

ARTICLE VI  
COLLECTION OF TAX AT THE SOURCE

A. Duty of Withholding

1. Except as otherwise provided herein, it is the duty of each employer within or doing business within the City of Brook Park, who employs one or more persons whether as an employee, officer, director or otherwise, to deduct each time any compensation is paid the tax of two percent (2.0%) from:

a. The gross amount of all salaries, wages, bonuses, incentive payments, fees, commissions or other form of compensation paid to residents of the City of Brook Park, regardless of the place where the services are rendered.

b. All compensation paid nonresidents for services rendered, work performed or other activities engaged in within the City of Brook Park.

2. All employers within or doing business within the City of Brook Park are required to make the collections and deductions specified in the Articles, regardless of the fact that the services on account of which any particular deduction is required, as to residents of the City of Brook Park, were performed outside of the City of Brook Park.

3. Employers who do not maintain a permanent office or place of business in the City of Brook Park, but who are subject to tax on net profits attributable to the City of Brook Park, under the method of allocation provide for in the ordinance, are considered to be employers within the City of Brook Park and subject to the requirement of withholding.

4. The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation paid. If the employer has withheld the tax and failed to pay the tax withheld to the Director of the Department of Taxation, the employee is not liable for the tax so withheld.

5. Commissions and fees paid to professionals, brokers and others who are independent contractors, and not employees of the payer, are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file a declaration and return and pay the tax pursuant to the provisions of the ordinance and Articles V and VII of the regulations. The employer, however, is responsible for providing the Department of Taxation with copies of any 1099's or other records of payment.

6. Where a nonresident receives compensation for personal services rendered or performed partly within and partly without the City of Brook Park, the withholding employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within the City of Brook Park in accordance with the following rules of apportionment:

- a. If the nonresident is a salesman, agent or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted or chiefly effected by the employee within the City of Brook Park bears to the total volume of business transacted by him both within and outside of the City of Brook Park.
- b. The deducting and withholding of personal service compensation of other nonresident employees, including officers of corporations, shall attach to the proportion of the personal service compensation of such employee which total number of his working hours within the City of Brook Park is of the total number of working hours.
- c. The fact that nonresident employees are subject to call at any time does not permit the allocation of pay for time worked within the City of Brook Park on a seven-day per week basis. The percentage of time worked in the City of Brook Park will be computed on the basis of a forty hour week unless the employee notifies the Director of the Department of Taxation that a greater or lesser number of hours per week is worked.
- d. The occasional entry into the City of Brook Park of a nonresident employee who performs the duties, for which he is employed primarily outside the city, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the City of Brook Park. "However, Interstate Truck Drivers, Regional Salesmen traveling interstate, flight crews and Others with similar work and travel situations, reporting to a terminal, office, etc. in Brook Park must have a minimum of twenty five percent (25%) of wages subject to Brook Park City income tax at two percent (2.0%) withheld and paid to Brook Park for various city services and protection services provided and available to nonresidents while being provided a place to work in the city."
- e. A non-resident individual who works in the City of Brook Park for 12 or fewer days per year shall be considered an occasional entrant, and shall not be subject to the City of Brook Park municipal income tax for those 12 days provided however that municipal income tax is paid to the city where the employer's principal place of business is located. For purposes of the 12-day calculation, any portion of a day worked in Brook Park shall be counted as one day worked in Brook Park.

Beginning with the thirteenth day, or if no municipal tax has been withheld for the first twelve days for the taxing municipal corporation of the employer's principal place of business, the employer of said individual shall begin withholding 2% income tax from the remuneration paid by the employer to the individual, and shall remit the withheld income tax to the City of Brook Park in accordance with Chapters 1705 and 1713. 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 of Brook Park by the individual for the first twelve days.

If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the City of Brook Park

The occasional entry does not apply to entertainers or professional athletes, their employees or individuals who perform services on their behalf, or to promoters and booking agents of such entertainment events and sporting events.

f. In the case of employees who are non-resident professional athletes, the deduction and withholding of personal service compensation shall attach to the entire amount of compensation received for games which occur in the City of Brook Park. In the case of a non-resident athlete not paid specifically for a game played in the City of Brook Park, the following apportionment formula must be used: The compensation is the total income earned during the taxable year, including incentive bonuses, roster bonuses and other extras multiplied by a fraction, the numerator of which is the number of exhibition, regular season and post season games the athlete played (or was available to play for his team, as for example, with substitutes), or was excused from playing because of injury or illness, in the City of Brook Park during the taxable year, and the denominator of which is the total number of exhibition, regular season and post season games which the Athlete was obligated to play under contract or otherwise during the taxable year, including games in which the athlete was excused from playing because of injury or illness. Exhibition games are only those games played before a paying audience, and played against another professional team from the same professional league. In the case of non-resident salaried athletic team employees who are not professional athletes, deduction and withholding shall attach to personal service income in the manner set forth in subsection 6(b), supra.

g. Any person who shall employ or contract for the services of any entertainer, entertainment act, sports event, promotional booth, special event, band orchestra, rock group, theatrical performance, lecturers, speakers, etc, (this list is not exhaustive of types of entertainers) shall be subject to the two percent (2%) withholding tax:

.1 Any person who, acting as a promoter, booking agent or employer, engages the services of, or arranges the appearance of any entertainer, entertainment act, sports event, band orchestra rock group, theatrical performance and the like in the City of Brook Park, and who makes any payment arising from said appearance shall be deemed to be an employer and shall, for the purposes of collection of the income tax, be required to withhold, report and pay over to the Director of the Department of Taxation the tax at the applicable rate, on the gross amount so paid on the completion of the engagement, said reports and payments to be made in compliance with Chapter 1705 and Chapter 1713.; or

.2 Any person, who rents facilities to any entertainer, entertainment act, sports event, promotional booth, special event, band orchestra, rock group, theatrical performance and the like for use in performing services within the City of Brook Park, and who makes any payment arising from said use of facilities shall be deemed to be an employer and shall for purposes of collection of the income tax, be required to withhold, report and pay over to the Director of the Department of Taxation the applicable tax at the rate of two percent (2%) based on the amount so paid on completion of the engagement, said reports and payments to be made to the Director of Taxation in the manner prescribed in Chapter 1705 and 1713 of the codified ordinances.

.3 The income of non-resident entertainers is the entire amount received for performances, engagements or events which occurred in the City of Brook Park. In the case of a non-resident entertainer who is not paid specifically for a performance and apportionment of total income shall be made by formula using as a numerator the number of performances the entertainer performed (or was available to perform, as for example with understudies) in Brook Park, and the denominator is the total number of performances which the entertainer was obligated to perform under contract or otherwise during the taxable year.

7. An employer shall withhold the tax on the full amount of any advances made to an employee on account of commission.

8. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses necessary and actually incurred by the employee in the actual performance of his services, provided such expenses are incurred in earning compensation, including commissions, and are not deducted as a business expense by the employee under Article III of these regulations.

9. An employer whose records show that an employee is a nonresident of the City of Brook Park and has no knowledge to the contrary, shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services rendered or work done outside the City of Brook Park by such an employee, provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Director of the Department of Taxation notifies said employer in writing that such employee is a resident of the City of Brook Park. All employees are required to notify the employer of any change of residence and the date thereof.

10. A Brook Park employer required to withhold the tax from a Brook Park resident for work done or services performed in another municipality, and who does so withhold and remit to such other municipality, shall be relieved from the requirement of withholding the Brook Park tax from such Brook Park resident, except where the rate of tax for such other municipality is less than the rate of tax imposed by this ordinance. In such case the employer shall withhold and remit the difference to the city of Brook Park.

11. No person shall be required to withhold the tax on the wages or other compensation paid domestic servants employed exclusively in or about such person's residence, but such employee shall be subject to all the requirements of the ordinance.

#### B. Return and Payment of Tax Withheld and Status of Employees

1. The deduction from salaries, wages, and other compensation required to be made by employers are to begin with the compensation earned on or after the effective date of the ordinance.

The employer (in addition to any return required to be filed with respect to his own earnings or net profits) shall, on or before the last day of the month next following each quarterly period, make a return and pay to the Director of the Department of Taxation the full amount of the tax so deducted or withheld with respect to compensation paid all of his employees subject to the tax under the ordinance. Provided, however, that the Director of the Department of Taxation may require an employer to remit withholding taxes at more frequent intervals as stipulated in Chapter 1713 of the codified ordinances.

The return required to be filed under this Article shall be made in accordance with Chapter 1713 on a form obtainable on request from the Director of the Department of Taxation or on the internet, or on a generic form approved by the Director of the Department of Taxation.

## 2. Manager's Obligation:

a. Every manager is deemed to be a trustee for the City of Brook Park in collecting and holding the tax required under the ordinance to be withheld, and the funds so collected by such withholding are deemed to be trust funds.

Every manager is liable to the City of Brook Park for payment of such trust, whether actually collected by such employer or not. Any tax deducted and withheld is considered paid to the City of Brook Park, whether or not the employer actually remits the tax to the City of Brook Park for purposes of determining employee payments or credits.

b. All managers shall be personally liable to the extent of the tax, interest and penalty, jointly and severally, for failure to file the employer's return or to pay the employer's tax, interest and penalty as required under this ordinance.

c. No change in structure by an employer, including a fundamental change, discharges its managers from liability for the employees' or manager's failure to remit funds held in trust, to file a tax return or to pay taxes.

3. If more than the amount of tax to be deducted by the ordinance is withheld from an employee's pay, such excess may be refunded by the employer or the Director of the Department of taxation, depending upon the circumstances and the time when the over-withholding is determined as follows:

### a. Current Employees

.1 If the over-withholding is discovered in the same period, the employer shall make the necessary adjustment directly with the employee and the amount to be reported on the return as withheld shall be the corrected amount.

.2 If the over-withholding is discovered in a subsequent period of the same calendar year, the employer may make the proper adjustments with the employee. In such case the return for the period in which the adjustment is made shall indicate the total amount

actually withheld, the amount of the adjustment deducted there from, and the corrected amount reported on the return.

.3 If the over-withholding is discovered in the following year, the employer should notify the Director of the Department of Taxation of such over-withholding and the circumstances thereof. Upon proper verification, the Director of the Department of taxation shall refund to the employee the amount of such excess withholding.

b. Former Employees:

.1 In the case of too much has been withheld from an employee who is no longer employed by the employer, the employer shall notify the director of the Department of Taxation of the amount and circumstances of such over-withholding and the Director of the Department of Taxation shall then refund to the employee the amount of such excess withholding upon the request of the employee in accordance with the provisions of Article XI.

.2 If the error is discovered by the employee such employee shall file a claim with the Director of the Department of Taxation and, upon verification thereof by the employer, the Director of the Department of Taxation shall refund to the employee the amount of excess withholding as directed by the ordinance.

c. Nonresidents Employed Outside the City:

.1 Where an employer has withheld the tax from all wages of a nonresident of the City of Brook Park and such nonresident has been employed outside the City of Brook Park for all or part of the time, such employee shall file a claim with the Director of the Department of Taxation covering such erroneous withholding and the Director of the Department of Taxation shall upon verification thereof by the employer, refund to the employee the amount of such excess withholding in accordance with the ordinance.

d. Insufficient Withholding:

.1 If less than the amount of tax required to be deducted is withheld from an employee, such deficiency shall be withheld from subsequent wages. However, if the employee-employer relationship has terminated, the employer shall notify the Director of the Department of Taxation of such deficiency and the reason therefore. The employer has the final responsibility of paying any tax due but unpaid to the Department of Taxation.

4. On or before the 31st day of January, following any calendar year in which such deductions have been made by an employer, such employer shall file with the Director of the Department of taxation on the form prescribed by the Director of the Department of taxation, an information return for such employee from whom the City of Brook Park's income tax has been withheld, showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of the City of Brook Park's income tax withheld from such employee. The transmittal shall

include copies of all W-2s, 1099s, etc. issued by resident employers in the City of Brook Park.

5. The gross compensation to be reported for each employee shall be for the full twelve (12) calendar months of the year, or such portion thereof as the employee was actually employed.

6. All payments not subject to withholding shall be reported on forms as required by the Director of the Department of Taxation...

7. In addition to such information returns, and at the time the same are filed, such employer shall file with the Director of the Department of Taxation a form to enable the Director of the Department of Taxation to reconcile the sum total of compensation paid and taxes withheld as disclosed by information return W-2, or list of employees, and prior returns and remittances made pursuant to the ordinance.

#### C. Fractional Parts of Cent

In deducting and withholding the tax at the source and in payment of any tax due under the ordinance, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more in which case it shall be increased to one cent.

#### D. Liability For Employer's Taxes

If any employer which is liable for tax, interest and penalty imposed by this ordinance, undergoes a fundamental change, then the employer and its manager shall be liable for taxes, interest and penalty due up to the date of the fundamental change. Taxes and final tax returns shall be due immediately after the fundamental change. Any successor employer shall withhold from any purchase price that the successor owes to the predecessor employer an amount sufficient to pay all unpaid taxes, interest and penalty which the predecessor owes pursuant to this ordinance. The successor employer shall make such withholding until such time that the predecessor employer has paid such taxes, interest and penalties. If the successor fails to withhold said amount, then the successor and, in a personal manner, the successor's manager shall be jointly and severally liable for the payment of said taxes, interest and penalty.