

# Helpful Guide

This guide serves as a tool beginning with **tax year 2016**, to clarify sections of Ohio Revised Code Section 718 (ORC 718) and Codified Ordinance 880. While not all inclusive, this guide will cover the most common questions and concerns received by the City of Brunswick tax department. To the extent there is a conflict between any part of this guide and a provision or limitation of ORC 718, the required provisions or limitations of ORC 718 will control.

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### **Domicile (Residency)**

A list of 25 factors used to determine domicile is included in ORC 718.012. An individual is presumed to be domiciled in the City of Brunswick for all or part of a taxable year if the individual was domiciled in Brunswick on the last day of the immediately preceding taxable year or if the tax department reasonably concludes that the individual is domiciled in Brunswick for all or part of the taxable year.

### **Quarterly estimated taxes**

The City of Brunswick has waived the mandatory requirement for filing and payment of quarterly estimated taxes, 880.08 (a). However, taxpayers may elect to file and pay quarterly estimates. The City of Brunswick does mandate annual filing and payment of tax, 880.08 (g), regardless of whether the taxpayer elects to pay quarterly.

The applicable due date for the quarterly payments will be the 15<sup>th</sup> day of April, June, September, and December, if elected.

### **Qualifying wages**

To determine qualifying wages, begin with box 5 or 18 (whichever is higher) on the W-2. If the W-2 is incorrect, the taxpayer should request a corrected W-2 (W-2C) from their employer. If the taxpayer is not able to get a W-2C, then the taxpayer will need to add/deduct the following amounts:

#### Deduct any amount:

- Included in a section 125 plan/program (cafeteria plans), ORC 718.01 (R) (1)(a)
- That constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of employer or other payer. (3<sup>rd</sup> party sick pay), ORC 718.01 (R) (1)(b)

#### Add any amount (if not already included in wages):

- Attributable to a nonqualified deferred compensation plan (Box 11), ORC 718.01 (R) (1)(c)
- That arises from the sale, exchange, or other disposition of a stock option, ORC 718.01 (R) (2)(b)
- That is not included in wages if the amount is an amount described in 401(k), 403(b), or 457 and other qualified deferred compensation plans, ORC 718.01 (R) (2)(c)
- That is supplemental unemployment compensation and not included in wages, ORC 718.01 (R) (2)(d)

### **Nontaxable vs. Taxable Income**

Taxable income is defined as all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident.

**See the table on the next page for an extensive list of examples of taxable/nontaxable income.**

Any questions regarding taxable/nontaxable income can be addressed with the tax department.

| <b>Non-taxable</b>   | <b>Taxable</b>   |
|--|--|
| military pay   | earned income/qualifying wages   |
| interest, dividends  | prizes or awards   |
| capital gains  | net profits of resident businesses   |
| social security benefits   | lottery, gambling winnings and similar games of chance or skill  |
| railroad retirement benefits   | royalties  |
| unemployment compensation  | compensation paid for lost salaries or wages or punitive damages   |
| pensions   | tips   |
| 3 <sup>rd</sup> party sick pay   | tax shelter plans  |
| annuity payments   | vacation and holiday pay   |
| disability payments  | wage continuation benefits   |
| proceeds of sickness, accident, or liability insurance policies  | director's fees  |
| election official compensation under \$1,000   | stock options not designated as capital gains  |
| dues, contributions, similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, similar organizations | property in lieu of cash   |
| alimony and child support  | sick pay   |
| compensation for personal injuries or damages to property from insurance proceeds  | bonuses and incentive payments   |
| income of individual that is under 18 years of age   | clergy pay   |
| any amount that constitutes compensation attributable to a section 125 plan (cafeteria plan)   | company closing benefits   |
| retirement benefit payments including 401k and deferred compensation withdrawals   | deferred compensation contributions, including amounts attributable to a nonqualified deferred compensation plan   |
| parsonage allowance  | employer paid premiums for group-term life insurance in excess of \$50,000   |
|  | strike benefits  |
|  | supplemental unemployment  |
|  | depreciation recapture   |
|  | resident partner's or stockholder's distributive share of a nonresident partnership or S-corporation net profits (see schedule income section for more info) |

### **Annual return; filing**

Brunswick requires an annual return to be completed. Each taxpayer eighteen years and older, shall, **whether or not a tax is due**, make and file a return on or before April 15. If April 15 falls on a weekend day or holiday, then the return is due on the federal individual due date. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within three and one-half months from the end of such fiscal year or period, 880.06 (b).

If a taxpayer turns 18 partially through the year, the income earned after turning 18 will be taxable. If the income needs to be pro-rated, it is best to provide a pay-stub on or around the date the taxpayer turned 18 to get the most accurate amount of taxable income.

### **Deceased taxpayer**

If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

### **No earned income**

If the taxpayer has no earned income, the taxpayer shall indicate such on the income tax return; sign it, date it and file along with a copy of the Federal form 1040 by the normal due date. If information is received by the income tax department that a taxpayer has received taxable income, the city may request returns up to 6 years prior.

### **Student exemption**

An individual will qualify for the student exemption from City income tax if the individual satisfies each of the following: (1) is a dependent for federal income tax purposes of a resident; (2) is enrolled at a post-secondary institution of higher learning located outside the City and lives outside the City while enrolled at such an institution; and (3) earns or receives qualifying wages while living outside the City from an employer not located in the City. Any such individual that satisfies the requirements of the immediately preceding sentence is, however, **still subject to the annual City income tax return filing requirements**, 880.04.

Example 1: A taxpayer over the age of 18 who is a dependent of their parent in Brunswick is attending University of Akron and living outside the City of Brunswick. While living on campus, the taxpayer has a part-time job in the bookstore. This taxpayer will file a return as student exempt and the income earned will be exempt from the City of Brunswick income tax.

Example 2: A taxpayer over the age of 18 who is a dependent of their parent in Brunswick is attending the Ohio State University and living outside the City of Brunswick. While home in Brunswick for the summer, the taxpayer works part-time at a grocery store. This taxpayer will file a return for the income earned while residing in Brunswick during the summer.

Example 3: A taxpayer over the age of 18 who is a dependent of their parent in Brunswick is attending Baldwin Wallace University while living at home in Brunswick. The taxpayer works part-time at the local movie theater. This taxpayer will file a return on all income earned throughout the year.

### **Signature on return**

Each return shall contain the signature of the taxpayer or duly authorized agent and of the person who prepared the return and shall include the taxpayer's social security number or taxpayer identification number.

### **Required attachments**

The City of Brunswick requires individual taxpayers to include with each annual return copies of the following documents:

- W-2 form- including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation
- IRS Form 1040
- Any other documentation necessary to support the return if a refund is requested

After a taxpayer has submitted a return, the tax administrator may request, and the taxpayer shall provide, any information, statements, or documents required to determine, and verify, the tax liability.

- Schedules C, E, F, 2106 expenses including Schedule A, Form 4797, and support for 'other income' will be requested if not included with original filing

### **Minimum amount due**

No remittance of payment is required if the amount due is **\$10 or less** on individual or net profit returns.

### **Federal extensions**

A taxpayer that has requested a Federal extension shall automatically receive an extension for filing the municipal income tax return. The extended due date is the 15<sup>th</sup> day of the 10<sup>th</sup> month after the last day of the taxable year to which the return relates. Failure to make a payment of at least as much as was due the previous year by the normal due date for the annual return will result in penalty and interest.

To avoid confusion and unnecessary correspondence, it is strongly suggested and preferred that the taxpayer mail a copy of the Federal Extension Form (4868 or 7004) by the normal due date of the return to the local tax office at 4095 Center Rd, Brunswick, OH 44212 Attn: Income Tax Department.

**\*An extension of time to file is not an extension of time to pay any tax due.**

### **Armed forces income**

The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state are exempt from municipal income tax. Each member of the national guard of any state and each member of a reserve component of the armed forces of the US called to active duty may apply to the tax administrator for both an extension of time for filing and for payment of taxes during their service and for 180 days thereafter.

### **Postmark date**

If any report, claim, statement, or other document required to be filed, or any payment made, is delivered after the period or that date by the US postal service, the date of the postmark stamped on the cover of the envelope shall be deemed to be the date of delivery or date of payment.

If there is more than one date of postmark, the earliest date imprinted on the cover by the US postal service will be used as the official date of the postmark.

### **S-Corporation income**

Because the City of Brunswick was imposing, assessing, and collecting a tax on a resident S-Corporation shareholder's distributive share of net profits of the S-Corporation on December 31, 2004, and a majority of the electors of the municipal corporation who voted on the question of continuing to tax such shares after December 31, 2004, voted in favor of that question at an election held on November 2, 2004, **we are permitted to continue taxing this income.**

### **Net operating loss (NOL) offset**

Any resident's net operating loss (NOL) incurred in the taxable year, including resident's distributive share of S-Corporations, can be used for the taxable year and the following 5 years. This loss can be used against any other net profit (Schedule C, E, F) of the resident. The income for each entity must be reported prior to any NOL carried forward. Also, the usage of the NOL will reduce the credit on taxable income paid to another city.

Please refer to Schedule A of the tax return and instructions to calculate the tax due after the credit calculation.

**\*Please note there is no offset of business losses against wages earned.**

### **Federal Form 2106**

A taxpayer may use Federal Form 2106 and Schedule A, subject to the 2% limitation, that the individual deducted for federal income tax purposes for the taxable year, to reduce income on the individual tax return. If the taxpayer is a non-resident, the 2106 expenses must be related to the performance of services in Brunswick, otherwise the deduction will be disallowed. Any adjustment to Brunswick income cannot exceed the amount deducted on the Federal return.

**\*Please note that the City will need documentation of Schedule A and 2106 Business Expenses if not submitted with tax return.**

### **Gambling winnings**

Per Federal Regulations, a taxpayer is considered a professional gambler, and able to use losses and expenses, if the taxpayer files a Schedule C at the Federal level. (conducted as a business). If there was not Federal Schedule C filed, no deductions for losses or expenses will be allowed on the return.

### **Requests for refunds**

Refunds will be issued by request for overpayments **exceeding \$10** and for amounts paid erroneously if **over \$10** pursuant to ORC 718.19(A) (1, 2).

Requests for refunds shall be filed with the tax administrator and/or designee on the form prescribed **within 3 years** after the tax was due or paid, whichever is later. The tax administrator and/or designee will require the taxpayer to file any documentation necessary to substantiate the request.

Full-year non-resident taxpayers requesting a refund should use the Application for Refund form found on the city's website for days worked out of city, employer error, and taxpayers under the age of 18.

### **Penalties**

Penalties will be assessed for failure to pay the income tax due on a tax return, failure to file timely, and failure to pay employer withholding amounts as follows:

A penalty of 15% of the amount not timely paid will be applied to unpaid income tax for individual and net profit returns.

A penalty of \$25 for each month of failure to timely file, up to \$150, for each failure will be applied.

A penalty of 50% of the amount not timely paid will be applied to any unpaid withholding tax from employer.



## **Interest**

In addition to penalties, there will also be interest charged on any unpaid tax amounts. Interest rate, as used in this section, refers to the federal short-term rate, rounded to the nearest whole number, plus 5%. The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined.

By the 31<sup>st</sup> of October each year, the City of Brunswick will publish the interest rate on the City website. [www.brunswick.oh.us](http://www.brunswick.oh.us)

**\*Brunswick may impose on the taxpayer the post-judgment collection costs and fees, including attorney fees**

## **Assessment definition; Service of Assessment**

Once an assessment is determined to be required, a copy of each assessment shall be served upon the taxpayer by personal service, certified mail, or by a delivery service.

Once served, a taxpayer may protest the ruling of the assessment by filing an appeal with the Board of Tax Review **within 60 days** after receipt of service.

## **Board of Tax Review**

Any person who has been issued an assessment may appeal the assessment to the Board by filing a request with the Board. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within 60 days after the taxpayer receives the assessment.

The Board will schedule a hearing to be held within 60 days after receiving an appeal of an assessment, unless the taxpayer requests additional time to prepare or waives a hearing. The taxpayer may appear before the Board and may be represented by an attorney, CPA or other representative. The Board may allow a hearing to be continued as jointly agreed to by both parties within 120 days after the first day of the hearing.

The Board may affirm, reverse, or modify the Tax Administrator's assessment or any part of that assessment. The Board of Tax Review shall issue a final determination on the appeal within 90 days after the Board's final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within 15 days after issuing the final determination. The taxpayer or the Tax Administrator may appeal the Board's final determination.

## **Audits**

At or before the commencement of an audit, the tax administrator shall provide to the taxpayer a written description of the roles of the tax administrator and of the taxpayer during an audit and a statement of the taxpayer's rights, including any right to obtain a refund of an overpayment of a tax.

The tax administrator shall prescribe a form by which a taxpayer may designate an attorney, accountant, or bookkeeper to assist or represent the taxpayer in the conduct of the proceedings.

**Request for opinion of the tax administrator**

A taxpayer may submit a written request for an opinion of the tax administrator as to whether, or how, certain income, source of income, or a certain activity or transaction will be taxed. The written response will come from the tax administrator or designee.

**Business income subject to tax**

Please refer to ORC 718.02 and the City of Brunswick tax return and instructions to calculate or apportion income.

The City of Brunswick requires a taxpayer that is not an individual to include the following Federal returns, as applicable:

- Form 1041
- Form 1065
- Form 1120
- Form 1120-REIT
- Form 1120F
- Form 1120S

If a return is filed through the Ohio Business Gateway (OBG), the documents shall be mailed or submitted electronically with a notation that the local tax return was filed through OBG.

A resident individual shall report the net profit from all real estate activity on the individual's annual tax return for the resident municipality. They may claim a credit for taxes they paid on the net profit to another municipality to the extent such a credit is allowed.

**Realtor income**

Commissions received by a **real estate agent** or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to a municipality based upon the ratio of commission received from the sale, purchase, or lease of real estate located in the municipality to the commissions received from the sale, purchase, or lease of real estate everywhere.

**Consolidated municipal income tax return**

For taxable year beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the municipal corporation's income tax in that taxable year, and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year.

The election is binding for each subsequent 5-year period beginning with the first taxable year of the initial election unless the taxpayer elects to discontinue filing consolidated municipal income tax returns. The election to discontinue must be made in the first year following the last year of a 5-year consolidated municipal income tax return election period, and is binding for a 5-year period.

**Withholding taxes from qualifying wages**

Taxes required to be deducted and withheld shall be remitted monthly if the total taxes deducted and withheld in the preceding calendar year exceeded \$2,399, or if the total amount of taxes deducted and

withheld in any preceding month of the calendar quarter exceeded \$200. Otherwise, the payments may be made quarterly. (Cont'd)

**Monthly** payments shall be made to the tax administrator no later than the **15<sup>th</sup> day** after the last day of the month.

**Quarterly** payments shall be made to the tax administrator no later than the **last day** of the following month following the last day of each quarter.

An employee is not relieved from liability for a tax by the failure of the employer to withhold the tax. The failure of the employer to remit the tax withheld relieves the taxpayer from the liability for that tax, unless the employee colluded with the employer. Per Ordinance 880, refunds cannot be made until withholding is actually remitted to the City.

An employer is required to deduct and withhold municipal income tax on tips and gratuities received by the employer's employees to the extent that the tips and gratuities are under the employer's control- if the tip/gratuity is paid by the customer to the employer to be remitted to the employee, or by credit card, debit card, or other electronic means.

### **Reconciliation**

On or before the last day of February of each year, the employer shall file a withholding reconciliation return to the tax administrator listing names, addresses, and social security numbers of all employees from whose qualifying wages tax was withheld.

### **Twenty Day Rule**

An employer is not required to withhold municipal income tax on qualifying wages paid to an employee for the performance of personal services in a municipal corporation on 20 or fewer days in a calendar year, **unless one of the following applies:**

- The employee's principal place of work is located in the municipal corporation.
- The employee performed services at one or more presumed worksite locations in the municipal corporation at which services can be reasonably expected to last more than 20 days.
- The employee is a resident of the municipal corporation and has requested that the employer withhold tax from the employee's qualifying wages.
- The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure.

An employee shall be considered to have spent a day performing services in Brunswick only if the employee spent more time performing services for or on behalf of the employer in Brunswick than in any other location on that day.

Example #1: Employer located in Brunswick

Out of a 9 hour work day the employee includes the following:

- 1 hour spent traveling from employee's other job to principal place of work in Brunswick
- ½ hour spent picking up materials in Medina and brought back to employer's job site in Brunswick
- 3 ½ hours spent working at job site in Brunswick
- 1 hour spent traveling home from Brunswick

- Total 6 hours spent within Brunswick, employee spent day working in Brunswick

Example #2:

Out of an 8 hour work day the employee includes the following:

- 0.5 hours to travel from home to Brunswick
- 1 hour to deliver property from Brunswick to another location
- 1 hour to return from delivery
- 2 hours of work at job site in Brunswick
- 0.5 hour travel to work for a different employer for the rest of the 8 hours
- Total 5 hours spent working in Brunswick, employee spent day working in Brunswick

The employer shall withhold on the 21<sup>st</sup> day and all subsequent days in the calendar year on which the employer pays qualifying wages to the employee.

An employer, not within the municipal limits of Brunswick, may decide to withhold for Brunswick on the first twenty days on which the employer paid qualifying wages to the employee. The taxes withheld and paid by such employer may be refundable to the employee upon formal request submitted by the employee. Application for refund form may be found the City website.

Compensation paid to a non-resident individual (independent contractor) for personal services performed in a municipal corporation is exempt from tax for the first 20 days unless:

The individuals' base of operation is located in the municipal corporation.

The individual is a professional athlete, professional entertainer, or public figure.

**Small employer withholding (gross receipts under \$500,000)**

Small employers shall withhold municipal income tax on all of an employee's qualifying wages for a taxable year and remit to the municipal corporation in the employer's **fixed location** regardless of the number of days. The Tax Administrator will require the employer to provide federal returns to determine if it is a small employer. However, if a small employer by ORC definition is located in municipal limits, the small employer must withhold local tax on all employee qualifying wages and remit to the City.

**Municipal corporations with larger population**

Since Brunswick is a municipal corporation with a population over 30,000, it will have all of the tax administrator's, or designee's, written correspondence to a taxpayer or other person include the name and contact information of an individual designated to receive inquiries regarding the correspondence. The individual may be the tax administrator or an employee of the tax administrator.

**Rounding of amounts**

A person may round to the nearest whole dollar amounts required to be entered on any return, report, voucher, or other document required by this chapter. If amount equals or exceeds 50 cents, it should be rounded to the next whole dollar. If less than 50 cents, the cents should be rounded down to the nearest whole dollar.

**Taxpayers' rights and responsibilities**

A taxpayer's responsibilities include filing, reporting, withholding, remitting and paying, verifying the accuracy of returns and complying with audits. Along with these responsibilities, the taxpayer is afforded certain rights which include the right to appeal through a local Board of Review, the right to receive the Tax Administrator's opinion, and the right to timely processed refunds.

**Rental properties**

Rental income received by a taxpayer shall be included in the computation of net profit from business activities, as reported on the taxpayer's Schedule E and/or as required under Chapter 718 of the Ohio Revised Code.

Every property owner subject to this section shall, personally or through a management agent, submit to the Administrator a list of names, addresses, and Social Security Numbers or Employer Identification Numbers, as applicable, of all persons, firms, corporations or other entities occupying, leasing, renting or otherwise using the premises within the City in such a manner as to produce economic benefit to the property owner, whether or not such benefit is called "rent" and whether or not such benefit results in a profit or loss. The required list shall be prepared by June 30, of each year and submitted on or before July 31, of each year and prepared by December 31, of each year and submitted on or before January 31, of the following year and at such other times as may be prescribed by the Administrator