

**CITY OF SILVERTON, OHIO  
CHAPTER 36: TAXATION**

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**§ 36.01 PURPOSE.**

The purpose of this chapter is to provide funds for general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the City. In accordance with Ordinance No. 2384, passed December 15, 1977 and effective January 1, 1978, there is levied a tax on income, qualifying wages, commissions, and other compensation, and on net profits as hereinafter provided.

**§ 36.02 DEFINITIONS.**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning. The singular shall include the plural and the masculine shall include the feminine and the neuter.

**ADJUSTED FEDERAL TAXABLE INCOME.** A "C" corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute "Adjusted Federal Taxable Income" as if the pass-through entity was a "C" corporation. This definition does not

apply to any taxpayer required to file a return under Ohio Revised Code (ORC) Section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.

**ASSOCIATION.** A partnership, limited partnership, limited liability company, or any other form of unincorporated enterprise, including S Corporations as defined in the federal tax code, 26 U.S.C. 1361.

**BOARD OF REVIEW.** The Board created by and constituted as provided in § 36.13 of this chapter.

**BUSINESS.** 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.

**CITY.** The City of Silverton, Ohio.

**CORPORATION.** A corporation (but including S Corporations as defined in the federal tax code, 26 U.S.C. 1361), 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.

**DOMICILE.** The permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

**EMPLOYEE.** One who works for wages, salary, commission, or other type of compensation in the service of and under the control of an employer.

**EMPLOYER.** An individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on an income, qualifying wage, commission, or other compensation basis.

**FISCAL YEAR.** An accounting period of 12 months or less ending on any day other than December 31.

**GENERIC FORM.** An electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or separate requests for refunds that contain all the information required on the City of Silverton's regular tax return and estimated payment forms, and are in a similar format that will allow processing of the generic forms without altering Silverton's procedures for processing forms.

**GROSS RECEIPTS.** The total revenue derived from sales, work done, or service rendered.

**INCOME.** All monies and compensation in any form, subject to limitations imposed by ORC 718 and exemptions provided for in this chapter, derived from any source whatsoever, including but not limited to:

(A) All income, qualifying wages, commissions, other compensation and other income from whatever source received by residents of Silverton.

(B) All salaries, wages, commissions, other compensation and other income from whatsoever source received by nonresidents for work done or services performed or rendered or activities conducted in Silverton.

(C) The portion attributable to the City of the net profits of all businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in Silverton.

**INTANGIBLE INCOME.** 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 R.C. Chapter 5701, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with lottery winnings or other similar games of chance.

**NET PROFITS.** A net gain from the operation of a business, profession, enterprise, or other activity after provision for all ordinary, reasonable, and necessary expenses either paid or accrued in accordance with the accounting system (i.e., cash or accrual) used by the taxpayer for federal income tax purposes, without deduction of taxes imposed by this chapter, federal, state, or other taxes based on income exclusive of the amount of the state franchise tax computed on the net worth basis; 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. For taxable years 2004 and later, "net profits" means "adjusted federal taxable income".

**NONRESIDENT.** An individual who is not a resident as herein defined.

**NONRESIDENT UNINCORPORATED BUSINESS ENTITY.** An unincorporated business entity not having an office or place of business within the City.

**PASS-THROUGH ENTITY.** A partnership, S Corporation, Limited Liability Company, or any other class of entity the income or profits from which are given pass-

through treatment under the Internal Revenue Code. Unless otherwise specified herein, for purposes of this chapter the tax treatment for pass-throughs is the same as “Association”.

**PERSON.** 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 partners or members thereof, and as applied to corporations, the officers thereof.

**PLACE OF BUSINESS.** Any bona fide office (other than a mere statutory office), factory, warehouse, or other space that is occupied and used by the taxpayer in carrying on any business activity individually, or through one or more of the taxpayer's regular employees regularly in attendance.

**QUALIFYING WAGES.** Wages, as defined in § 3121(a) of the Internal Revenue Code, without regard to any wage limitations, and adjusted in accordance with R.C. § 718.03(A).

**RESIDENT.** For purposes of this and all other titles, chapters, and sections of this code, a RESIDENT of the City shall be defined as follows.

(1A) An individual domiciled in the City.

(2B) An individual who during a taxable year has been domiciled in the City at least 183 days, which need not be consecutive, is presumed to be domiciled in the City for the entire taxable year. An individual can rebut this presumption for any portion of the taxable year only with clear and convincing evidence to the contrary. An individual who rebuts this presumption under this section for any portion of the taxable year is presumed to be domiciled in the City for the remainder of the taxable year for which the individual does not provide clear and convincing evidence to the contrary.

(3C) It shall be prima facie evidence that an individual's domicile or place of abode is within the City if two or more of the following apply (ADDITIONAL FACTORS MAY ALSO BE CONSIDERED AS EVIDENCE BY THE CITY):

(a1) An individual's mailing address is within the City;

(b2) A residency address listed on an individual's state, federal, or government identification or documentation is within the City;

(c3) Documentation of any real or registered property lists an individual's domicile as being within the City;

(d4) A statement to any court, government, law enforcement, or social service official or documentation thereof that an individual's address or domicile is within the City;

(e5) An individual has executed a domicile rental, lease, or purchase agreement on property located within the City.

**RESIDENT UNINCORPORATED BUSINESS ENTITY.** An unincorporated business entity having an office or place of business within the City.

**TAX ADMINISTRATOR.** The individual designated by this chapter to administer and enforce the provisions of this chapter as provided in § 36.08 of this chapter. May also be referred to as Tax Commissioner.

**TAXABLE YEAR.** The calendar year, or the fiscal year based upon which 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 the return is required to be made.

**TAXPAYER.** A person, whether an individual, partnership, association, corporation, or any other entity, required hereunder to file a return and/or pay a tax.

### **§ 36.03 IMPOSITION OF TAX.**

(A) Subject to the provisions of §§ 36.17, an annual tax for the purposes specified in § 36.01 of this chapter shall be imposed at the rate of one and one-quarter percent (1.25%) per annum upon the following:

(1) On all income, qualifying wages, commissions, and other compensation earned and/or received during the effective period of this chapter by residents of the City.

(2) On all income, qualifying wages, commissions, and other compensation earned during the effective period of this chapter by nonresidents for work done or services performed or rendered in the City. Separation pay, termination pay, reduction-in-force pay, and other compensation paid as a result of an employee leaving the service of an employer shall be allocable only to the City.

(a) Silverton shall not, however, tax the compensation of a non-resident individual who will be deemed to be an occasional entrant if all of the following apply:

1. The compensation is paid for personal services performed by the individual in the City on twelve or fewer days during the calendar year, in which case the individual shall be considered an occasional entrant for purposes of the City income tax. A day is a full day or any fractional part of a day.

2. In the case of an individual who is an employee, the principal place of business of the individual's employer is located outside the City and the individual pays tax on compensation described in Section 36.03(A)(2) to the

municipality, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual.

3. The individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the City.

(b) Beginning with the thirteenth day an individual deemed to have been an occasional entrant to the City performs services within the City, the employer of said individual shall begin withholding the City income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to the City in accordance with the requirements of this ordinance. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in the City by the individual for the first twelve days.

(c) If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the City.

(3) On the portion attributable to the City of the net profits earned during the effective period of this chapter of all resident unincorporated businesses, professions, associations, or other entities, derived from sales made, work done, services performed or rendered, and business or other activities conducted in the City.

(4) On the portion of the distributive share of the net profits earned and/or received during the effective period of this chapter of a resident partner or owner of a resident unincorporated business entity not attributable to the City and not levied against an unincorporated business entity by the City.

(5) (a) On the portion attributable to the City of the net profits earned during the effective period of this chapter of all nonresident unincorporated businesses, professions, associations, or other entities, derived from sales made, work done, or services performed or rendered, and business or other activities conducted in the City, whether or not an unincorporated business entity has an office or place of business in the City.

(b) On the portion of the distributive share of the net profits earned and/or received during the effective period of this chapter of a resident partner or owner of a nonresident unincorporated business entity not attributable to the City and not levied against an unincorporated business entity by the City.

(6) 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 those corporations have an office or place of business in the City.

(7) Lottery, games of chance, gambling and sports winnings are taxable, and in no circumstances shall deductions be allowed against these winnings. However, deductions shall be allowed against gambling and sports winnings if the taxpayer is considered a professional gambler for federal income tax purposes.

**(B) ALLOCATION AND APPORTIONMENT OF NET PROFITS.**

(1) Net profits from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable status in the same proportion as the average ratio of:

(a) The average original cost 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 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. Real property shall include property rented or leased by the taxpayer, and the value of that 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 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. "Persons employed" shall not be construed to mean any subcontractor or independent contractor. For tax year 2004 and subsequent tax years, wages, salaries, and other compensation shall be included to the extent that they represent qualifying wages.

(c) 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.

(d) In the event the foregoing allocation formula in § 36.03(B)(1)(a) does not produce an equitable result, the Board of Review, upon application of the taxpayer, or the Tax Commissioner, shall, under uniform regulations adopted by the Board of Review, have the authority to substitute other factors (including the books and records method) or methods calculated to effect a fair and proper allocation.

**(C) OPERATING LOSS CARRY-FORWARD.**

(1) Effective with tax year 2009, a net operating loss shall not be carried forward or backward to any other taxable year.

(D) EXEMPTIONS. The tax provided for herein shall not be levied upon:

(1) The military pay or allowances of members of the armed forces of the United States and of members of their reserve components, including the National Guard.

(2) The net profits of any civic, charitable, religious, fraternal or other organization specified in Ohio R.C. 718.01 to the extent that such net profits are exempted from municipal income taxes under such section.

(3) Poor relief, unemployment benefits, payments from retirement pensions, including permanent disability benefits, received from local, State or Federal governments or charitable, religious or educational organizations.

(4) Proceeds or insurance paid by reason of the death of the insured, pensions, permanent disability benefits, annuities or gratuities not in the nature of compensation for service rendered from whatever source derived.

(5) 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 has tax-exempt activities. This exemption does not include unrelated income that is subject to federal tax.

(6) Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from seasonal or casual entertainment, amusement, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations and only to the extent that the said income is exempt from Federal income tax.

(7) Compensation for personal injuries or for damages to property by way of insurance or otherwise, but this exclusion does not apply to compensation paid for lost salaries or wages or to compensation from punitive damages.

(8) Gains from involuntary conversion, cancellation of indebtedness, items of income already taxed by the State of Ohio from which the City is specifically prohibited from taxing and interest on Federal obligations and income of a decedent's estate during the period of administration.

(9) Compensation paid to a precinct election official, to the extent that such compensation does not exceed \$1,000 annually.

(10) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained clergy's compensation. The clergy must be duly ordained, commissioned, or licensed by a religious body constituting a



religious denomination, and must have authority to perform all sacraments of the religious body.

(11) Interest, dividends and other revenue from intangible property.

(12) Unreimbursed employee business expenses deductible on federal form 2106. The amount deducted for the City shall initially be the same as the federal deduction, but shall be subject to adjustment after review and audit by the City. The expenses must be allocated proportionate to the related income.

(13) Income, salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce, and/or is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of a municipality to impose net income taxes.

#### **§ 36.04 RETURN AND PAYMENT OF TAX.**

(A) (1) Except as herein provided each taxpayer shall, whether or not a tax is due thereon, make and file a City income tax return on or before April 15 of the year following the effective date of this chapter, and on or before April 15 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within one hundred five (105) days from the end of the fiscal year or period. The due dates shall change for any tax year in accordance with changes to the federal income tax due dates for that tax year.

(2) Retirees having no taxable income for City of Silverton income tax purposes may file, with the Tax Administrator, a written request for exemption from these filing requirements, and shall be exempt if the request is granted by the Tax Administrator. The request shall be filed using the prescribed Individual Declaration of Exemption, which is available from the Tax Administrator. Such exemption, if granted, shall be in effect until such time as the retiree receives income taxable for City of Silverton income tax purposes, at which time the retiree shall be required to comply with all applicable provisions of this chapter, including the filing requirements.

(B) The return shall be filed with the Tax Administrator on a form or forms furnished by or obtainable upon request from the Income Tax Administrator, or on an acceptable generic form as defined in this Chapter, setting forth:

(1) The aggregate amounts of income, qualifying wages, commissions and other compensation earned and/or received and gross receipts from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross receipts earned during the preceding year and subject to said tax;

(2) The amount of the tax imposed by this Chapter on such earnings and profits; and

(3) Such other pertinent statements, information returns or other information as the Tax Administrator may require, including but not limited to copies of all W-2 and W-2G forms, 1099 Miscellaneous Income Forms, page one of form 1040, Page One and Two of Form 1120, 1120S (including (K-1), 2106, 1065, Schedule C (including cost of goods manufactured and/or sold), Schedule E, schedule F and any other Federal Schedules, if applicable.

(C) EXTENSIONS.

For taxable years 2004 and later, the extended due date for individuals shall be the last day of the month following the month to which federal income tax due date has been extended. For businesses, if the extension is filed through the Ohio Business Gateway the extended due date shall be the last day of the month to which the due date of the federal income tax return has been extended. If not filed through the Ohio Business gateway the extended due date shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. The Tax Administrator may deny the extension if the taxpayer fails to file the request timely, fails to file a copy of the federal extension request, or if the taxpayer's income tax account with the City is delinquent in any way. The Tax Administrator 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. If filed and paid within the extended time period, interest only shall be assessed Based on the date on which the extended return is actually filed and paid. If filed and/or paid after the extended time period, interest and penalty shall be assessed from the original due date.

(D) (1) The taxpayer making a return shall, at the time of the filing thereof, pay to the Tax Administrator 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 § 36.05 of this Chapter, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of § 36.06 of this Chapter, shall be deducted from the amount show to be due and only the balance, if any, shall be due and payable at the time of filing said return.

(2) A taxpayer who has overpaid the amount of tax to which the City is entitled under the provisions of this Chapter may have such overpayment applied against any subsequent liability hereunder, or at his election indicated on the return, such overpayment (or part thereof) shall be refunded. Should the taxpayer have a delinquent liability the overpayment will first be applied to the delinquent liability. No taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

(E) AMENDED RETURNS.

(1) Where necessary, 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 § 36.11. Such amended returns shall be on a form obtainable on request from by the Tax Administrator. A taxpayer may not change the method of accounting (i.e., cash or accrual) or apportionment of net profits after the due date for filing the original return.

(2) Within three (3) months from the final determination 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 the City tax based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.

(F) Each resident taxpayer may offset business losses against business net profits from any business conducted in the City or in any municipality that does not levy an income tax on net profits therefrom.

(G) A loss from the operation of a business may not be used to offset the income on a taxpayer's W-2 Form.

(H) Any business, profession, association or corporation reporting a net loss is subject to the filing requirements of this Chapter.

(I) Consolidated returns.

(1) Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the City.

(2) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity with the City constituting a portion only of its total business, the Tax Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City. If the Tax Administrator finds net profits are not properly allocated to the City by reason of transaction with stockholders or with other corporations related by stock ownership, interlocking directorates, or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the City.

(J) 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 the return or pay taxes, penalties, or interest due.

### **§ 36.05 COLLECTION OF TAX AT SOURCE.**

(A) (1) Each employer within or doing business within the City shall deduct at the time of the payment of an income, qualifying wage, commission, or other compensation, the tax of one and one-quarter percent (1.25%) of the income, qualifying wages, commissions, or other compensation due by the employer to the employee and shall, on or before the fifteenth day of the month following the close of each calendar quarter, make a return and pay to the Tax Administrator the amount of taxes so deducted. However, effective with tax withheld for the month of October 2009, payment of the withheld tax shall be made on or before the fifteenth (15th) day of the month following the month for which the tax was withheld.

(2) The returns shall be on forms prescribed by or acceptable to the Tax Administrator and shall be subject to the rules and regulations prescribed by the Tax Administrator. The employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not those taxes have in fact been withheld.

(B) The employer in collecting the tax shall, until payment is made by the employer to the City, be deemed to hold the same, as a trustee for the benefit of the City, and any tax collected by the employer from his or her employees, shall, until payment is made by the employer to the City, be deemed a trust fund in the hands of the employer.

(C) (1) On or before February 28 of each year beginning with the year 2001, each employer shall file a withholding return setting forth the names, addresses, and social security numbers of all employees from whose compensation the tax was withheld during the preceding calendar year, the amount of tax withheld from his or her employees, and any other information required by the Tax Administrator.

(2) On or before February 28 of each year all individuals, businesses, employers, brokers or others who engage persons, either on a fee or commission basis or as independent contractors and not employees (i.e., those who are not subject to withholding) must provide the City Income Tax Department with copies of all 1099 Miscellaneous Income Forms and/or a list of names, addresses, Social Security numbers and a total amount of earnings, payments, bonuses, commissions and/or fees paid to each person for any services provided in the city.

(D) The Tax Administrator for good cause may require immediate returns and payments to be submitted to the Tax Administrator's office.

(E) No person shall be required to withhold the tax on the wages or other compensation paid domestic servants employed exclusively in or about the person's residence.

(F) All employers that provide any contractual service within the City, and who employ subcontractors in conjunction with that service shall, prior to commencement of the service, provide the City the names, addresses and federal identification numbers of the subcontractors. The subcontractors shall be responsible for all income tax employer requirements under this chapter.

(G) The officer or the employee having control or supervision of or charged with the responsibility of withholding the tax, and/or of filing the report and making payment, is personally liable for failure to file the report or pay the tax due as required by this section. The dissolution of a corporation or limited partnership does not discharge an officer's or employee's liability for a prior failure of the corporation or limited partnership to file returns or pay the tax due.

#### **§ 36.06 DECLARATION OF ESTIMATED TAX.**

(A) Every person who has taxable income in whole or in part which is not subject to § 36.05 of this chapter, or who engages in any business, profession, enterprise, or activity subject to the tax imposed by § 36.03 of this chapter, shall file a declaration setting forth an estimated income or the estimated profit or loss from a business activity together with the estimated tax due thereon. A person whose income derives wholly from wages from which tax will be withheld and remitted to the City in accordance with § 36.05 of this chapter need not file a declaration. In addition, if the amount of the estimated tax not withheld or not fully withheld is less than one hundred dollars (\$100.00), such person need not file a declaration.

(B) A declaration shall be filed on or before April 15 of each year during the life of this chapter and, beginning with tax year 2008, on or before the federal filing date if it is other than April 15th.

(C) Those taxpayers reporting on a fiscal year basis shall file a declaration within one hundred five (105) days after the beginning of each fiscal year or period and, beginning with tax year 2008, on or before the federal filing date if it is other than the 15th day of the fourth month from the end of such fiscal year or period.

(D) A declaration shall be filed upon a form furnished by, or obtainable from, the Tax Administrator, or on an acceptable generic form as defined in this Chapter. However, credit shall be taken for the City's income tax to be withheld from any portion of that income.

(E) The original declaration (or any subsequent amendment thereof) may be increased or decreased on or before any subsequent quarterly payment date and

provided for herein. In case an amended declaration is filed, the unpaid balance shown due thereon in equal installments on or before the remaining payment dates.

(F) A declaration or estimated tax to be paid to the City shall be accompanied by a payment of at least one-fourth of the estimated tax due from income from which the tax is non-withheld and/or under-withheld, and at least a similar amount shall be paid shall be paid as follows:

(1) If the taxpayer is an individual, at least a similar amount shall be paid on or before the last day of the seventh (7th), tenth (10th), and thirteenth (13th) months after the beginning of the taxpayer's taxable year. If an amended declaration has been 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.

(2) If the taxpayer is a corporation or association, at least a similar amount shall be paid on or before the fifteenth day of the sixth (6th), ninth (9th), and twelfth (12th) months of the taxable year. If 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.

(G) No penalties or interest shall be assessed for not filing a declaration on any resident taxpayer who qualifies under AT LEAST one of the following:

(1) The resident taxpayer was not domiciled in the City on the first day of January in the year in which they became subject to estimated payments.

(2) The resident taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period and the taxpayer filed a return for that year.

(3) Taxpayer has remitted an amount equal to ninety percent (90%) of the final tax liability for the tax year due on or before April 15<sup>th</sup> of the current year.

### **§ 36.07 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.**

No credit shall be allowed against the tax imposed by this chapter of the amount paid by an individual taxpayer or in his behalf to any other municipality.

### **§ 36.08 TAX ADMINISTRATOR; APPOINTMENT AND DUTIES.**

(A) (1) There is created a Department to be known as the Income Tax Department. This Department shall be administered by the Tax Administrator, who shall be appointed by the City Manager, and any other assistants and clerks as the City Manager shall also appoint.

(B) It shall be the duty of the Tax Administrator to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, to report all moneys so received, to keep accurate records for a minimum of six (6) years showing the amount due from each taxpayer required to file a declaration or to make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

(C) (1) The Tax Administrator is charged with the enforcement of the provisions of this chapter, and is empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and administration and enforcement of the provisions of this chapter, including provisions for the reexamination and correction of returns. Taxpayers are hereby required to comply not only with the provisions of this Chapter, but also with the rules and regulations.

(2) The Tax Administrator is authorized to arrange for the payment of unpaid taxes, interest, and penalties on a schedule of installment payments, when the taxpayer has proved to the Tax Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. The authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the chapter.

(3) Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of §§ 36.11 and 36.99 shall apply.

(C) 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 Tax Administrator may determine the amount of tax appearing to be due the City from the taxpayer and shall send to the taxpayer a written statement (i.e., assessment) showing the amount of tax so determined, together with interest and penalties thereon, if any. If the taxpayer fails to respond to the assessment within thirty (30) days the tax, penalties, and interest assessed shall become due and payable and collectible as are other unpaid taxes, penalty, and interest.

(D) Every taxpayer shall retain all records necessary to compute his tax liability for a period of six (6) years from the date his return is filed, or the withholding taxes are paid.

(E) Subject to the consent of the Board of Review or pursuant to regulation approved by the Board, the Tax Administrator shall have the power to compromise any interest or penalty, or both, imposed by § 36.10 of this chapter.

**§ 36.09 INVESTIGATIVE POWERS OF THE TAX ADMINISTRATOR; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.**

(A) The Tax Administrator, or any authorized employee or agent thereof, is authorized to examine the books, papers, records, and federal and state income tax returns of any employer or of any taxpayer or person subject to, or whom the Tax Administrator believes is subject to, the provisions of this chapter for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every employer, supposed employer, taxpayer, or supposed taxpayer is directed and required to furnish, within ten (10) calendar days following a written request by the Tax Administrator, or any authorized agent or employee thereof, the means, facilities, and opportunity for making those examinations and investigations as are authorized.

(B) The Tax Administrator is authorized to order any person presumed to have knowledge of the facts to appear before him or her and may examine that person, under oath, concerning any income that was or should have been reported for taxation or any transaction tending to affect that income, and for this purpose may compel the production of books, papers, records, and federal and state income tax returns and the attendance of all persons, whether as parties or witnesses, whenever the Tax Administrator believes those persons have knowledge of any income or information pertinent to the inquiry.

(C) The refusal to produce books, papers, records, and federal and state income tax returns, or the refusal to submit to an 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 subchapter; or with an order of subpoena of the Tax Administrator authorized hereby, shall be deemed a violation of this chapter, punishable as provided in § 36.99 hereof.

(D) **CONFIDENTIALITY.**

(1) Any information gained as a result of any returns, investigations, verifications, or hearings before the Tax Administrator, required by this chapter or authorized by these rules and regulations shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction.

(2) In addition to the penalty in § 36.99(B), any employee of the City who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

**§ 36.10 INTEREST AND PENALTIES.**

(A) All taxes imposed and all moneys withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid after they become



due shall bear interest at the rate of one and one-half (1.5%) percent per month or fraction of a month thereof.

(B) In addition to interest as provided in division (A) of this section, penalties based on the unpaid tax are imposed as follows:

(1) For failure to pay taxes due, other than taxes withheld; one and one-half percent (1-1/2%) per month or fraction of a month thereof.

(2) For failure to remit taxes withheld from employees; ten percent (10%) per month or fraction of a month thereof, to a maximum penalty of fifty percent (50%) of the tax due.

(3) In addition to the above, any person required to file a tax return with the City and who fails to file, or to timely file, a return shall pay a penalty of fifty dollars (\$50) for the first offense, \$75 for a second offense, and one hundred dollars (\$100) for each subsequent offense, even if no tax is found to be due.

(C) A penalty shall not be assessed on an additional tax assessment made by the Tax Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Tax Administrator. 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 months after final determination of the federal tax liability.

(D) The Tax Administrator may abate penalties in whole or in part.

### **§ 36.121 COLLECTION OF UNPAID TAXES; REFUNDS.**

(A) All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by a by suit, as other debts of like amount are recoverable. All additional assessments shall be made and all actions to recover municipal income taxes and penalties and interest thereon shall be brought within three years after the tax was due or the return was filed, whichever is later. However, In the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover Municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later.

(B) Taxes erroneously paid shall not be refunded unless a claim for a refund is made. Claims for refund of municipal income taxes must be brought within three (3) years after the tax was due or the return was filed, whichever is later. In addition, the following shall apply regarding refunds of tax withheld from non-qualified deferred compensation plans (NDCP):

(1) A taxpayer may be eligible for a refund if the taxpayer has suffered a loss from a NDCP. The loss will be considered sustained only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to the NDCP. Full loss is sustained if no distribution of money and property will be made by the NDCP.

(2) A taxpayer who receives income as a result of payments from a NDCP, and that income is less than the amount of income deferred to the NDCP and upon which municipal tax was withheld, then a refund will be issued on the amount representing the difference between the deferred income that was taxed and the income received from the NDCP. If different tax rates applied to the tax years in which deferrals, a weighted average of the different tax rates will be used to compute the refund amount.

(3) Refunds shall be allowed only if the loss is attributable to the bankruptcy of the employer who had established the NDCP, or the employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the non-qualified compensation.

(C) Income tax that has been deposited with the City of Silverton, but should have been deposited with another municipality, is allowable by the City of Silverton as a refund but is subject to the three-year limitation on refunds. Income tax that should have been deposited with the City of Silverton, but was deposited with another municipality, shall be subject to recovery by the City of Silverton. The City of Silverton will allow a non-refundable credit for any amount owed the City of Silverton that is in excess of the amount to be refunded by the other municipality, as long as the tax rate of the other municipality is the same or higher than the City of Silverton's tax rate. If the City of Silverton's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the City of Silverton.

(D) Amounts of less than \$1 shall not be collected or refunded.

### **§ 36.12 AUTHORIZATION TO USE DEBT-COLLECTION SERVICES.**

(A) The City Manager is hereby authorized to enter into a contract with bonded collectors to collect delinquent tax accounts referred by the Tax Administrator.

(B) The Tax Administrator is hereby authorized to refer delinquent tax collection cases to bonded collectors from time to time as the Administrator deems necessary.

### **§ 36.13 BOARD OF REVIEW.**

(A) There is hereby created a Board of Review consisting of a chairperson and two other individuals to be appointed by City Council. Effective with appointments to the Board in 2009, the Board member appointed first by City Council shall serve a term ending December 31, 2012, the Board member appointed second by City Council

shall serve a term ending December 31, 2011, and the Board member appointed third by City Council shall serve a term ending December 31, 2010. At the expiration of each term, each subsequent term shall be three years in length so that the terms will be overlapping. A majority of the members of the Board of Review shall constitute a quorum. The Board of Review shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board of Review shall be conducted privately, and the provisions of § 36.09(D) of this chapter regarding the confidential nature of information required to be disclosed by this chapter shall apply to those matters as may be heard before the Board of Review on appeal.

(B) All rules and regulations and amendments/changes thereto that are adopted by the Tax Administrator pursuant to the authority conferred by this chapter must be approved by the Board of Review before the same become effective. The Board of Review shall hear and rule upon appeals from any ruling or decision of the Tax Administrator, including appeals of penalty and interest, and shall be empowered to substitute alternate methods of allocation at the request of the taxpayer or Tax Administrator.

(C) Any person dissatisfied with any ruling or decision of the Tax Administrator that is made pursuant to the authority conferred by this chapter, and who has filed the required returns or other documents pertaining to the contested issue, may appeal therefrom to the Board of Review by filing a request with the Board of Review. The request shall be in writing, shall state why the ruling or decision should be deemed incorrect or unlawful, and shall be filed within 30 days from the announcement of the ruling or decision by the Tax Administrator.

(D) The Board of Review shall, unless waived by the appealing taxpayer, schedule a hearing within 45 days after receiving the request. The Board of Review shall have jurisdiction to affirm, reverse, or modify any such ruling or decision or any part thereof, shall issue a final decision on the appeal within 90 days after its final hearing, and shall send a copy of its final decision by ordinary mail to all parties to the appeal within 15 days after issuing the decision.

(E) The Tax Administrator or appealing taxpayer may appeal the Board of Review's decision to a court of competent jurisdiction within thirty days from the announcement of such ruling or decision. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

#### **§ 36.14 LANDLORD REPORTING.**

(A) Every landlord/property owner who leases a dwelling(s), whether for residential, industrial, commercial, or other purposes must report semi-annually, on a form approved by the City, required tenant information. The report due date for January

through June shall be July 31st of the same year, and for July through December shall be January 31st of the following year. The required tenant information is as follows:

- (1) All tenant(s) and/or resident(s) occupying the dwelling(s);
- (2) The date(s) when any tenant(s), eligible taxpayer(s), and/or resident(s) moves into or vacates a dwelling(s), including forwarding addresses, if known; and
- (3) Whether the dwelling(s) is government subsidized.

**(B) If a landlord/property owner fails to file, or to timely file, the completed reports required by this section, it shall be considered an offense and the following shall apply:**

**(1) The landlord/property owner shall be assessed a penalty of fifty dollars (\$50) for the first offense and one hundred dollars (\$100) for each subsequent consecutive (back-to-back) offense; provided that,**

**(2) If any penalty remains unpaid each future violation, whether or not consecutive, will result in a one hundred dollar (\$100) penalty until such time as all penalties are fully paid.**

### **§ 36.15 ALLOCATION OF COLLECTED FUNDS.**

(A) All moneys collected under the provisions of this chapter shall be deposited **in the General Fund**. These funds shall be disbursed in accordance with division (B) hereof.

(B) All moneys collected under the provisions of this chapter shall be used for the following purposes:

- (1) Street, highway, and drainage construction, maintenance, and repair.
- (2) Capital improvements and acquisition of major motorized equipment.
- (3) General municipal operations.
- (4) Any other use permitted or authorized by state or federal law.

### **§ 36.16 COLLECTION OF CITY INCOME TAX AFTER TERMINATION OF ORDINANCE.**

(A) This chapter shall continue in effect insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of the taxes levied hereunder are fully paid and any and all suits and prosecutions for the collection of the taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in §§ 36.11 and 36.99.

(B) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in §§ 36.046, 36.081, 36.060, and 36.061, as though the same were continuing.

### **§ 36.17 SAVING CLAUSE.**

If any sentence, clause, section or part of this chapter, or any tax against any individual or 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 chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of City Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

### **§ 36.18 RULES AND REGULATIONS.**

The City hereby adopts the Regional Income Tax Agency (R.I.T.A.) Rules & Regulations, including amendments that may be made from time to time, for use as the City of Silverton's Income Tax Rules and Regulations. In the event of a conflict with any provision(s) of the City of Silverton Income Tax Ordinance and the R.I.T.A. Rules & Regulations, the Ordinance will supercede.

### **§ 36.999 VIOLATIONS AND PENALTIES.**

(A) Any person who:

(1) Fails, neglects, or refuses to make any return or declaration required by this chapter;

(2) Makes any incomplete, false, or fraudulent return;

(3) Willfully fails, neglects, or refuses to pay the tax, penalties, or interest imposed by this chapter;

(4) Willfully fails, neglects, or refuses to withhold the tax from employees or remit that withholding to the Tax Administrator;

(5) Refuses to permit the Tax Administrator, or any duly authorized agent or employee thereof, to examine the person's books, records, papers, and federal and state income tax returns relating to the income or net profits of a taxpayer;

(6) Fails to appear before the Tax Administrator and to produce the person's books, records, papers, or federal and state income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator;

(7) Refuses to disclose to the Tax Administrator any information with respect to the income or net profits of a taxpayer;

(8) Fails to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator authorized hereby;

(9) Gives to an employer false information as to the person's true name, correct social security number, and residence address, or fails to promptly notify an employer of any change in residence address and the date thereof;

(10) Fails to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid, and the City's income tax withheld, or knowingly gives the Tax Administrator false information; or

(11) Attempts to do anything whatsoever to avoid the payment of the whole or any portion of the tax, penalties or interest imposed by this chapter;

shall, in addition to any other penalties provided, be guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500) or imprisoned not more than sixty (60) days, or both, for each offense.

(B) Whoever violates § 36.09(D) (Confidentiality) is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500) or imprisoned not more than sixty (60) days, or both, for each offense.

(C) Whoever violates § 36.14 is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500) or imprisoned not more than sixty (60) days, or both, for each offense. For purposes of this division (C), each tenant, eligible taxpayer, and/or resident not reported in accordance with the required filing constitutes a separate offense.

(D) Prosecutions for an offense made punishable under this section or any other provision of this chapter shall be commenced within three years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of 25% or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.

(E) The failure of any employer or person to receive or procure a return, declaration, or other required form shall not excuse him or her from making any information return, return or declaration, from filing a form, or from paying the tax.