be claimed for tax paid to another municipality. Accordingly, if the profits of an activity are subject to tax by another municipality, the portion of a loss that may be not be used to offset profits is determined by multiplying the loss by a fraction, the numerator being either the tax rate of the other taxing municipality or the percentage rate to which credit for tax paid to another municipality is limited,

whichever is the lesser, and the denominator being the existing New Philadelphia tax rate. Any unused loss, or portion thereof, allowable for offset as determined in this manner, may be carried forward as set forth in Article III-C-1 of these rules and regulations.

SECTION .13 VIOLATIONS - CRIMINAL PROSECUTIONS.

Any person or taxpayer who or which:

- A. Fails, neglects or refuses to make any return, information return or declaration required by this chapter; or
- B. Makes any false or fraudulent return; or knowingly makes any incomplete return; or
- C. Fails, neglects or refuses to pay the tax, penalties or interest imposed by this ordinance; or
- D. Fails neglects or refuses to withhold the tax from his employees or to remit such withholding to the Administrator; or
- E. Refuses to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers and Federal income tax returns relating to the income or net profits of a taxpayer; or
- F. Fails to appear before the Administrator and to produce his books, records, papers or Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or
- G. Refuses to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
- H. Fails to comply with the provisions of this ordinance or any order or subpoena of the Administrator authorized hereby; or
- I. Gives to an employer false information as to his true name, correct Social Security number, or residence address, or fails to promptly notify an employer of any change in his residence address and the date thereof; or
- J. Fails to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and City tax withheld or knowingly gives false or misleading information to the Administrator; or
- K. Attempts to do anything whatever to avoid payment of the whole or any part of the tax, penalties or interest imposed by this ordinance; or

- L. Fails neglects or refuses to complete and return to the Administrator any tax form whose purpose is to determine if a resident must file a City tax return; Shall be guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six (6) months or both, for each offense.
- M. Prosecutions for an offense made punishable under this ordinance shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of the compensation or net profits required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense in accordance with O.R.C. 718.12B.
- N. The failure of any employer, taxpayer or person to receive or procure a return, declaration or other required form shall not excuse him from making any return, information return or declaration, from filing such form or from paying the tax.

SECTION .14 BOARD OF REVIEW.

- A. A Board of Review, consisting of a chairman and two other individuals, each to be appointed by the Mayor and approved by Council, is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 10 with reference to the confidential character of information required to be disclosed by this ordinance shall apply to such matters as may be heard before the Board.
- B. All rules and regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this ordinance, must be approved by the Board of Review before the same becomes effective. The Board shall hear and pass on appeals from any ruling or decision of the Administrator, and at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.
- C. Any taxpayer dissatisfied with any ruling or decision of the Administrator which was made under the authority conferred by Section 9C and/or Section 9E and who has filed the required returns or other documents pertaining to the contested issue may appeal there from to the Board of Review within thirty (30) calendar days from the issuance of such ruling or decision by the Administrator. The appeal must state the alleged errors in the Administrator's ruling or decision. The Board must schedule a hearing within forty-five (45) calendar days of receiving the appeal unless the taxpayer expressly waives the hearing and chooses instead to let the Board render its decision on the writings submitted by the Administrator and the taxpayer. If the taxpayer does not waive the hearing, the taxpayer is entitled to appear before the Board and bring with him or her representation of his or her choosing. The Board must issue a written decision within ninety (90) days after the final hearing and send

a notice of its decision by ordinary mail to the taxpayer within 15 days after issuing the decision. If the Board fails to comply with the provisions of this section, the taxpayer's appeal will default in favor of the taxpayer. Hearing held in accordance with this Section is not a meeting of a public body subject to ORC 121.22.

- D. Any person dissatisfied with any ruling or decision of the Board of Review may appeal there from to a court of competent jurisdiction as provided by law within thirty (30) calendar days from the date of the Board's ruling.

SECTION .15 USE OF FUNDS.

Funds shall be allocated to the General Fund and the Capital Improvement Fund as may be determined by Council.

SECTION .16 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

- A. Credits and limitations thereof. Every individual taxpayer who resides in the City of New Philadelphia who received net profits, salaries, wages, commissions, or other personal service compensation for work done or services performed or rendered outside of the City of New Philadelphia, if it be made to appear that he has paid a municipal income tax on the same income taxable under this ordinance to another municipality, shall be allowed a credit against the tax imposed by this ordinance of the amount so paid by him or in his behalf to such other municipality. The credit shall not exceed one percent (1%) on such income earned in such other municipality or municipalities where such tax is paid.
- B. The credits provided for shall not be allowed unless the same are claimed in a timely return or form acceptable to, and filed with the Administrator. In the event a taxpayer fails, neglects or refuses to file such timely return or form, he shall not be entitled to such credit and shall be liable for the full amount of tax assessed by this ordinance, together with such interest and penalties, both civil and criminal, as are prescribed in this chapter.
- C. No credit shall be given for any tax paid to a school district or a county.

SECTION .17 SAVINGS CLAUSE.

If any sentence, clause, section or part of this ordinance, or any tax against any individual of any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared to be the intention of Council that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION .18 COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE.

- A. This Ordinance shall continue effective insofar as the levy of taxes is concerned for an indefinite period, provided however, that annual returns for the year ending December 31, 2004, shall be filed on or before April 15, 2005. This ordinance and all prior ordinances shall continue to be effective until all taxes, penalties and interest due under the said ordinances are fully paid and all tax returns due are filed, and any and all civil litigation and criminal prosecutions for the collection of said taxes have been fully consummated.
- B. Annual returns due for all or any part of the last effective year of this ordinance shall be due on the date provided in Section 6 and Section 7 of this ordinance as though the same were continuing.

ORC 718.02 DETERMINATION OF INCOME SUBJECT TO TAX.

- A. In the taxation of income that is subject to municipal income taxes, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of a municipal corporation 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 municipal corporation, then only such portion shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation. In the absence of such records, 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 situs in such municipal corporation for purposes of municipal income taxation 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 such municipal corporation 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 profession for services performed in such municipal corporation to wages, salaries, and to other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed excluding compensation described in Division (f)(8) of Section 718.01 of the Revised Code.

3. 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, whoever made or performed. If the foregoing allocation formula does not produce an equitable result, another basis may be substituted, under uniform regulations so as to produce an equitable result.
- B. As used in division (A) 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.

HISTORY:

SECTION III. This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety and shall go into immediate effect. The reason for said emergency is that said changes must be in effect for the beginning of the new tax year, January 1, 2004.

PASSED:

PRESIDENT OF COUNCIL

ATTEST:

CLERK OF COUNCIL

APPROVED:

MAYOR

SPONSORED BY: FINANCE COMMITTEE

AMENDED ORDINANCE NO. 3-2005

AN ORDINANCE AMENDING SECTIONS 3, 5, 7 AND 16 OF ORDINANCE NO. 51-2003 PROVIDING FOR AN INCREASE OF ONE-HALF PERCENT (1/2%) IN THE EXISTING INCOME TAX LEVIED BY THE CITY OF NEW PHILADELPHIA TO BE USED FOR THE SAFETY FORCES EQUALLY, EFFECTIVE JULY 1, 2005 AND CONTINUING UNTIL REVOKED, TO PROVIDE FUNDS FOR GENERAL MUNICIPAL OPERATIONS.

BE IT ORDAINED by the Council of the City of New Philadelphia, County of Tuscarawas, Ohio, that:

Section 1. That Division A of Section 3, Section 5, Division A of Section 7 and Division A of Section 16 of Ordinance No. 51-2003, are hereby amended to read in full as follows:

“SECTION 3. IMPOSITION OF TAX

A. Basis of Imposition

Subject to the provisions of this ordinance, an annual tax for the purposes specified in Section 1 hereof is hereby imposed at the rate of one and one-half (1 1/2) percent (%) per year which results from a one percent (1%) income tax approved by the City on December 22, 2003, and a one-half percent (1/2%) income tax approved by the electors on May 3, 2005, effective on and after July 1, 2005, upon the following:

1. On all qualifying wages, commissions, spousal support, other compensation, and other taxable income earned or received by residents of the municipality.
2. On all qualifying wages, commissions, other compensation and other taxable income earned or received by nonresidents for work done or services performed or rendered in the municipality.
3. On the portion attributable to the Municipality 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 Municipality. On the portion of the distributive share of the net profits earned by a resident owner, a resident unincorporated business entity or pass-through entity not contributable to the Municipality and not levied against such unincorporated business entity or pass-through entity.
4. On the portion attributable to the Municipality 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 Municipality, whether or not such unincorporated business entity has an office or place of business in the Municipality. 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 Municipality and not

levied against such unincorporated business entity or pass-through entity.

5. On the portion attributable to the Municipality of the net profits earned by all corporations that are not pass-through entities from work done or services performed or rendered and business or other activities conducted in the Municipality, whether or not such corporations have an office or place of business in the Municipality.
6. On all income received as gambling winnings from any state sponsored lottery winnings in excess of \$599.99.”

“SECTION 5. EFFECTIVE DATE

The tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of persons, businesses, professions, or other activities, as defined in this Chapter, earned or received on and after July 1, 2005.”

“SECTION 7. COLLECTION AT SOURCE – WITHHOLDING BY EMPLOYER

A. Each employer within or doing business within the City who employs one or more persons on a salary, wage, commission or other compensation basis as defined herein, shall, at the time of the payment thereof, deduct the tax of one and one-half percent (1 1/2%) from the gross salaries, wages, commissions or other compensation earned or received by residents regardless of where such compensation was earned, and shall deduct the tax of one and one-half percent (1 1/2%) from the salaries, wages, commissions or other compensation as defined herein as earned or received within the City by nonresidents thereof.”

“SECTION 16. CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY

A. Credits and limitations thereof. Every individual taxpayer who resides in the City of New Philadelphia who received net profits, salaries, wages, commissions, or other personal service compensation for work done or services performed or rendered outside of the City of New Philadelphia, if it be made to appear that he has paid a municipal income tax on the same income taxable under this ordinance to another municipality, shall be allowed a credit against the tax imposed by this ordinance of the amount so paid by him or in his behalf to such other municipality. The credit shall not exceed one and one-half percent (1 1/2%) on such income earned in such other municipality or municipalities where such tax is paid.”

Section 2. Effective July 1, 2005, Division A of Section 3, Section 5, Division A of Section 7 and Division A of Section 16 of Ordinance No. 51-2003, as amended, in the form in which they have heretofore existed by enactment, amendment and confirmation, are hereby amended as shown in Section 1 hereof; provided, however, that no provision of this Ordinance, including the amendment of those Division A of Section 3, Section 5, Division A of Section 7 and Division A of Section 16 in that form, shall in any way affect any rights and obligations of the City, any taxpayer, or any other person, official or entity, with respect to the one percent (1%) income tax levied prior to July 1, 2005 and authorized and provided for by and in Ordinance No. 51-2003, as amended.

Section 3. Should any section, clause or provision of this Ordinance be declared by a Court to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

Section 4. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 5. This Ordinance shall be in full force and effect at the earliest date provided by law.

Passed: _____, 2005

President of Council

Attest: _____
Clerk

Approved:

Mayor

SPONSORED: SAFETY, HEALTH AND SERVICE COMMITTEE