

CHAPTER 183
Income Tax Regulations

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183.01 DEFINITIONS.

- (a) As used in this Chapter the following words shall have the meanings ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning.
- (1) "Adjusted federal taxable income" means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted per Section 181.03(a)(5).
 - (2) "Association" means a partnership, limited partnership, S corporation or any other form of unincorporated enterprise, owned by one or more persons.

- (3) "Board of Review" means the Board created by and constituted as provided for in Section 181.13.
- (4) "Business" means 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.
- (5) "Corporation" means a corporation 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.
- (6) "Domicile" means a principal residence that the taxpayer intends to use for an indefinite time and to which, whenever he is absent, he intends to return. A taxpayer has only one domicile even though he may have more than one residence.
- (7) "Employee" means one who works for wages, salary, commission or other types of compensation in the services of an employer.
- (8) "Employer" means 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 a salary, wage, commission or other compensation basis.
- (9) "Fiscal year" means an accounting period of twelve (12) months or less ending on any day other than December 31.
- (10) "Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.
- (11) "Generic form" means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability that is not prescribed by a particular corporation for the reporting of that municipal corporation's tax on income.
- (12) "Gross receipts" means total income of taxpayers from whatever source derived.
- (13) "Income from a pass-through entity" means partnership income of partners, membership interests of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership shares of income from other pass-through entities.
- (14) "Intangible income" means income of any of the following types: 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 Chapter 5701. of the Ohio Revised Code, 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 any lottery winnings or other similar games of chance.
- (15) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C.1, as amended.

- (16) "Internet" means the international computer network of both Federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.
- (17) "Joint Economic Development District" means districts created under the Ohio Revised Code sections 715.70 through 715.83 as amended from time to time.
- (18) "Limited liability company" means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.
- (19) "Municipality" means the City (Village) of Gallipolis.
- (20) "Net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than amounts described in Section 181.03(f), required to be reported on schedule C, schedule E, or schedule F.
- (21) "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.
- (22) "Nonresident" means an individual domiciled outside the Municipality.
- (23) "Nonresident incorporated business entity" means an incorporated business entity not having an office or place of business within the Municipality.
- (24) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the Municipality.
- (25) "Other payer" means any person, other than an individual's employer or the employer's agent that pays an individual any amount included in the federal gross income of the individual.
- (26) "Owner" means a partner of a partnership, a member of a limited liability company, a shareholder of an S corporation, or other person with an ownership interest in a pass-through entity.
- (27) "Owner's proportionate share" with respect to each owner of a pass-through entity, means the ratio of:
- A. The owner's income from the pass-through entity that is subject to taxation by the municipal corporation, to
 - B. The total income from that entity of all owners whose income from the entity is subject to taxation by that municipal corporation.
- (28) "Pass-through entity" means a partnership, limited liability company, S corporation, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.
- (29) "Person" includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity.
- (30) "Place of business" means any bona fide office (other than a mere statutory office), factory, warehouse, or other space, which is occupied and used by the taxpayer in carrying on any business activity, individually or through one or more of his regular employees regularly in attendance.
- (31) "Principal place of business" means in the case of an employer having headquarters' activities at a place of business within a taxing municipality, the place of business at which the headquarters is situated. In the case of any employer not having its headquarters' activities at a place of business within a taxing municipality, the term means the largest place of business located in a taxing municipality.

- (32) "Qualified plan" means a retirement plan satisfying the requirements under section 401 of the Internal Revenue Code as amended.
- (33) "Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with section 718.03(A) of the Ohio Revised Code.
- (34) "Resident" means an individual domiciled in the Municipality.
- (35) "Resident incorporated business entity" means an incorporated business entity whose office, place of operations or business site is within the Municipality.
- (36) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the Municipality.
- (37) "Return preparer" means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report or other document for or on behalf of the taxpayer.
- (38) "Rules and Regulations" means the Rules and Regulations as set forth in Chapter 183.
- (39) "Schedule C" means Internal Revenue Service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.
- (40) "Schedule E" means Internal Revenue Service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.
- (41) "Schedule F" means Internal Revenue Service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.
- (42) "S corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.
- (43) "Tax Administrator" means the person appointed to administer the Municipality's Income Tax Ordinance and to direct the operation of the Municipal Income Tax Department.
- (44) "Taxable income" means qualifying wages paid by an employer or employers, compensation for personal services, other income defined by statute as taxable, and/or adjusted federal taxable income from the operation of a business, profession, or other enterprise or activity adjusted in accordance with the provisions of this Chapter.
- (45) "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.
- (46) "Taxing municipality" means a municipality levying an income tax.
- (47) "Taxpayer" means a person subject to a tax on income levied by a municipal corporation. "Taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "Taxpayer" includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.

(b) The singular shall include the plural, the masculine shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates.
(Ord. 2003-79. Passed 12-2-03.)

183.02 COMMENCEMENT OF THE TAX.

The tax imposed by this chapter is effective as to income and profits earned or accruing on and after June 1, 1978 and payroll deductions shall be made against all qualifying wages, commissions, bonuses, and other compensation earned or accruing on and after that date. (Ord. 2003-79. Passed 12-2-03.)

183.03 IMPOSITION OF TAX; RESIDENTS.

In the case of the residents of the Municipality, an annual tax of one percent (1%) is imposed on all qualifying wages, commissions and other compensation, and other taxable income earned or accrued on and after June 1, 1978. For the purpose of determining the tax on the earnings of the resident taxpayers, taxed under Section 181.03, the source of the earnings and the place or places in, or at which the services were rendered are immaterial. All such earnings, wherever earned or paid, are taxable.

- (a) The following are items that are subject to the tax.
- (1) Qualifying wages, bonuses or incentive payments received by an individual, whether directly or through an agent or whether in cash or in property, for services rendered on and after June 1, 1978:
 - A. As an officer or employee, or both, of a corporation (including charitable and other nonprofit corporations), joint stock associations or joint stock company;
 - B. As an employee (as distinguished from a partner or member) of a partnership, limited partnership, limited liability company, or any other form of unincorporated enterprise owned by one or more persons;
 - C. As an employee (as distinguished from the proprietor) of a business, trade or profession conducted by an individual owner;
 - D. As an officer or employee (whether elected, appointed or commissioned) of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, subdivision, section or unit of the State or any of the political subdivisions thereof;
 - E. As an officer or employee (whether elected, appointed or commissioned) of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, subdivision, section or unit of the United States Government, or of a corporation created and owned or controlled by the United States Government or any of its agencies;
 - F. As an employee of any other entity or person.
 - (2) Qualifying wages, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered on and after June 1, 1978:
 - A. Whether based upon hourly, daily, weekly, semimonthly, annual, unit of production or piecework rates;
 - B. Whether paid by an individual, limited liability company, limited partnership, partnership, association, corporation (including charitable and other nonprofit corporations), governmental administration, agency, arm, authority, board, body, branch, department, division, subdivision, section or unit, or any other entity.

- (3) Commissions received by a taxpayer whether directly or through an agent and whether in cash or in property, for services rendered on and after June 1, 1978, regardless of how computed, by whom or wheresoever paid. If amounts received as a drawing account exceed the commissions earned, the tax is payable on the gross amounts received. Amounts received from an employer by way of expenses and not by way of compensation and used as such by the individual receiving them are not deemed to be compensation if the employer deducts such expense advances as such from his gross income for the purpose of determining his net profits taxable under this chapter. If such commissions are included in the net earnings of a trade, business, profession, enterprise or activity regularly carried on by such individual and, therefore subject to tax under Section 181.03(a) they shall not again be separately taxed. In such case, such net earnings shall be taxed as provided in Section 183.12.
 - (4) The receipt of fees and other compensation for personal services rendered shall be deemed to be subject to taxation under this chapter.
 - (5) On the net profit of a proprietorship or business entity, regardless of where the entity is located.
 - (6) The resident's share of net profits from a pass-through entity located outside the Municipality.
 - (7) Domestic servants are subject to municipal tax under this chapter, but are not subject to withholding provisions. That is to say, the domestic shall report earnings and pay the tax directly to the Municipal Income Tax Department.
- (b) The provisions of this chapter shall not be construed as levying a tax upon the following:
- (1) Proceeds from welfare benefits, unemployment insurance benefits, supplemental unemployment benefits, social security benefits or similar payments received from local, state or federal governments or charitable or religious organizations.
 - (2) Proceeds of insurance, annuities, Workers' Compensation insurance, permanent disability benefits, compensation for damage for personal injuries and like reimbursements, not including damages for loss of profits or qualifying wages.
 - (3) Compensation for damage to property by way of insurance or otherwise.
 - (4) Interest and dividends from intangible property.
 - (5) Military pay and allowances received as a member of the armed forces of the United States and of members of their reserve components, including the Ohio National Guard (ORC 718.01).
 - (6) If exempt for Federal income tax purposes, fellowship and scholarship grants are excluded from Municipal income tax.
 - (7) Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000.00) annually. Such compensation in excess of one thousand dollars may be subjected to taxation. The payer of such compensation is not required to withhold Municipal tax from that compensation.

- (8) Alimony (not deductible as an expense).
- (9) Capital gains.
- (10) Patent and copyright income.
- (11) Royalties (if derived from intangible property).
- (12) Annuities (at time of distribution).
- (13) Profit sharing from qualified plans.
- (14) As of January 1, 2003, the housing allowance of ministers commissioned by a church or denomination to conduct worship services.
 - A. The church or denomination must furnish a copy of the bylaws or minutes setting forth the amounts that are designated for housing allowance. The minister cannot designate the breakdown himself. This could change each year depending on the housing allowance, therefore the church Minutes must record each time a change occurs.
 - B. A minister is not eligible for a housing allowance with respect to secular earnings.
 - C. For part-time ministers or those with dual-purpose income, the deduction cannot be greater than the income received for conducting worship services.
 - D. The deduction cannot be greater than that allowed by the Internal Revenue Service. A copy of the Internal Revenue Service schedule and/or worksheet must accompany the Municipal tax return. (Ord. 2003-79. Passed 12-2-03.)

183.04 BUSINESS LOSS OFFSET.

A loss sustained by an individual proprietorship (federal schedules C, E, or F) may not be used to offset the profits earned in a partnership, S-Corporation, or other flow-through entities.

A loss sustained in a partnership, S-Corporation or other flow-through entity may not offset the profits of an individual proprietorship (federal schedules C, E, or F) nor the salaries, wages, commission or other personal service income.

A loss sustained by a business entity may not be used by another business entity to reduce the amount of net profit earned by the parent company, unless a consolidated return is filed with the Internal Revenue Service.

An individual who runs two or more businesses as individual proprietorships, may offset the net profits of one such business by the loss of the other, (but not against salaries, wages or other personal service compensation).

(Ord. 2003-79. Passed 12-2-03.)

183.05 IMPOSITION OF TAX; NONRESIDENTS.

In the case of individuals who are nonresidents of the City, there is imposed under this chapter an annual tax of one percent (1%) on all qualifying salaries, wages, commissions and other compensation, earned or accruing on and after June 1, 1978, for work done or services performed or rendered within the City, whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property.

The items subject to tax under this section are the same as those listed and defined in Section 183.03(a)(1 - 4) and;

- (a) On the net profits of a proprietorship or other business entity located inside the Municipality (not including partnerships and other pass-through entities required to file a Municipal return as an entity).

(b) The following shall not be taxed:

Personal services performed by the individual in the Municipality on twelve (12) or fewer days in a calendar year unless one of the following applies:

- (1) The individual is an employee of another person, the principal place of business of the individual's employer is located in another municipality in Ohio that imposes a tax applying to compensation paid to the individual for services paid on those days and the individual is not liable to that other municipality for tax on the compensation paid for such services.
- (2) The individual is a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such promoter, all as may be reasonably defined by the Municipality.
- (3) The individual is an employee of a contractor who has received a building permit and paid the tax according to Section 183.15(h).
(Ord. 2003-79. Passed 12-2-03.)

183.06 NET PROFITS; RESIDENT BUSINESSES.

(a) In the case of trades, businesses, professions, other activities, enterprises or undertakings conducted, operated, engaged in, prosecuted or carried on inside the Municipality, there is imposed an annual tax of one percent (1%) on the net profits earned or accruing on and after June 1, 1978.

(b) For the purpose of construing Section 183.03, resident incorporated and unincorporated business entities, shall ordinarily be construed to have reference to the business itself, as distinguished from the partners, proprietors or other participants in its profits.

(c) Proprietorships (Federal forms C, E, F and other income reported on page one) are taxed at the individual level whether or not the individual is a resident of the Municipality.

(d) Generally, a partnership, association or other pass-through entity shall be taxed as an entity.

(e) The tax imposed under Section 181.03 is levied upon the entire net profits of the resident trade, business, profession, other activity, enterprise or undertaking, earned, paid or accrued and regardless of the fact that any part of such business or professional activities may have been conducted at or through, a place or places of business located outside the City. The tax would not be imposed upon:

- (1) Any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio R.C. 718.01, which is exempt from payment of the tax imposed by this chapter.
- (2) Any association or organization falling in the category listed in subsection (e)(1) hereof not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the taxes levied under this chapter on all business activities of a type ordinarily conducted for profit by taxpayers operating for profit.
- (3) Where such nonprofit association or organization conducts income-producing business both within and without the corporate limits, it shall calculate its profits allocable to the Municipality under the methods provided in Section 183.09.
(Ord. 2003-79. Passed 12-2-03.)

183.07 NET PROFITS; NONRESIDENT BUSINESS.

(a) In the case of a nonresident business, partnership, association, fiduciary or other entity engaged in the conduct, operation or prosecution of any trade, business, profession, enterprise, undertaking, or other activity, there is imposed an annual tax of one percent (1%) of the net profits (earned or accruing on and after June 1, 1978) of such trade, and to the extent conducted in or derived from activity in the Municipality.

(b) A nonresident entity within the meaning of Section 181.03 which has a branch or branches, office or offices and/or store or stores, warehouse or other place or places in which the entity's business is transacted, located in the Municipality, shall be considered to be conducting, operating, prosecuting or carrying on a trade, business, profession, enterprise, undertaking or other activity to the full extent of the sum total of all transactions originating or consummated in, by or through the Municipal branch office, store, warehouse or other place of business, including:

- (1) Billings made on such transactions; or
- (2) Services rendered; or
- (3) Shipments made; or
- (4) Goods, chattels, merchandise, etc., sold; or
- (5) Commissions, fees or other remuneration or payments earned.

(c) In the case of the partnership, association, pass-through entity or other unincorporated enterprise owned by one or more persons, the tax, generally, shall be upon such partnership, association, or business enterprise as an entity and not upon the partners or members thereof. However, the provisions of Section 183.06 are applicable to render taxable against such resident partners or members their distributive share of any profits of such nonresident entity not taxable under this chapter.

(d) In determining the proportion or amount of the taxable net profits of a nonresident business entity having a place or places of business within and outside the Municipality, such business entity must use and apply the business allocation percentage formula set forth in Section 181.03(b). For explanation of formula, see Section 183.09.

(e) Net operating losses from previous years shall not be carried forward to the present taxable year. (Ord. 2003-79. Passed 12-2-03.)

183.08 NET BUSINESS PROFITS; CORPORATIONS.

(a) In the case of a corporation doing business in the Municipality, whether domestic or foreign, and whether domiciled in the Municipality or elsewhere, there is imposed an annual tax of one percent (1%) on that part of the corporation's net profits which is earned by such corporation as a result of work done or services performed or rendered and business or other activities conducted in the Municipality.

(b) The provisions of Section 183.07 are applicable to such corporations.

(c) A corporation doing business both within and outside the Municipality, in determining the part of the net profits that are taxable under this chapter must:

- (1) Use the usual accounting method of the taxpayer corporation, so long as such usual accounting method shall be the one used for the Internal Revenue Service, as evidenced by acceptance and approval of income tax returns filed therein; and
- (2) Use the business allocation percentage formula set forth in Section 181.03. (Ord. 2003-79. Passed 12-2-03.)

183.09 BUSINESS ALLOCATION PERCENTAGE.

(a) A corporate taxpayer or a nonresident business entity must use the formula set forth in Section 181.03 to compute the percentage of their entire net profits (derived from activities both within and outside the Municipality) which is taxable under the Chapter and to determine the tax payable to the Municipality thereunder. If the taxpayer had a place of business outside the Municipality and was doing business in the Municipality during such period, the business allocation percentage shall be computed on the following basis: (Ohio R.C. 718.02)

- (1) Multiply the entire net profits of the business by a business apportionment percentage to be determined by the 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 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. Real property shall include property rented or leased by the taxpayer and the value of such 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 such municipal corporation to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the municipal corporation under section 718.011 of the Ohio Revised Code.
 - C. Gross receipts of the business or profession from sales made and services performed during the taxable period in such municipal corporation to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.
 - D. Adding together the percentages determined in accordance with subsections (a)(1)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.
 1. A factor is applicable even though it may be apportioned entirely in or outside the Municipality.
 2. Provided however, that in the event a just and equitable result cannot be obtained under the formula provided for herein, the Tax Administrator, upon application of the taxpayer, shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.
- (2) As used in subsection (a)(1)C. hereof, "sales made in the Municipality" means:
 - A. All sales of tangible personal property delivered within the Municipality regardless of where title passes if shipped or delivered from a stock of goods within such Municipal corporation.

- B. All sales of tangible personal property delivered within the Municipality regardless of where title passes, even though transported from a point outside the Municipality, if the taxpayer is regularly engaged through its own employees, in the solicitation or promotion of sales within the Municipality and the sales result from such solicitation or promotion.
 - C. All sales of tangible personal property shipped from a place within the Municipality to purchasers outside the Municipality 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.
- (3) As used in subsection (a)(1)C. thereof, "Business Receipts" means:
- A. Work done and performed or services rendered in the Municipality.
 - B. Rental from property situated in the Municipality, where the rental of such property is a usual or normal part of the taxpayer's business activity.
 - C. All other business receipts earned in the Municipality. For the purpose of determining business allocation percentage, no account shall be given to receipts, within or without the Municipality, of income derived from intangibles (including stocks, bonds, royalties and the like), the income of which is taxable under the statutes of the State. All receipts of the period covered by the report (computed on the cash or accrual basis, in accordance with the method of accounting used in the computation of the taxpayer's Federal Income Tax) shall be taken into account.
- (4) Compensation for work done and performed or service rendered means:
- A. Compensation and other receipts for work done or services performed within the Municipality are allocable to the Municipality and taxable under this chapter. All amounts so received, credited or charged by the taxpayer in payment for such work or services are so allocable, irrespective of whether done or performed by employees or agents of the taxpayer, by subcontractors, or by any other persons. It is immaterial where such amounts were payable or where they were received.
 - B. Commissions or fees received by the taxpayer are allocated to the Municipality if the services for which the commissions paid were performed in the Municipality. If the taxpayer's services, for which commissions or fees were paid, were performed for the taxpayer by salespersons or other agents or employees attached to, or working out of a place of business within the Municipality, the taxpayer's services shall be deemed to have been performed in the Municipality. Where a lump sum is received by the taxpayer in payment of services within and without the Municipality, the amount attributable to services within the Municipality, is to be determined on the basis of such services within and without.

- (5) Payroll Factor includes:
- A. Employees within the Municipality, includes all employees regularly connected with, or working out of, a place of business maintained by the taxpayer in the Municipality, irrespective of where the services of such employee were performed. However, if the taxpayer establishes to the satisfaction of the Administrator that because of the fact that a substantial part of its payroll was paid to employees who performed a substantial part of their services outside the Municipality, the computation of the payroll factor according to the general rule, would not produce an equitable result, then the Administrator may, in his discretion, permit the payroll factor to be computed on the basis of the amount of compensation paid for services rendered within and without the Municipality.
 - B. Wherever it appears that because a substantial part of the taxpayer's payroll being paid to employees attached to places of business outside the Municipality, performed a substantial part of their services within the Municipality, the computation of the payroll factor according to the general rule would not properly reflect the amount of the taxpayer's business performed inside the Municipality, the Administrator may require the payroll factor to be computed on the basis of the amount of compensation paid for services performed within and without the Municipality.
 - C. Whenever the services inside the Municipality are performed by leased employees, the payroll factor according to the general rule will not produce an equitable result. In this case, the payroll percentage will be eliminated from the apportionment allocation in its entirety.
(Ord. 2003-79. Passed 12-2-03.)

183.10 TAX FIRST LEVIED ON EARNINGS OR NET PROFIT.

(a) The tax referred to in Sections 183.03 and 183.05 shall first be levied, collected and paid with respect to the salaries, wages, bonuses, incentive payments, commissions, fees and/or other compensation earned on and after June 1, 1978.

(b) The tax referred to in Sections 183.06 to 183.08 with respect to net profits of trades, businesses, professions, enterprises, undertakings and other activities shall first be levied, collected and paid with respect to such net profits earned or accrued (in accordance with the regular accounting systems of taxpayer as approved by the U.S. Collector of Internal Revenue) from and after June 1, 1978.

(c) But see Section 183.11 for fiscal year returns.
(Ord. 2003-79. Passed 12-2-03.)

183.11 FISCAL YEARS.

Where the fiscal year of a trade, business, profession, enterprise, undertaking and /or other activity differs from the calendar year, the tax shall be applicable to the net profits of the fiscal year, but for the first fiscal year with respect only to such portion thereof as was earned on and after June 1, 1978.

A fiscal year shall be recognized only if it has been or may be recognized as such by the Director of Internal Revenue for the purpose of federal income tax.
(Ord. 2003-79. Passed 12-2-03.)

183.12 NET BUSINESS PROFITS.

(a) In amplification of the definition contained in Section 183.01(a) but not in limitation thereof, the following additional information and requirements respecting the taxation of net business profits are furnished.

- (1) On the portion attributable to the Municipality on the net profits earned by all nonresident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered and business or other activities conducted in the Municipality, whether or not such unincorporated business entity has an office or place of business in the Municipality.
- (2) On the portion of the distributive share of the net profits earned by a resident owner of a resident unincorporated business entity or pass-through entity not attributable to the Municipality and not levied against such unincorporated business entity or pass-through entity.
- (3) On the portion attributable to the Municipality on the net profits earned by all nonresident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered and business or other activity conducted in the Municipality, whether or not such unincorporated business entity has an office or place of business in the Municipality.
- (4) On the portion of the distributive share of the net profits earned by a resident owner of a nonresident unincorporated business entity or pass-through entity not attributable to the Municipality and not levied against such unincorporated business entity or pass-through entity.
- (5) On the portion attributable to the Municipality of the net profits earned by all corporations that are not pass-through entities from work done or services performed or rendered and business or other activities conducted in the Municipality, whether or not such corporations have an office or place of business in the Municipality.
- (6) All proprietors must use the net profits reported for federal income tax purposes (schedules C, E, and F) as the net profits for Municipal purposes.
- (7) All corporations and other entities shall adjust, to the extent it is included in the adjusted federal taxable income:
 - A. Deduct intangible income regardless of whether the Intangible income relates to assets used in a trade or business or assets held for the production of income.
 - B. Add an amount equal to five percent (5%) of intangible income deducted under A. of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code.
 - C. Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.

- D. Deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code. This does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.
- E. Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.
- F. In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income.
(Ord. 2003-79. Passed 12-2-03.)

183.13 RECONCILIATION WITH FEDERAL RETURN.

If, as a result of a change made in business income by the Federal Bureau of Internal Revenue or by a judicial decision, an additional amount will result as owing to the City, a report of such change shall be filed by the taxpayer within three months after receipt of the final notice of such change from the federal authorities or after final decision of a court adjudicating any such federal income tax liability.

(Ord. 2003-79. Passed 12-2-03.)

183.14 RETURN AND PAYMENT OF TAX.

- (a) (1) All taxpayers shall, on or before April 15 of each year, make and file a final return with the Tax Administrator. When a non-resident employee's entire taxable earnings for the year are paid by an employer and the one percent (1%) tax thereon has, in each instance, been withheld by the employer from the gross amount of the entire earnings of such non-resident employee-taxpayer, and where the employer of such employee has filed a report or return in which such employee's entire and only earnings are reported to the Tax Administrator, and where such employee has no taxable income other than such earnings, it shall not be necessary for such employee to file a return for any taxable year in which such conditions have prevailed.
- (2) Any person who filed a return in preceding years but no longer meets the requirements for filing, must file a current year return and state the reason they no longer need to file.
- (3) Individuals who are eighteen years of age and under with no taxable income, or are eighteen years of age and under who are employed where the Gallipolis tax is withheld, or who are sixty-five years of age and older and their sole income is from social security, retirement or other nontaxable income, are exempt from filing.
(Ord. 2006-04. Passed 3-7-06.)

(b) In all returns filed hereunder, there shall be set forth the aggregate amount of qualified wages, bonuses, incentive payments, commissions, fees and other compensation received and/or net profits earned (all as hereinbefore defined) by and during the preceding year and subject to such tax, together with such pertinent information as the Tax Administrator may require.

(c) If the return is made for a fiscal year or for any period other than a calendar year, the return shall be due by the fifteenth (15) day of the fourth month from the end of such fiscal year or other period.

(d) The return shall show the amount of the tax imposed by the chapter on such earnings or net profits, or both.

(e) The taxpayer making the return shall at the time of filing thereof, pay to the Municipality, the amount of tax shown to be due and unpaid by the return. If, pursuant to the provisions of Section 183.20 the taxpayer has at the time of making such final return overpaid his tax, the taxpayer shall show the amount of overpayment and may in such return either:

- (1) Request a refund subject to the conditions of Section 181.11(c) or,
- (2) Request that the amount thereof be credited against the amount that will be required to be paid by the taxpayer on the next succeeding installment of tax that may become due. For payments in installments, see Section 183.20.

(f) Where any portion of the tax otherwise due has been deducted at the source and has been paid to the Municipality by the person making the deduction, a credit equal to the amount so paid shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing the return.

(g) Where any portion of the tax due has been deducted and paid to another Municipality, a credit of one percent (1%) of the earnings in that Municipality so withheld and paid, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing the return.

(h) Upon written request of the taxpayer, the Tax Administrator may extend the time for filing the annual return for a period of not more than six months or not more than thirty days beyond any extension requested of and granted by, the Internal Revenue Service for filing of the federal income tax return. (Ord. 2003-79. Passed 12-2-03.)

183.15 COLLECTION AT SOURCE.

(a) Each employer (as hereinbefore defined) who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct from compensation paid to any employee subject to this Chapter, the tax of one percent (1%) of such qualifying salary, wage, bonus, incentive payment, commission or other compensation due by such employer to the employee. The tax shall be deducted by the employer from:

- (1) The gross amount of all qualifying salaries, wages, bonuses, incentive payments, commissions or other form of compensation paid to employees who are nonresidents of the Municipality, for services rendered, work performed or other activities engaged in to earn such compensation within the Municipality; and
- (2) The gross amount of all qualifying salaries, wages, bonuses, incentive payments, commissions or other form of compensation paid to employees who are residents of the Municipality, regardless of the place where the services are rendered.

(b) All employers who, or which, maintain an office or other place of business in the Municipality are required to make the collection and deductions specified in this section, regardless of the fact the services on account of which any particular deduction is required as to residents of the Municipality were performed at a place of business of any such employer situated outside the Municipality.

(c) The mere fact that the tax is not withheld shall not relieve the employee of the responsibility of filing a return and paying the tax on the compensation received.

(d) Commissions and fees paid to professional men, 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 shall in all instances, file returns and pay the tax pursuant to the provisions of Section 183.03 or 181.03. (See Sections 183.06 and 183.07)

(e) In the case of employees who are nonresidents of the Municipality, the amount to be deducted is one percent (1%) of the compensation paid with respect to personal services rendered in the Municipality subject to the exceptions in Section 181.03(f)(16).

Where a nonresident is a salesman, agent or other employee whose compensation on the basis of commission depends directly on the volume of business transacted by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the Municipality bears to the volume of business transacted by him within and outside the Municipality.

The deducting and withholding of personal service compensation of all other employees (including officers of corporations) shall attach to the portion of the personal service compensation of such employee (according to the ratio) which the total number of working days employed within the Municipality bears to the total number of working days employed within and outside the Municipality. If it is impossible to apportion the earnings as provided above because of the peculiar nature of the service of the employee, or the unusual basis of compensation, apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly.

The occasional entry into the Municipality of a nonresident employee who performs the duties for which he is employed entirely outside the Municipality, but enters the Municipality for the purpose of reporting, receiving instructions, accounting, etc. incidental to his duties outside the Municipality, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the Municipality.

(f) An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions, whether by way of drawing account or otherwise (but see subsection (g) hereof), where such advances are in excess of commissions earned.

(g) 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 by the employer to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services. Provided, that such expenses shall be of the kind and in the amount recognized and allowed as deductible expenses for federal income tax purposes.

(h) It shall not be required of contractors, or subcontractors, with employees working in the Municipality, who have properly applied for and received a building permit to construct, rebuild or otherwise perform any activity for which a building permit is required and paid the Municipality tax thereon, to collect income tax of one percent (1%) for income received by employees for the permitted project only. This does not effect the obligation of an employer to collect and pay taxes for employees earning income in the Municipality from any source other than a permitted project. (Ord. 2003-79. Passed 12-2-03.)

183.16 RETURNS OF TAX WITHHELD AND PAYMENT.

(a) The deductions from salaries, wages and other compensation required to be made, by employers are to begin with compensation earned on and after June 1, 1978. The first return and payment is required to be made, filed and paid to the City Treasurer between July 1, 1978 and July 31, 1978.

(b) Each employer within the Municipality who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct monthly, or more often than monthly, and at the time of the payment of such salary, wage, commission or other compensation, the tax of one percent (1%) of qualifying salaries, wages, commissions or other compensation due by the employer to the employee.

(c) Every employer required to deduct and withhold any amount under this section shall file a return thereof and shall pay to the Tax Administrator, that amount as required herein as follows:

In monthly payments to be made not later than thirty days following the close of the calendar month during which the amount was withheld, except employers who withhold taxes in an amount less than one hundred dollars (\$100.00) per month may make quarterly payments not later than thirty days following the close of the calendar quarter.

(d) Such return shall be on a form prescribed by and obtainable from the Tax Administrator, and shall be subject to the rules and regulations prescribed therefor by the Tax Administrator. Such employer, in collecting such tax, shall be deemed a trustee for the benefit of the Municipality and any such tax collected by such employer from his employee shall, until the same is paid to the Municipality, be deemed a trust fund in the hands of such employer.

(e) For adjustment of errors in returns of tax withheld by employers, see Section 183.24.

(f) This section shall not apply to contractors or subcontractors, who have applied for and received a building permit and paid the Municipal tax thereon, as to income of employees for work performed on that permitted job only. This paragraph shall not effect any taxes due or tax documents necessary for such employer to pay or file under this or any other Code section, except as to income for employees working on a permitted project only. (Ord. 2003-79. Passed 12-2-03.)

183.17 LIMITATION ON CREDIT FOR TAX PAID AT SOURCE.

The failure of any employer, residing either within or outside the Municipality, to collect the tax and to make any return prescribed herein, shall not relieve the employee from the payment of such tax in compliance with these regulations respecting the making of returns and the payment of taxes. (Ord. 2003-79. Passed 12-2-03.)

183.18 STATUS AND LIABILITY OF EMPLOYERS.

(a) Every employer is deemed to be a trustee of the Municipality, in collecting and holding the tax required under this Chapter to be withheld and the funds so collected by such withholding are deemed to be trust funds.

(b) Every such employer required to deduct and withhold the tax at the source is liable directly to the Municipality for the payment of such tax, whether actually collected by such employer or not. (Ord. 2003-79. Passed 12-2-03.)

183.19 DECLARATIONS.

(a) An employee whose entire wages, salaries or other compensation for any taxable year will be subjected to the withholding provisions under Section 183.16 to 183.18 whose tax will accordingly be withheld as to his entire earnings for such year by his employer, and who during such taxable year expects to derive no other compensation or other income which is subject to tax under this Chapter, need not file a declaration as provided in this section.

(b) Every person who anticipates any taxable income which is not subject to withholding or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 181.03, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any.

- (1) On or before September 30, 1978, every such taxpayer shall file a declaration of his estimated tax for the taxable period beginning June 1, 1978, and ending December 31, 1978.
- (2) A similar declaration shall be filed on or before April 15 of each year or on or before the fifteenth (15th) day of the fourth (4th) month following the date the taxpayer becomes subject to the tax for the first time.
- (3) Those taxpayers having a fiscal year or period differing from the calendar year, shall file a declaration on or before the fifteenth (15th) day of the fourth (4th) month following the start of each fiscal year or period.
- (4) The estimated tax may be paid in full with the declaration or in equal installments:
 - A. For taxpayers who are individuals, such declaration of estimated tax to be paid the Municipality shall be accompanied by a payment of at least one-fourth of the estimated annual tax and at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year.
 - B. For taxpayers that are not individuals, such declaration of estimated tax to be paid the Municipality shall be accompanied by a payment of at least one-fourth of the estimated annual tax and at least a similar amount shall be paid on or before the fifteenth (15th) day of the sixth, ninth and twelfth months after the beginning of the taxable year.
- (5) The declarations so required shall be filed upon a form furnished by, or obtainable from the Tax Administrator.
- (6) Any estimate filed hereunder may be amended by the filing of an amended estimate at the time prescribed for the payment of any installment of tax paid in accordance with Section 183.20.

- (7) Failure to file and pay accurate declaration amounts will result in penalties and interest as proposed in Section 183.26 on the unpaid portion upon filing the year-end return. To avoid a penalty imposed by Section 183.26:
- A. Each installment must equal at least twenty-five percent (25%) of the lesser of ninety percent (90%) of the tax shown on the current year's tax return or one hundred percent (100%) of the tax shown on the return for the preceding tax year.
 - B. The amount of tax for the current year would be less than fifty dollars (\$50.00).
 - C. The taxpayer is an individual who resides in the City, but was not domiciled there on the first day of January of the current calendar year. (Ord. 2003-79. Passed 12-2-03.)

183.20 PAYMENT OF TAX INSTALLMENTS.

(a) At the time of filing each declaration required by Section 183.19, each person shall pay to the Municipality one-fourth of the amount of his estimated annual tax. Thereafter the installments must be paid as required in Section 183.19.

(b) For final returns and final adjustment of tax due, see Section 183.14.
(Ord. 2003-79. Passed 12-2-03.)

183.21 RECIPROCITY PROVISION CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES.

Every individual taxpayer who resides in the Municipality who receives net profit, salaries, wages, commissions or other personal service compensation for work done or services performed or rendered outside of the Municipality, if it appears that he has paid a municipal income tax on the same income taxable under this Chapter to another municipality, shall be allowed a credit against the tax imposed by this Chapter of the amount so paid by him or on his behalf to such other municipality. The credit shall not exceed the tax assessed by this Chapter on such income earned in such other municipality or municipalities where such tax is paid.

The Municipality shall grant a credit against the tax imposed by this Chapter to every taxpayer who works in a Joint Economic Development Zone created under section 715.691 or a Joint Economic Development District created under section 715.70, 715.71 or 715.72 of the Ohio Revised Code. The credit shall not exceed the tax assessed by this Chapter on such income earned in Such Joint Economic Development Zone or Joint Economic Development District where such tax is paid. (Ord. 2003-79. Passed 12-2-03.)

183.22 INQUISITORIAL POWERS OF THE CITY TAX ADMINISTRATOR.

(a) The City Tax Administrator personally, or his duly authorized agents, are authorized and empowered to examine the books, papers and records of any employer or supposed employer, or of any taxpayer, or supposed taxpayer, in order to verify the accuracy of any return made; or, if no return was made, to ascertain the tax imposed by this chapter.

(b) Every employer or supposed employer, and every taxpayer or supposed taxpayer, is required to furnish to the City Tax Administrator or his duly authorized agents or employees, the means, facilities and opportunity for such examinations, investigations and audits as are authorized in, and by, this chapter.

(c) The City Tax Administrator or his duly authorized agent or employee is further authorized and empowered to examine under oath any person concerning any income which was, or should have been, returned for taxation, and to this end, the City Tax Administrator has the right and power to compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such income

(d) Refusal of any explanation by any employer or person subject to the tax, or presumed to be such employer or person so subject, constitutes a misdemeanor punishable by fine or imprisonment, or both.

(Ord. 2003-79. Passed 12-2-03.)

183.23 RECORDS TO BE KEPT BY EMPLOYERS AND TAXPAYERS.

Employers and others subject to the tax under this chapter are required to keep such records as will enable the filing of true and accurate returns, whether of taxes withheld at source or of taxes payable upon earnings or net profits or both, and such records are to be preserved to enable the City Tax Administrator or any agent or employee of the City Tax Administrator to verify the correctness of the returns filed.

No contractor or subcontractor, who has received a building permit and paid the required fee, shall be obligated to report tax information for employees for income received by such employees for the permitted project only. This paragraph shall not affect any records necessary for the employer to keep under this or any other Code section except as to those pertaining to the permitted project only. (Ord. 2003-79. Passed 12-2-03.)

183.24 COLLECTION OF DEFICIENCIES; ALLOWANCE OF CREDIT FOR OVERPAYMENT.

(a) The Tax Administrator is authorized to arrange for the payment of unpaid taxes on a payment plan of no less than Twenty-five dollars (\$25.00) per month and not to exceed a twelve-month period of time. All late fees, penalties and interest will be assessed and payable upon completion of the payment plan. The authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under this chapter.

(b) If, as a result of investigation conducted by the Tax Administrator, a return is found to be incorrect, the Tax Administrator is authorized to assess and collect any underpayment of tax withheld at the source or any underpayment of tax owing by any taxpayer with respect to earnings or net profits or both. If no return has been filed and a tax is found to be owing, the tax actually owing may be assessed and collected with or without the formality of obtaining a delinquent return from the employer or taxpayer.

(c) Should it be disclosed, either as a result of an investigation by the Tax Administrator or through the medium of the filing of a claim or petition for refund or credit that an overpayment has been made, the City Auditor shall refund such overpayment.

(d) The employer shall, in every instance, be required to pay the full tax which should have been withheld, even though he may fail to withhold from the employee. If too much has been withheld, the excess shall be refunded by the employer to the employee.

- (1) While the withholding agent (employer) will be expected to maintain complete records of such adjustments with the employees, any such adjustment made during the current year need not be reflected in the withholding return. The W-2's should balance to the Annual Reconciliation reflecting the correct withholding amount.
- (2) Any such adjustment made for a prior year will need to be reflected on the current withholding return along with a letter of explanation.

(e) In those cases in which too much has been withheld by an employer from an employee and remitted to the City and there has been a termination of the employee-employer relationship, the taxpayer (employee) may obtain an adjustment by application to the City. (Ord. 2003-79. Passed 12-2-03.)

183.25 PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

Tax returns and all audits connected therewith, are confidential. Any information gained by the City Tax Administrator, by his agents or employees, or by any other official or agent of the City as a result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be held confidential, except for official purposes and except in accordance with proper judicial order or as otherwise provided by law. Violation of this provision constitutes a misdemeanor of the first degree. Every such breach of confidence constitutes a separate offense. (Ord. 2003-79. Passed 12-2-03.)

183.26 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 five (5) days after they become due shall bear interest at the rate of one and one-half (1½ %) percent per month or fraction thereof.

(b) In addition to interest as provided in Paragraph A hereof, penalties are hereby imposed as follows, based on the tax remaining unpaid after it becomes due:

- (1) For failure to pay taxes due, one and one-half percent (1½ %) per month or fraction thereof.
- (2) Where the taxpayer has failed to file a return by the due date or by the date resulting from extension, a late filing fee of twenty-five dollars (\$25.00).
- (3) Where the taxpayer has failed to file a declaration and paid the estimated tax per Section 183.19.
- (4) No penalty or interest shall be charged against a taxpayer for the late payment or nonpayment of estimated tax liability if the taxpayer is an individual who resides in the Municipality but was not domiciled there on the first day of January of the current calendar year.
- (5) Except in the case of fraud, the penalty shall not exceed fifty percent (50%) of the unpaid tax.

(c) Exceptions. 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, and provided further that, 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 (3) months after the final determination of the federal tax liability.

(d) Computed interest and penalties of less than five dollars (\$5.00) for a first time violation shall not be assessed. However, notification to the taxpayer of a first time violation will be made.

(e) Upon recommendation of the Tax Administrator, the Board of Review may abate penalty or interest, or both, or upon appeal from the refusal of the Tax Administrator to recommend abatement of penalty and interest, the Board may, nevertheless, abate penalty or interest, or both. (Ord. 2003-79. Passed 12-2-03.)

183.27 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.

(a) Civil actions to recover municipal income taxes together with interest and penalties thereon, shall be brought within three (3) years after the tax was due or the return was filed, whichever is later. In the case of fraud, failure to file a return or the omission of twenty-five percent or more of income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations the period within which an additional assessment may be made by the Tax Administrator shall be extended one (1) year from the time of the final determination of the federal tax liability.

(b) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date on which such payment was made or the return was due, or within three months after final determination of the federal tax liability, whichever is later.

(c) After the time period allowed for a refund of the tax or withholding paid to another municipality, a nonrefundable credit shall be allowed against tax or withholding erroneously paid or withheld to another municipality equal to the tax or withholding paid with respect to such income or wages.

If the tax rate is less than the tax rate paid or withheld on such income or wages, the credit described in subsection (c) hereof shall be calculated using the tax rate in effect.

(d) Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment, with the following exception: No interest shall be allowed on any overpayment that is refunded within ninety (90) days after the final filing date of the annual return or ninety (90) days after the complete return is filed, whichever is later. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the rate of interest prescribed by Ohio R.C. 5703.47.

(e) Refunds will not be issued to any active account unless the amount is greater than the estimate for the following year and only to the extent of the difference or all the tax to be owed is being withheld from wages by the employer.

(f) Amounts of less than one dollar (\$1.00) shall not be collected or refunded.
(Ord. 2003-79. Passed 12-2-03.)

183.28 BOARD OF REVIEW.

(a) Board of Review, consisting of the Presidente of the City Commission or his designated appointed designee from the remaining members of the Commission, the City Manager and the City Auditor, is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board shall be conducted privately and the provisions of Section 181.09 with reference to the confidential character of information required to be disclosed by the Chapter shall apply to such matters as may be heard before the Board on appeal. (Ord. 2004-81. Passed 11-16-04.)

The actions of the Board are to be governed by Section 181.13.

(b) All rules and regulations and amendments or changes thereto which are adopted by the Tax Administrator under the authority conferred by this Chapter, shall be approved by the Board of Review before the same becomes effective. After such approval, such rules, regulations, amendments and changes shall be filed with the City Auditor and shall be open to public inspection. The Board shall hear and pass on appeals from any ruling or decision of the Tax Administrator, and at the request of the taxpayer or Tax Administrator, is empowered to substitute alternate methods of apportionment.

(c) Whenever the Tax Administrator issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the Municipality, the Tax Administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

(d) Any person dissatisfied with any ruling or decision of the Administrator and who has filed with the Municipality the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Review by filing a request with the Board. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Tax Administrator has issued the decision.

(e) The imposition of penalty and interest as prescribed in these Codified Ordinances is not a sole basis for an appeal.

(f) The taxpayer or the Tax Administrator may appeal the Board's decision as provided in section 5717.011 of the Ohio Revised Code.

(g) Each Board of Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under section 149.43 of the Ohio Revised Code. Hearings requested by a taxpayer before a Board of Review created pursuant to this section are not meetings of a public body subject to section 121.22 of the Ohio Revised Code. (Ord. 2003-79. Passed 12-2-03.)

183.29 APPLICABILITY.

This chapter is inapplicable to any person or corporation upon whom or which it is beyond the legal power of the City Commission to impose the tax; it is likewise inapplicable as to any property income or profits or part thereof as to which it is beyond the legal power of Commissioners to levy the tax. (Ord. 2003-79. Passed 12-2-03.)

183.30 SEPARABILITY OF PROVISIONS.

This chapter shall not apply to any person, firm, corporation, or any property as to whom, or which, it is beyond the power of the City Commission to impose the tax herein provided for. 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 sentence, clause, 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 the City Commission that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.
(Ord. 2003-79. Passed 12-2-03.)

183.31 CONSOLIDATED RETURNS.

(a) A consolidated return may be filed by a group of corporations who are affiliated through stock ownership if that affiliated group filed for the same tax period, a consolidated return for Federal income tax purposes. A consolidated return must include all companies that are so affiliated.

(b) Once a consolidated return has been filed for any taxable year, consolidated returns shall continue to be filed in subsequent years unless the applicable requirements are met.

(1) If the Tax Administrator finds net profits are not properly allocated to the Municipality by reason of transactions 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 Municipality.

(2) If by written request from the taxpayer, the Tax Administrator finds the change from the consolidated return will not effect the fair and proper allocation of net profits to the Municipality, then a written "letter of acceptance" will be issued by the Tax Administrator.

(Ord. 2003-79. Passed 12-2-03.)

183.32 SPLIT PAYROLLS.

(a) In the case of hourly employees, where a payroll continues past May 31, 1978, and said payroll does not end until a period in June, 1978, said payroll shall be considered a split payroll, and as such, this payroll will not be subject to withholding tax under this chapter. This is to say only the first full pay for hourly employees earned after June 1, 1978, and all payrolls thereafter, will become subject to withholding under this chapter.

(b) All salaried employees paid on a calendar month will be subject to withholding under this chapter of June 1, 1978.

(Ord. 2003-79. Passed 12-2-03.)

183.33 WITHHOLDING STATEMENTS.

(a) The Municipal Income Tax Department shall require the filing of employee earnings report, either copies of the W-2's or a list containing all the information listed on the W-2's, along with a reconciliation report balancing the W-2 Municipal withholding to the amount already paid to the Municipality in quarterly or monthly deposits made for the year. The withholding tax reconciliation shall be filed by each employer on or before February 28 following the end of such calendar year.

(b) In addition to the wage reporting requirements of this section, any person required by the Internal Revenue Service to report on Form 1099, payments to individuals not treated as employees, shall file copies of the forms or a list of all information listed on the 1099 form, with the Municipal Income Tax Department on or before February 28 following the end of such calendar year. (Ord. 2003-79. Passed 12-2-03.)

183.34 VACATION PAY.

Vacation pay paid in 1978 shall not be subject to withholding deductions under this chapter. Vacation pay paid in 1979, and in all subsequent years, shall be subject to withholding deductions under this chapter. (Ord. 2003-79. Passed 12-2-03.)

183.99 PENALTY.

(a) Any person who shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this Chapter; or
- (2) Knowingly make an incomplete, false or fraudulent return; or
- (3) Willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this Chapter; or
- (4) Fail, neglect or refuse to withhold the tax from his employees and remit such withholding tax to the Tax Administrator; or
- (5) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his or his employer's books, records, papers, or federal income tax returns; or
- (6) Fail to appear before the Tax Administrator and to produce his or his employer's books, records, papers or federal income tax returns upon order or subpoena of the Tax Administrator; or
- (7) Refuse to disclose to the Tax Administrator any information with respect to such person's or such person's employers income or net profits; or
- (8) Willfully give to an employer by an employee false information as to his true name, correct social security number and residence address, or the failure of such employee to promptly notify an employer of any change in residence address and date thereof; or
- (9) Failure on the part of any employer to maintain proper records of employees' residence addresses, total wages paid and Municipal tax withheld, or to knowingly give the Tax Administrator false information; or
- (10) Fail to comply with the provisions of this Chapter or any order or subpoena of the Tax Administrator; or
- (11) Willfully fail or willfully refuse to make any payment on the estimated tax for any year or part of any tax year as required by Section 181.07; or

- (12) Fail to cause the tax withheld from the qualifying wages of the employees pursuant to this Chapter to be paid to the Municipality in accordance with the provisions of Section 181.06; or
- (13) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Chapter; shall be guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1000.) or imprisoned not more than six months, or both, for each offense.

(b) All prosecutions under this section must be commenced within the time specified in Ohio R.C. 718.12.

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

(d) Statute of Limitations.

- (1) Civil actions to recover Municipal income taxes and penalties and interest on Municipal income taxes shall be brought within three (3) years after the tax was due or the return was filed, whichever is later.
- (2) Prosecutions for an offense made punishable under this Chapter shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense. (ORC 718.12)

(e) The term "person" as used in this section shall, in addition to the meaning prescribed in Section 181.02, include in the case of an association or corporation not having any partner, member or officer within the Municipality, any employee or agent of such association or corporation who can be found within the corporate limits of the Municipality. (Ord. 2003-79. Passed 12-2-03.)