

ORDINANCE NO. 2005-23

AN ORDINANCE AMENDING SECTION 181.03 OF THE
CODIFIED ORDINANCES OF THE CITY OF ST. MARYS, OHIO,
AS MANDATED BY ORC 718.14(B)

WHEREAS, ORC 718.14(B) requires the City to stipulate the treatment of Sub Chapter S corporation by rule.

NOW, THEREFORE, BE IT ORDAINED BY COUNCIL FOR THE CITY OF ST. MARYS, OHIO:

SECTION 1. That Sections 181.03 of the Codified Ordinances of the City of St. Marys is amended to read as follows:

181.03 IMPOSITION OF TAX

(a) Subject to the provisions of Section 181.15, an annual tax for the purpose specified in Section 181.01, shall be levied on and after April 1, 1968, at the rate of one percent (1%) per annum upon the following:

- (1) On all qualifying wages, commissions, rentals, and other compensation earned or received on and after April 1, 1968, by residents of the City.
- (2) On all qualifying wages, commissions, rentals, and other compensation earned or received on and after April 1, 1968, by nonresidents for works done or services performed or rendered in the City.
- (3) A. On the portion attributable to the City of the net profits earned on and after April 1, 1968, of all resident associations, unincorporated, businesses, pass-through entities, professions, or other activities derived from work done or services performed or rendered, and business conducted in the City.
B. On a resident partner's or owner's share of the net profit of a resident association or other unincorporated business entity not attributable to the City and not levied against such association or other unincorporated business entity.
- (4) A. On the portion attributable to the City of St. Marys, the net profits earned on and after April 1, 1968, of all nonresident associations, unincorporated business, professions, or other activities, derived from sales made, work done, or services performed or rendered or business or other activities derived from work done or services performed or rendered, and business or other activities conducted in the City, whether or not such association or unincorporated business entity has an office or place of business in the City.
B. On a resident partner's or owner's share of the net profits of a nonresident association or other ~~unincorporated~~ business entity not attributable to the City and not levied against such association or other ~~unincorporated~~ business entity.

C. Distribution received by an owner domiciled in the City from any pass-through entity from a non-resident pass-through entity such as a partnership, limited partnership, limited liability company or Sub-Chapter S corporation shall be considered as income from an association as defined in Section 181.03 (a) (4) B) of the Ordinance. A credit shall be given for any Ohio municipal income tax paid by the non-resident entity at the entity level, (i.e. in the hand of the entity), where such non-resident entity is domiciled. This Division (C) codifies the interpretation of this Section as of January 1, 2003. Ref. R.C. 718.14(B)

- (5) **A.** On the portion attributable to the City of the net profits earned on and after April 1, 1968, of all corporations derived from sales made, work done or services performed or rendered and business or other activities conducted in the City, whether or not such corporations have an office or place of business in the City.
- B. The tax imposed by this chapter on corporations shall apply at the entity level to resident corporations which have elected to be taxed as a Sub-Chapter S corporation under the Internal Revenue Code. This Division (B) codifies the interpretation of this Section as of January 1, 2003. Ref. R.C. 718.14 (D).**
- (6) All income received as gambling winnings as reported on IRS Form W-2G, Form 5754 and any or any other Form required by the Internal Revenue Service that reports winnings from gambling, prizes and lottery winnings. Provided however that a taxpayer who has a liability under this paragraph may deduct demonstrated wagering losses, notwithstanding the inability of the taxpayer to claim such losses on his federal return because taxpayer's itemized deductions did not exceed the standard federal deduction. Such deduction shall be limited to the amount of wagering gains solely for the year in which the gains are incurred and may not be carried forward.

(b) An employee who pays his business expenses from his commissions or other compensation, without reimbursement from his employer, may deduct from his gross commissions or other compensation business expenses allowed by the Internal Revenue Service for federal income tax purposes, but only to the extent such expenses are incurred in earning commissions or other compensation subject to the tax imposed by this chapter.

(c) Net profit from a business or profession conducted both within and without the boundaries of the municipal corporation shall be considered as having a taxable situs in the 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 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.

(B) Ascertaining the percentage which the gross receipts of the business from sales made and services performed in the City, during the period covered by the return, are of the total gross receipts from all sales and services, wherever made or performed, during such period.

1. Sales made within the City shall be deemed to include all sales of tangible personal property which is delivered within the City regardless of where title passes if shipped or delivered from a stock of goods within the City.

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

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

(C) Ascertaining the percentage which the total wages, salaries qualifying and other compensation paid during the period covered by the return, to employees for services performed in the City is of the total qualifying wages, commissions, and other compensation paid, during such period, to all employees within and outside the City.

(D) Adding together the percentage determined in accordance with subsections 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. A factor is applicable even though it may be allocable entirely in or outside the City.

(2) Provided, however, that in the event a just and equitable result cannot be obtained under the formula provided for herein, the Board of Review, upon application of the Taxpayer or the Tax Commissioner, shall, under uniform regulations adopted by the Board, have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

(d) The tax provided for herein shall not be levied on the following:

(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 Ohio National Guard;

- (2) Poor relief, pensions, unemployment compensation or similar payments, including disability benefits received from local, State, or federal governments, or from charitable, religious, or education organizations;
- (3) Alimony received;
- (4) Income, dues, contributions, receipts from casual entertainment, amusements, sports events, and health and welfare activities received by religious, fraternal, charitable, scientific, literary, educational institutions or organizations, labor unions, lodges, and similar organizations;
- (5) Any association, organization, corporation, club, or trust, which is exempt from federal taxes or income by reason of its charitable, religious, educational, literary, scientific, etc., purposes;
- (6) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, items of income already taxed by the State, and income of a decedent's estate during the period of administration, except such income from the operation of a business; or
- (7) Earnings and income of all persons under sixteen years of age whether residents or nonresidents.
(Ord. 1995. Passed 7-27-64; Ord. 2187. Passed 2-26-68)
- (8) Compensation paid under Section 3501.28 or 3501.36 of the revised code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars (\$1,000.00) annually.
- (9) Parsonage allowance pursuant to Section 107 of the Internal Revenue Code.
- (10) Compensation paid to an employee of a transit authority for operating a transit bus in or through the municipal corporation, unless the bus is operated on a regularly scheduled route, the operator is a resident or domiciled in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation.
- (11) Intangible income. (Ord. 2004-40A. Passed 10-23-00.)

SECTION 2. That existing Section 181.03 of the Codified Ordinances of the City of St. Marys is hereby repealed.

SECTION 3. That this ordinance shall take effect and be in force at the earliest date provided by law.

Passed this 26th day of September, 2005.

/s/ Daniel R. Hoelscher, Jr.
President of Council

ATTEST:

/s/ Betty Wehrman
Clerk of Council

Approved by the Law Director this 26th day of September, 2005.

/s/ Kraig E. Noble

Law Director

Approved by the Mayor this 26th day of September, 2005.

/s/ Greg Freewalt

Mayor