

## **ORDINANCE O-2017-13**

### **AN ORDINANCE TO CURE OMISSIONS, DEFECTS AND ERRORS IN THE CODIFIED ORDINANCES OF THE VILLAGE OF WINDHAM AND DECLARING AN EMERGENCY.**

**WHEREAS**, the Home Rule Amendment of the Ohio Constitution, Article XVII, Section 3, provides that "Municipalities shall have authority to exercise all powers of local self-government," and the municipal taxing power is one of such powers of local self-government delegated by the people of the State to the people of municipalities; and

**WHEREAS**, when the General Assembly enacted changes to Chapter 718 of the Ohio Revised Code in December 2014, revisions to municipal income tax codes were mandated to take effect by January 1, 2016, so as to ensure that any income or withholding tax is "levied in accordance with the provisions and limitations specified in Chapter 718"; and

**WHEREAS**, in response to the mandate set forth in Chapter 718 of the Ohio Revised Code, the Village of Windham completely rewrote the applicable income tax sections of the Village Codified Ordinances, and with the passage of Ordinance 2015-13 on November 24, 2015 enacted Chapter 182 of the Village Codified Ordinances; and

**WHEREAS**, the enactment of Chapter 182 of the Village Codified Ordinances was accomplished prior to the January 1, 2016 deadline and was accomplished in accord with the provisions and limitations specified in Chapter 718 of the Revised Code; and

**WHEREAS**, the minutes of all the meetings of the Village Council and the committees of the Village Council at which the passage of Ordinance 2015-13 were discussed do not reflect any discussion of a change in the amount or percentage of a credit against Village of Windham Income Tax from the amount or percentage of the credit set forth in the Village Codified Ordinances prior to the passage of Ordinance 2015-13; and

**WHEREAS**, by enacting the amendments to the Village of Windham Codified Ordinances authorized by Ordinance 2015-13 this Council did not intend to alter or adjust the amount or the percentage of a credit against Village of Windham Income Tax not to exceed a maximum of one-half of one percent in effect prior to the enactment of Ordinance 2015-13; and

**WHEREAS**, in 2016 the Ohio Legislature again amended various sections of Chapter 718 of the Ohio Revised Code, and so as to assure that the Village of Windham Codified Ordinances remain consistent with the provisions and limitations specified in Chapter 718 of the Ohio Revised Code, on November 22, 2016 the Village enacted Ordinance 2016-22, which enacted amendments to Chapter 182 of the Village Codified Ordinances; and

**WHEREAS**, the minutes of all the meetings of the Village Council and the committees of the Village Council at which the passage of Ordinance 2016-22 were discussed do not reflect any discussion of altering or adjusting the amount or percentage of a credit against Village of Windham Income Tax not to exceed a maximum of one-half of one percent; and

**WHEREAS**, by enacting the amendments to the Village of Windham Codified Ordinances authorized by Ordinance 2016-22 this Council did not intend to alter or adjust or the amount or the percentage of a credit against Village of Windham Income Tax not to exceed a maximum of one-half of one percent in effect prior to the enactment of Ordinance 2015-13; and

**WHEREAS**, Article II, Section 28 of the Ohio Constitution does state in summary part that upon terms as shall be just and equitable, the *manifest intention of parties, and officers may be enforced by curing omissions, defects, and errors*; and

**WHEREAS**, the first year that Windham income taxes are to be paid under Chapter 182 of the Village Codified Ordinances is tax year 2016, under which the returns and payment of tax is required to be filed with the Village on or before April 18, 2017; and

**WHEREAS**, during the whole of the time the Village Tax Administrator has accepted Village income tax returns for 2016, one citizen brought to the attention of the Village Tax Administrator a concern that the credit afforded to resident taxpayers for tax paid to a different municipality was different that the credit provisions in effect prior to December 31, 2015; and

**WHEREAS**, a review of the provisions identified by the taxpayer reveals an erroneous section in Chapter 182, which is defective by virtue of the omission of the correct text to authorize the credit for tax paid by filers for income tax paid to municipalities other than the Village of Windham; and

**WHEREAS**, the Village Council and all of its subcommittees did not discuss, consider, or intentionally authorize any change or adjustment in the credit afforded to resident taxpayers for tax paid to a municipality other than Windham during the consideration and subsequent passage of Ordinance 2015-13 and of Ordinance 2016-22; and

**WHEREAS**, the Village Council hereby declares that it did not intend to omit the credit provisions as they existed before the passage of Ordinance 2015-13; and

**WHEREAS**, pursuant to the authority set forth in Article II, Section 28 of the Ohio Constitution and through this Ordinance the Council of the Village of Windham hereby intends to cure omissions, defects and errors in Chapter 182 of the Village of Windham Codified Ordinances.

**NOW THEREFORE BE IT ORDAINED** by the Council of the Village of Windham, Portage County, Ohio with two-thirds of the members thereto concurring that:

**Section 1.** That the revisions and amendments set forth in the attached Exhibit "A", which is incorporated herein by reference, are hereby enacted.

**Section 2.** That this Ordinance shall take effect and be in force from and after January 1, 2016.



**Section 3.** This Resolution is hereby declared to be an emergency measure, becoming effective immediately on passage by Council and approval by the Mayor, necessary to protect the health, safety, morals and general welfare of the community, and for the further reason that the Council of the Village of Windham desires to cure omissions, defects and errors in Chapter 182 of the Village Codified Ordinances now so that taxpayers to the Village of Windham have access to the correct ordinances of the Village.

**Section 4.** It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of the Council and any committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including §121.22 of the Revised Code of the State of Ohio.

PASSED IN COUNCIL as an emergency on April 25<sup>th</sup>, 2017.

Vote of Council:      Ayes: 5  
                                     Nays: 0

\_\_\_\_\_  
Mayor Deborah Blewitt

ATTEST:

\_\_\_\_\_  
Fiscal Officer Cheree M. Taylor

Approved as to Form:

\_\_\_\_\_  
Village Solicitor Thomas Reitz

Exhibit A

**182.081 CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES**

(A) Every individual taxpayer domiciled in the Municipality who is required to and does pay, or has acknowledged liability for, a municipal tax to another municipality on or measured by the same income, qualifying wages, commissions, net profits or other compensation taxable under this chapter/ordinance may claim a nonrefundable credit upon satisfactory evidence of the tax paid to the other municipality, *not to exceed tax paid outside of the Village up to a maximum of one-half of one percent.* Subject to division (B) of this section, the credit shall not exceed the tax due the Municipality under this chapter.

(B) If the amount of tax withheld or paid to the other municipality is less than the amount of tax required to be withheld or paid to the other municipality, then for purposes of division (A) of this section, *the amount of the credit issued against the Village of Windham income tax obligation shall be calculated based on the amount of tax actually paid to the other municipality.* ~~the income, qualifying wages, commissions, net profits or other compensation<sup>22</sup> subject to tax in the other municipality shall be limited to the amount computed by dividing the tax withheld or paid to the other municipality by the tax rate for that municipality.~~

Italics represent added text.

Strikeouts represent deleted text.