

TITLE NINE - Taxation
Chap. 181. Income Tax.

CHAPTER 181
Income Tax

EDITOR'S NOTE: The original Marietta Income Tax was enacted by Ordinance 34(62-63) at the rate of six-tenths of one percent beginning September 1, 1962. Council by Ordinance 13(70-71) increased the rate to one percent effective July 1, 1970. The voters at the general election of November 2, 1971 authorized a three-tenths of one percent increase effective January 1, 1972, with funds generated thereby to be used exclusively for the construction, equipping, maintenance and staffing of two new fire stations. Council by Ordinance 119(76-77) passed March 28, 1977, repealed one-tenth of one percent of the special tax levy approved by the voters on November 2, 1971, and continued the remaining two-tenths of one percent, subject to the terms and conditions provided for by the original levy. An additional tax of five-tenths of one percent was approved by the voters pursuant to the passage of Ordinance 101(86-87), passed November 20, 1986.

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CROSS REFERENCES

Power to levy income tax - see Ohio Const., Art. XVIII, Sec. 3
Payroll deductions - see Ohio R.C. 9.42
Municipal income taxes - see Ohio R.C. Ch. 718
Compliance for building permit - see P. & Z. 1135.02

181.01 DEFINITIONS.

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:

- (a) "Administrator" means the City Treasurer, or his authorized deputy, acting in his capacity as the administrative head of the Department of Income Taxation.
- (b) "Board of Review" means the Board established by and constituted as provided in Section 181.12.
- (c) "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, pass-through entity, corporation or any other entity.
- (d) "Chapter" means Chapter 181 of the Codified Ordinances of the City.
- (e) "City" means the City of Marietta, Ohio.
- (f) "City income tax" or "tax imposed by this Chapter" means the tax levied by Section 181.02, including any amendments or successor provisions thereto, on the income specified in Section 181.03, including any amendments or successor provisions thereto.
- (g) "Compensation" means all salaries, wages, commissions and other remuneration for work done or services performed. For taxable years beginning on or after January 1, 2005, "compensation" of an employee means "qualifying wages," within the meaning of Ohio Revised Code Section 718.03, including any amendments or successor provisions thereto.
- (h) "Corporation" means a corporation, S 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, or any unincorporated entity treated as a corporation for federal income tax purposes. The term "corporation" does not include a limited liability company that is treated as a partnership for federal income tax purposes. For taxable years beginning on or after January 1, 2004, "corporation" includes a "combined company," an "electric company" and a "telephone company," all as defined in Ohio Revised Code section 5727.01, including any amendments or successor provisions thereto.
- (i) "Deferred compensation" means earned compensation the receipt of which is delayed to a later date.
- (j) "Department" means the Department of Income Taxation created by and constituted as provided in Section 181.08.
- (k) "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.
- (l) "Employee" means one who works for compensation in the service of an employer.
- (m) "Employer" means a person, governmental body, unit, agency or any other entity, whether or not organized for profit, who or that employs one or more persons on a compensation basis.
- (n) "Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31.

- (o) "Gross receipts" means the taxpayer's total income from any source whatsoever.
- (p) "Intangible income" means that income specified in Ohio Revised Code Section 718.01(A)(5), including any amendments or successor provisions thereto, and includes of any of the following types of income: 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, including any amendments or successor provisions thereto, 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.
- (q) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
- (r) "Limited liability company" means a limited liability company formed under Ohio Revised Code Chapter 1705, including any amendments or successor provisions thereto, or under the laws of any other state.
- (s) "Net operating loss" means the negative adjusted federal taxable income recognized by a taxpayer from the operation of a business for the taxable year.
- (t) "Net profits" means: (i) in the case of a corporation, "adjusted federal taxable income," as that term is defined in Ohio Revised Code Section 718.01(A)(1)(a)-(f), including any amendments or successor provisions thereto; (ii) in the case of a pass-through entity, "adjusted federal taxable income," as that term is defined in Ohio Revised Code Section 718.01(A)(1)(g), including any amendments or successor provisions thereto; and (iii) in the case of a sole proprietorship, the profit shown by the individual on Internal Revenue Service Schedule C, Schedule E, and Schedule F. Adjusted federal taxable income shall be determined in accordance with (i) the accounting method used by the taxpayer for federal income tax purposes and (ii) the Internal Revenue Code, Treasury Regulations, federal case law interpreting these authorities and administrative authorities promulgated by the Internal Revenue Service.
- (u) "Nonqualified deferred compensation plan" means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.
- (v) "Nonresident" means an individual domiciled outside the City.
- (w) "Owner" means an individual, partner, member, or any other person having an ownership interest in a pass-through entity.
- (x) "Pass-through entity" means a partnership or a limited liability company that is treated as a partnership for federal income tax purposes, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.
- (y) "Person" means every natural person, pass-through entity, fiduciary, or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to a pass-through entity shall mean the owners thereof and, as applied to corporations, the officers thereof.
- (z) "Place of business" means any bona fide office, other than a mere statutory office, factory, warehouse or other space that is occupied and used by the taxpayer in carrying on any business activity individually or through one or more agents or employees regularly in attendance.

- (aa) "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, including any amendments or successor provisions thereto. Qualifying wages includes compensation attributable to a nonqualified deferred compensation plan or program described in Section 3121(v)(2)(C) of the Internal Revenue Code and compensation from employment arising from the sale, exchange or other disposition of a stock option, the exercise of a stock option, or the sale, exchange or other disposition of stock purchased under a stock option. Qualifying wages does not include compensation deferred before January 1, 2004, to the extent that such deferred compensation would not be treated as wages within the meaning of Section 3121(a) of the Internal Revenue Code at the time such deferred compensation is paid or distributed.
- (bb) "Resident" means an individual domiciled in the City.
- (cc) "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.
- (dd) "Taxable income" means the income specified in Section 181.03(a) as subject to the tax imposed under this Chapter.
- (ee) "Taxable year" means the calendar year or the fiscal year upon the basis of which the net profits are to be computed under this Chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made. Unless approved by the Administrator, the taxable year of each taxpayer shall be the same as the taxable year used by the taxpayer for federal income tax purposes.
- (ff) "Taxing municipality" means any municipal corporation, other than the City, that levies a municipal income tax on compensation earned by individuals and on the net profits earned from the operation of a business.
- (gg) "Taxpayer" means a person required hereunder to file a return or pay City income tax. "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.

As set forth in this Chapter, 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. 147(04-05). Passed 2-17-05.)

181.02 PURPOSE.

(a) To provide funds for the purpose of general municipal operations, maintenance, new equipment, extension, enlargement and improvement of municipal services and facilities and capital improvements of the City, including the payment of principal of and interest on bonds and notes issued to finance such capital improvements, there shall be and is hereby levied a tax upon taxable income set forth in Section 181.03 at the rate of one and two-tenths percent (1.2%).

(b) In addition to the tax levied by the first paragraph of this section, commencing January 1, 1987, there shall be and is hereby levied a tax upon taxable income set forth in Section 181.03 at the rate of five-tenths of one percent (0.5 %) for the purposes of street construction, reconstruction, resurfacing, maintenance and repair, providing capital improvements, and providing general municipal operations, maintenance, new equipment, extension, enlargement and improvement of municipal services and facilities of the City. (Ord. 147(04-05). Passed 2-17-05.)

181.03 IMPOSITION OF TAX.

(a) Subject to the provisions of Section 181.15, an annual tax for the purposes and at the rate specified in Section 181.02 shall be imposed on and after January 1, 2005, upon the following:

- (1) On all compensation and on net profits from the operation of a business earned during the effective period of this Chapter by a resident.
- (2) On all compensation earned or received by a nonresident for work done or services performed or rendered in the City, subject to the limitations provided in Ohio Revised Code Section 718.011, including any amendments or successor provisions thereto, and on net profits earned or received by a nonresident from the operation or conduct of business in the City. Where a nonresident is employed at a place of business in the City, the compensation of such nonresident for the performance of employee services will be treated as earned outside the City only for those services which of necessity, as distinguished from convenience, obligate such nonresident to duties outside the City in the service of the nonresident's employer.
- (3) On the portion attributable to the City of the net profits earned during the effective period of this Chapter of a pass-through entity derived from business conducted in the City, whether or not such pass-through entity has an office or place of business in the City. The tax imposed by this Section 181.03(a)(3) on the net profits of pass-through entities is imposed upon the pass-through entities rather than their owners.
- (4) On the portion attributable to the City of the net profits earned during the effective period of this Chapter of a corporation derived from business conducted in the City, whether or not such corporation has an office or place of business in the City. The tax imposed by this Section 181.03(a)(4) on the net profits of an electric company, combined company, or telephone company shall be subject to, and shall accord with, Ohio Revised Code Chapter 5745, including any amendments or successor provisions thereto.
- (5) On all income derived anywhere from prizes, awards, gaming, wagering, lotteries, or schemes of chance by a resident, and on all income derived from prizes, awards, gaming, wagering, lotteries, or schemes of chance by a nonresident when such income is won or received from sources within the City.

(b) The portion of the net profits attributable to the City of a taxpayer conducting business both within and without the boundaries of the City shall be determined as provided in Ohio Revised Code Section 718.02, including any amendments or successor provisions thereto, and in accordance with rules and regulations adopted by the Administrator pursuant to this Chapter.

(c) Net Operating Loss.

- (1) The City does not allow a net operating loss carryback or carryforward to any taxable year other than the taxable year in which the taxpayer incurs the net operating loss.
- (2) Losses from other sources, including net operating losses and passive activity losses reported for federal income tax purposes, may not be combined with or otherwise offset compensation.

(d) Filing of Consolidated Returns.

- (1) The Administrator shall accept for filing a consolidated return from an affiliated group of corporations subject to the tax imposed by this Chapter if the affiliated group filed for the same taxable year a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code. Only corporations subject to the tax imposed by this Chapter may be included in such consolidated return filed for the City. If an affiliated group of corporations subject to the tax imposed by this Chapter properly files a consolidated return in accordance with this Section 181.03(d)(1) for any taxable year, the affiliated group must file a consolidated return for each succeeding taxable year in which it files a consolidated return for federal income tax purposes unless, on or before the due date (taking into account extensions of time properly granted) of the return for a taxable year, the affiliated group obtains the permission of the Administrator to cease filing a consolidated return for that year.
- (2) In the case of a corporation or other entity that carries on transactions with its stockholders or owners or with other corporations or entities related by stock ownership or other ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the City constituting only a portion of its total business, the Administrator shall require such additional information as the Administrator deems necessary to ascertain whether net profits are properly allocated to the City. If the Administrator finds that the net profits of such corporation, other entity or person are not properly allocated to the City by reason of transactions (i) with stockholders or other owners or (ii) with other corporations or entities related by stock or other ownership, interlocking directorates or some other method or (iii) with a division, branch, factory, office, laboratory or activity, the Administrator shall make an allocation of net profits to the City in such manner as the Administrator deems fair and reasonable. If necessary, the Administrator may require the filing of a City income tax return on a consolidated or unitary basis.

- (e) Exemptions. The City income tax shall not be levied on the following:
- (1) Military pay or allowance of members of the armed forces of the United States and of members of their reserve components, including the Ohio National Guard.
 - (2) The income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property or tax-exempt activities.
 - (3) Personal earnings of any natural person under eighteen years of age.
 - (4) Intangible income, including interest, dividends, gains and other revenue from intangible property, as described in Ohio Revised Code Section 718.01(A)(5), including any amendments or successor provisions thereto.
 - (5) Compensation paid to a nonresident individual to the extent prohibited under Ohio Revised Code Section 718.011, including any amendments or successor provisions thereto.
 - (6) Items excluded from federal gross income pursuant to Section 107 of the Internal Revenue Code.
 - (7) An S corporation shareholder's distributive share of net profits or losses of the S corporation, except to the extent that the distributive share of net profits represents wages as defined in Section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in Section 1402(a) of the Internal Revenue Code.
 - (8) Employee compensation that is not qualifying wages.
 - (9) Compensation, net profits and other items of income the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce.
 - (10) Compensation, net profits and other items of income the taxation of which is prohibited by the Constitution of the State of Ohio or any other act of the Ohio General Assembly limiting the power of a municipality to impose net income taxes.
 - (11) Generally, the above noted items in this Section 181.03(e) are the only forms of income not subject to the tax imposed by this Chapter. Any other income, economic benefit or other form of compensation earned or received by a taxpayer shall be subject to the tax imposed by this Chapter.

(f) Deductions of Employee Business Expenses. The only expenses that can be deducted against compensation are those employee business expenses deductible for federal income tax purposes in determining adjusted gross income, unless otherwise allowed on a uniform and consistent basis by the Administrator. The total of such expenses cannot exceed the employee's related W-2 wage income from the same employer. Notwithstanding anything to the contrary in this Section 181.03(f), if a taxpayer's taxable income for a taxable year includes income against which the taxpayer has taken a deduction for federal income tax purposes reported on Form 2106 attached to the taxpayer's federal income tax return filed for that taxable year, the taxpayer shall determine his or her taxable income to the City by deducting the same amount deducted for federal income tax purposes and reported on the taxpayer's Form 2106 for that taxable year and shall attach a copy of Form 2106 and Schedule A filed with the taxpayer's federal income tax return to the taxpayer's City return for that taxable year.

(Ord. 147(04-05). Passed 2-17-05.)

181.04 EFFECTIVE PERIOD.

(EDITOR'S NOTE: This section was repealed by Ordinance 246(80-81), passed November 19, 1981.)

181.05 RETURN AND PAYMENT OF TAX; AMENDED RETURNS.

(a) Each taxpayer having taxable income subject to tax under this Chapter, whether or not a tax is due thereon, shall make and file a City income tax return no later than the fifteenth (15th) day of the fourth (4th) month following the end of the taxpayer's taxable year. A City income tax return shall be deemed filed when postmarked by the United States Postal Service or on the date delivered other than by the United States Postal Service during normal business hours to the Administrator. Notwithstanding anything in this Chapter to the contrary, the return of an employer or employers that shows the amount of City income tax deducted by the employer or employers from the compensation of an employee and paid by the employer or employers to the Administrator shall be accepted as the City income tax return required of any employee whose sole income subject to City income tax consists of such compensation.

(b) The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from the Administrator, or on any form that comports with Ohio Revised Code Section 718.05(C), including any amendments or successor provisions thereto, setting forth:

- (1) The aggregate amounts of compensation and other taxable income earned or received by the taxpayer, and/or the gross receipts from the taxpayer's operation of a business less allowable expenses incurred in the acquisition of such gross receipts earned during the taxpayer's taxable year and subject to City income tax;
- (2) The amount of tax imposed by this Chapter on such compensation, net profits and other taxable income;
- (3) Any credits to which the taxpayer may be entitled under the provisions of Sections 181.07 and 181.14; and
- (4) Such other pertinent statements, returns or other information as the Administrator may require, including a statement that the figures used in the City income tax return are the figures used in the taxpayer's federal income tax return for that taxable year, adjusted to set forth only such income as is taxable under the provisions of this Chapter.

(c) Extensions.

- (1) Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of the City income tax return for the same taxable year by filing a copy of the taxpayer's federal extension request for such taxable year with the Administrator. Any taxpayer not required to file a federal income tax return may make a written request for an extension to file a City income tax return. The request for extension must be filed on or before the original due date for the City income tax return, as set forth in Section 181.05(a). If the request is granted, the extended due date of the City income tax return shall be the last day of the month following the month to which the due

date of the taxpayer's federal income tax return for the same taxable year has been extended. For taxable years beginning on or after January 1, 2005, a taxpayer who receives an extension for filing the federal income tax return will receive an extension for filing the City income tax return for the same taxable year by complying with Ohio Revised Code Section 718.051(B), including any amendments or successor provisions thereto, but such taxpayer must pay any City income tax owed by the unextended due date for filing the City income tax return, as provided in Section 181.05(d).

- (2) The Administrator may deny a taxpayer's request for an extension of the due date to file the City income tax return if the taxpayer:
 - A. Fails to timely file the request;
 - B. Fails to file a copy of the federal extension request, if applicable;
 - C. Owes the City any delinquent income tax, penalty, interest or other charge for the late payment or nonpayment of City income tax; or
 - D. Has failed to file any required City income tax return, report, or other related document for a prior taxable year.
- (3) The granting of an extension of the due date for filing a City income tax return does not extend the due date as provided in this Section 181.05 for payment of the tax; hence, penalty and interest may apply to any unpaid City income tax during the period of extension at the rate set out by Section 181.10. No penalty shall be assessed in those cases in which the City income tax return is filed and the final tax paid within the extended period for filing such return provided all other filing and payment requirements of this Chapter have been met. The Administrator shall grant any extension of the due date for filing the City income tax return upon the condition that all City income tax declaration filing and payment requirements have been fulfilled; however, if, upon further examination it then becomes evident that such declaration filing and payment requirements have not been fulfilled, penalty and interest may be assessed in full and in the same manner as though no extension of the due date for filing the City income tax return had been granted.

(d) The taxpayer making the City income tax return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown as due thereon. However, where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 181.06, or where any portion of such tax has been paid by the taxpayer pursuant to the provisions of Sections 181.05 and 181.07, credit for 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 City income tax return.

(e) An amended return must be filed to report additional income and pay any additional tax due, or claim a refund of tax overpaid subject to the requirements and/or limitations contained in Sections 181.11 and 181.14. An amended return shall be filed on a form obtainable upon request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

(f) Subject to the limitation on the period for assessment of City income tax and claims for refund thereof prescribed by Ohio Revised Code Section 718.12, including any amendments or successor provisions thereto, within three months from the final determination of any federal tax liability affecting the taxpayer's City income tax liability for the same taxable year(s), such taxpayer shall make and file an amended City income tax return for such year(s) showing income subject to City income tax based upon such final determination of federal tax liability and pay any additional tax shown due thereon or make claim for refund of any overpayment.

(g) Should the City income tax return or the records of the Administrator indicate an overpayment of the tax to which the City is entitled under the provisions of this Chapter, such overpayment shall first be applied against any existing liability of the taxpayer to the City, and the balance, if any, at the election of the taxpayer indicated on the return, shall be refunded or transferred against any subsequent liability of the taxpayer to the City, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded. (Ord. 147(04-05). Passed 2-17-05.)

181.06 COLLECTION AT SOURCE; CONTRACT SERVICES AND RENTAL INCOME.

(a) Each employer within or doing business within the City who or that employs one or more employees shall, at the time of payment of compensation, deduct the City income tax from the gross compensation paid to a taxpayer for work done or services performed or rendered in the City by the taxpayer.

(b) Each employer shall, on or before the last day of the month, make a return and remit to the Administrator the City income tax withheld from employee compensation in the previous month. Such return shall be on a form or forms prescribed by or acceptable to the Administrator and shall be subject to the rules and regulations prescribed therefore by the Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld. However, if the amount of City income tax so deducted by an employer in any one calendar quarter is less than one thousand dollars (\$1,000), the employer may defer the filing of a return and payment of the amount deducted until the last day of the month following the end of such calendar quarter.

(c) For taxable years beginning on or after January 1, 2007, any employer subject to this Section 181.06 may use the Ohio business gateway both to report the amount of City income tax withheld from compensation and to remit such amounts.

(d) An employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued.

(e) An employee is not relieved from liability for City income tax by the failure of the employer to withhold the tax as required by this Section 181.06 or by the employer's exemption from the requirement to withhold City income tax.

(f) The failure of an employer to remit the City income tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the City income tax withheld.

(g) On or before each January 31, each employer subject to the provisions of this Section 181.06 shall file with the Administrator an information return for each employee from whom city income tax has been or should have been withheld, showing the name, address and Social Security number of the employee, the total amount of compensation paid during the year to such employee and the amount of City income tax withheld from such employee and shall provide a copy of such information return to the employee.

(h) The employer, in collecting City income tax, shall be deemed to hold the same as a trustee for the benefit of the City until payment is made by such employer to the City, and such tax collected by such employer from its employees shall be deemed a trust fund in the hands of such employer until the same is paid to the City.

(i) On or before each January 31, any person, business or other entity who contracts or otherwise engages another person, business or other entity to perform services or conduct business activities for remuneration in any form, including, but not limited to, the sale of real estate, the sale of insurance, construction, transportation or other contract or subcontract services, shall file with the Administrator an information return, which shall include the proper name, address, federal identification number and the amount of such remuneration paid during the prior calendar year to such person, business or other entity.

(j) On or before each January 31 and each July 31, any person engaged in the rental of real estate and that receives rental income shall file with the Administrator a list of tenants as of December 31 and June 30, respectively, including the name and address of each tenant.

(k) Any return or form required to be filed under this Section 181.06 is considered filed on the date postmarked by the United States Post Office or on the date delivered other than by the United States Postal Service during normal business hours to the Administrator. (Ord. 147(04-05). Passed 2-17-05.)

181.07 DECLARATIONS.

(a) Every person who anticipates any taxable income that is not subject to the provisions of Section 181.06, or who engages in any business, profession, enterprise or activity subject to City income tax, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity, together with the estimated City income tax due thereon, if any. For taxable years beginning on or after January 1, 2005, declarations of estimated net profits from any business conducted within the City and payment of estimated city income tax thereon may be made by using the Ohio business gateway, as described in Ohio Revised Code Section 718.051, including any amendments or successor provisions thereto.

(b) Such declaration of estimated City income tax for a taxable year that is a calendar year shall be filed on or before April 15 of each year during the life of this chapter, or within four months of the date the taxpayer becomes subject to City income tax for the first time.

(c) Such declaration of estimated tax shall be filed on a form or forms furnished by or obtainable from the Commissioner of Taxation or on a generic form prescribed by Ohio Revised Code Section 718.05, including any amendments or successor provisions thereto, which form or forms may require a statement that the taxpayer's declaration of estimated City taxable income equals the taxpayer's estimated federal taxable income as adjusted so that City taxable income includes only those items that are taxable under this Chapter.

- (d) (1) Such declaration of estimated tax for a taxable year that is a calendar year shall be accompanied by payment of at least twenty-two and one-half percent of the estimated annual tax and, in the case of individuals, at least a similar amount must be paid on or before July 31 and October 31 of that taxable year and January 31 of the subsequent taxable year. A calendar year taxpayer having net profits subject to City income tax must file the declaration of estimated tax by April 15 and pay at least twenty-two and one-half percent of the estimated annual tax by that date, and at least a similar amount must be paid by June 15, September 15 and December 15 of such taxpayer's taxable year. The estimate may be amended at any time prior to the due date of the taxpayer's annual City income tax return for the taxable year for which the estimated payments are made. The annual City income tax return must be filed and any balance of City income tax that may be due must be paid on or before the due date set forth in Section 181.05. If the taxpayer has paid more than the amount of tax to which the City is entitled, a refund of the amount so overpaid shall be made or the same may be applied toward the declaration of tax due for the ensuing taxable year. Claims for refunds shall be made on forms prescribed or approved by the Commissioner of Taxation and within the time provided in Section 181.11.
- (2) An amended declaration must be filed on or before January 31 of any year, or in the case of a taxpayer on a fiscal year accounting basis, on or before the date fixed by regulation of the Commissioner of Taxation, if it appears that the original declaration made for the preceding taxable year underestimated the taxpayer's income by twenty percent (20%) or more. At such time a payment that, together with prior payment is sufficient to pay taxpayer's entire estimated liability, shall be made. If upon the filing of the annual City income tax return required by Section 181.05 hereof, it appears that the taxpayer did not pay at least ninety percent (90%) of the City income tax liability shown on such return on or before January 31 or the date fixed by regulation, whichever is applicable, the difference between ninety percent (90%) of the taxpayer's City income tax liability and the amount of estimated tax actually paid on or before January 31 or the date fixed by regulation, whichever is applicable, shall be subject to the interest and penalty provisions of Section 181.10. However, the interest and penalty provisions of Section 181.10 shall not apply where either: (i) the taxpayer is a resident but was not domiciled in the City on January 1 of the calendar year; or (ii) the taxpayer has remitted on a timely basis an amount of estimated City income tax at least equal to one hundred percent (100%) of the taxpayer's City income tax liability for the preceding taxable year, provided that the return for the preceding taxable year reflected a 12-month period and the taxpayer filed a City income tax return for the preceding taxable year.

- (3) Such declaration shall indicate that the estimated tax is being withheld under the provisions of Section 181.06 or is being paid to another municipality.

(e) Those taxpayers having a taxable year other than the calendar year shall file a declaration on or before the fifteenth day of the fourth month after the start of each fiscal year or period, accompanied by a payment of at least twenty-two and one-half percent of the estimated annual tax shown due thereon, and shall make quarterly payments of at least a similar amount each on the fifteenth day of the sixth month, ninth month and twelfth month of the taxpayer's taxable year.

(f) An annual City income tax return shall be filed by the date prescribed by Section 181.05(a) and any balance that may be due the City shall be paid therewith in accordance with the provisions of Section 181.05.
(Ord. 147(04-05). Passed 2-17-05.)

181.08 DUTIES OF THE ADMINISTRATOR.

(a) There is hereby established within the government of the City a Department of Income Taxation of which the City Treasurer shall be the administrative head, which Department shall be responsible for all matters constituting the subject matter of this Chapter. The Treasurer shall appoint such other officers and employees as may be provided by Council, subject to the provisions of Section 2A of Ordinance No. 31(62-63), as amended.

(b) It shall be the duty of the Treasurer to collect and receive the tax imposed by this Chapter in the manner prescribed herein from the taxpayers. It shall also be the duty of the Treasurer to enforce payment of all taxes owing to the City, to keep accurate records for a minimum of five (5) years, showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

(c) The Treasurer is hereby charged with the enforcement of the provisions of this Chapter and is hereby empowered, subject to the approval of the Board of Review, to adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this Chapter, including provisions for the re-examination and correction of returns and payments.

(d) The Treasurer, and any authorized deputy performing any of the duties of the Treasurer as Administrator, is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments when the taxpayer has proved to the Treasurer or Administrator, as the case may be, that, due to certain hardship conditions, he or she is unable to pay the full amount of the tax due. Such authorization shall not be granted until the taxpayer files proper returns for all amounts owed by him or her under this Chapter. Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand, and the provisions of Sections 181.11 and 181.99 shall apply.

(e) In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Treasurer, and any authorized deputy performing any of the duties of the Treasurer as Administrator, may determine the amount of tax appearing to be due the City from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

(f) The Treasurer, and any authorized deputy performing any of the duties of the Treasurer as Administrator, shall be required to post a bond guaranteeing to the City his faithful performance of his duties under this Chapter. The amount of such bond and a listing of the acceptable issuers thereof shall be established pursuant to ordinances adopted from time to time by Council.
(Ord. 147(04-05). Passed 2-17-05.)

181.09 INVESTIGATIVE POWERS OF THE ADMINISTRATOR; DIVULGING CONFIDENTIAL INFORMATION.

(a) The Administrator or any authorized employee is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Administrator believes is subject to, the provisions of this Chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this Chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish, upon written request by the Administrator or his or her duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(b) The Administrator may order any person to appear at the office of the Department of Income Taxation and may examine any person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and federal income tax returns and the attendance of all persons before him or her, whether as parties or witnesses, whenever he or she believes such persons have knowledge of such income or information pertinent to such inquiry.

(c) The refusal to produce books, papers, records and federal income tax returns, the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this Chapter or with an order or subpoena of the Administrator authorized hereby, shall be deemed a violation of this Chapter, punishable as provided in Section 181.99.

(d) Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this Chapter shall be confidential, except for official purposes, for disclosure and exchange of information with other federal, state or local taxing authorities for tax collection purposes, or except in accordance with proper judicial order. Any person divulging such information in violation of this Chapter shall be subject to the penalty provided in Section 181.99. Each such disclosure shall constitute a separate offense.

(e) Wherever the Administrator issues a decision regarding an income tax obligation that is subject to appeal, the Administrator shall notify the taxpayer at the same time of the taxpayer's right to appeal the decision and the manner in which the taxpayer may appeal the decision.

(Ord. 147(04-05). Passed 2-17-05.)

181.10 INTEREST AND PENALTIES.

(a) Interest. All taxes imposed and all moneys withheld or required to be withheld by employers under the provisions of this Chapter, and remaining unpaid after they become due, shall bear interest at the rate of one percent (1%) per month of the unpaid balance.

(b) Penalties. In addition to interest as provided in subsection (a) hereof, penalties based on the unpaid tax are hereby imposed as follows:

- (1) For failure to pay City income tax due, other than City income tax withheld, ten percent (10%) per annum of the unpaid tax; provided that a penalty shall not be assessed on an additional tax assessment made pursuant to this Chapter when a City income tax return has been filed in good faith and the tax paid thereon within the time prescribed herein; and provided further, that no penalty shall be assessed on any additional tax assessment resulting from a final determination of federal income tax liability, provided that an amended City income tax return is filed and the additional City income tax paid within three months after the final determination of the federal income tax liability, subject to the limitation on the period for assessment of City income tax and claims for refund thereof prescribed by Ohio Revised Code Section 718.12, including any amendments or successor provisions thereto.
- (2) For failure to remit City income tax withheld for employees, fifteen percent (15%) of the unpaid withholding.

(c) Upon recommendation of the Administrator, the Board of Review may abate any penalty imposed by this section, or upon an appeal from the refusal of the Administrator to recommend abatement of penalty, the Board may nevertheless abate such penalty.

(Ord. 147(04-05). Passed 2-17-05.)

181.11 COLLECTION OF UNPAID TAXES; REFUND OF OVERPAYMENTS.

(a) All taxes imposed by this Chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. No additional assessment of City income tax shall be made after three years from the date the City income tax return was due or filed, whichever is later.

(b) Prosecutions for an offense made punishable under this Chapter shall be commenced within three 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 the compensation or net profits required to be reported, prosecutions may be commenced within six years after the commission of the offense.

(c) City income tax erroneously paid or withheld shall not be refunded unless a claim for refund is made within the time specified in Ohio R.C. 718.12(C), including any amendments or successor provisions thereto. Interest on such refunded amounts shall be allowed to the extent provided in Ohio R.C. 718.12(D), including any amendments or successor provisions thereto. Amounts of less than one dollar (\$1.00) shall not be collected or refunded.

(Ord. 147(04-05). Passed 2-17-05.)

181.12 BOARD OF REVIEW; APPEALS.

(a) A Board of Review, consisting of the Chairman of the Council Finance Committee, the City Law Director and an elector appointed by each new Council after the general election, is hereby created. All rules and regulations, and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this Chapter, must be approved by the Board before the same become effective. After such approval, such rules, regulations, amendments and changes shall be filed with the Clerk of Council and shall be made available to public inspection at the offices of the Department of Income Taxation.

(b) The Chairman of the Council Finance Committee shall be Chairman of the Board, and an elector appointed by each new Council after the general election shall serve as Secretary thereof. 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. Such records are not public records available for inspection under Ohio R.C. 149.43, including any amendments or successor provisions thereto.

(c) All hearings 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 this Chapter, shall apply to such matters as may be heard before the Board. Hearings requested by a taxpayer before the Board of Review are not meetings of a public body that are subject to Ohio R.C. 121.22, including any amendments or successor provisions thereto.

(d) The Administrator, in issuing any ruling or decision for which authority has been conferred upon him by this Chapter, shall at the same time notify the taxpayer of both the taxpayer's right to appeal such ruling or decision and the manner in which the taxpayer may appeal such ruling or decision. Any person dissatisfied with any ruling or decision of the Administrator made under the authority conferred by this Chapter and who has filed with the City the required returns or other documents pertaining to the City income tax obligation at issue in the decision may appeal therefrom to the Board within thirty (30) days from the announcement of such ruling or decision by the Administrator, and the Board, on hearing, shall have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. An appeal of a ruling or decision of the Administrator must be in writing and must state why such ruling or decision is deemed incorrect or unlawful. The Board shall schedule any hearings and issue its decision within the periods and in the manner prescribed by Ohio R.C. 718.11, including any amendments or successor provisions thereto. If the taxpayer does not waive a hearing before the Board, the taxpayer may appear before the Board and be represented as provided by law.

(e) All appeals of decisions of the Board of Review shall be made in accordance with Ohio R.C. 718.11 and 5717.011, including any amendments or successor provisions thereto.

(Ord. 147(04-05). Passed 2-17-05.)

181.13 ALLOCATION OF FUNDS.

The funds collected under the provisions of this Chapter shall be deposited in the Income Tax Revenue Fund, and such Fund shall annually be disbursed for the following purposes and in the following order:

- (a) Such part thereof as shall be necessary to defray all costs of collecting the taxes and the cost of administering and enforcing the provisions thereof.
- (b) Such part of the balance of such funds as shall bear the same ratio to the total tax collected as two-tenths of one percent (0.2%) bears to the total rate of tax imposed by Section 181.02 shall be used for the construction, equipping, maintaining and staffing of fire station number three and fire station number four.
- (c) Such part of the balance of such funds as shall bear the same ratio to the total tax collected as two-tenths of one percent (0.2%) bears to the total rate of tax imposed by Section 181.02 shall be used for the construction, reconstruction, resurfacing, maintenance and repair of City streets.
- (d) Such part of the balance of such funds as shall bear the same ratio to the total tax collected as one-tenth of one percent (0.1%) bears to the total rate of tax imposed by Section 181.02 shall be used for capital improvements of the City, including the payment of principal of and interest on bonds and notes issued to finance such capital improvements.
- (e) Such part of the balance of such funds as shall bear the same ratio to the total tax collected as two-tenths of one percent (0.2%) bears to the total rate of tax imposed by Section 181.02 shall be used for general municipal operations, maintenance, new equipment, extension, enlargement and improvement of municipal services and facilities of the City.
- (f) The balance of the funds shall be used in accordance with appropriation ordinances adopted from time to time by Council.
- (g) Any portion of such balance which is not appropriated by Council shall be transferred to the Capital Improvement Fund.
(Ord. 147(04-05). Passed 2-17-05.)

181.14 RELIEF AND RECIPROCITY PROVISIONS.

(a) Residents. When a resident of the City is subject to and has paid, or has acknowledged liability for, a municipal income tax in another municipality in the State of Ohio on the same income taxable under this Chapter, and such municipality does not allow a credit to its nonresidents, the City resident may claim a credit against City income tax owed on such income in an amount equal to the lesser of: (i) one hundred percent (100%) of the amount of the tax imposed by this Chapter; or (ii) the amount of tax paid or payable by the City resident on such income to such other municipality. In no case shall the credit authorized by this subsection (a) exceed the City income tax imposed on the taxable income that is also subject to tax in another municipality in the State of Ohio.

(b) A resident owner of a pass-through entity that does not conduct business in the City and that has paid, or has acknowledged liability for, an income tax in another municipality may claim a credit equal to the lesser of the following amounts:

- (1) The resident owner's proportionate share of the amount, if any, of income tax paid by the pass-through entity to another municipal corporation in the State of Ohio; or
- (2) The resident owner's proportionate share of the amount of tax that would be imposed on the pass-through entity by the City if the pass-through entity conducted business in the City.

In no case shall the credit authorized by this subsection (b) exceed the City income tax imposed on the taxable income that is also subject to tax in another municipality in the State of Ohio.

(c) Credits. Where applicable, the credits provided by Ohio R.C. 718.021 and 718.121, including any amendments or successor provisions thereto, shall be available to residents.

(d) Nonresidents. Except as provided in Ohio R.C. 718.021 and 718.121, including any amendments or successor provisions thereto, when a nonresident is subject to the tax imposed by this Chapter and is also subject to tax on the same income in the municipal corporation in which the nonresident resides, such nonresident shall not be allowed any credit against or claim of refund for City income tax, and the City will not acknowledge or allow any claim for refund of any portion of the City income tax so levied.

(e) The credits provided for in this Section 181.14 will not be allowed unless the same are claimed in a timely return on a form acceptable to, and filed with, the Administrator, and such evidence that the Administrator may require is presented that the payment of tax to such other municipality has been made or is owed. In the event a taxpayer fails, neglects or refuses to file such timely return or form, he or she shall not be entitled to such credit and shall be liable for the full amount of tax assessed by this Chapter, together with such interest and penalties, both civil and criminal, as prescribed in this Chapter.

(f) The credits provided for in this Section 181.14 apply only to individuals and do not apply to corporations or pass-through entities.
(Ord. 147(04-05). Passed 2-17-05.)

181.15 SAVING CLAUSE.

If any sentence, clause, section or part of this Chapter or any City income 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 clause, sentence, 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 Council that this Chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein. (Ord. 147(04-05). Passed 2-17-05.)

181.16 COLLECTION OF TAX AFTER TERMINATION OF TAX LEVY.

(EDITOR'S NOTE: This section was repealed by Ordinance 246(80-81), passed November 19, 1981.)

181.99 PENALTY.

- (a) The following shall be considered violations of this Chapter:
- (1) Failure, neglect or refusal to make any return or declaration required by this Chapter;
 - (2) Making any incomplete, false or fraudulent return;
 - (3) Failure, neglect or refusal to pay the tax, penalties or interest imposed by this Chapter;
 - (4) Failure, neglect or refusal of an employer to withhold the tax from his or her employees or to remit such withholding to the Administrator;
 - (5) Refusal to permit the Administrator or any duly authorized agent or employee to examine his or her books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer;
 - (6) Failure of an employer or taxpayer to appear before the Administrator and to produce his or her books, records, papers or federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator;
 - (7) Refusal of an employer or taxpayer to disclose to the Administrator any information with respect to the income or net profits of a taxpayer;
 - (8) Failure to comply with the provisions of this Chapter or any order or subpoena of the Administrator authorized hereby;
 - (9) Giving to an employer false information as to his or her true name, correct Social Security number and residence address, or failing to promptly notify an employer of any change in residence address and date thereof;
 - (10) Failure to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and City income tax withheld, or knowingly giving the Administrator false information;
 - (11) Attempting to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Chapter.

(b) Whoever violates any of the provisions of this section is guilty of a misdemeanor of the first degree and shall be fined not more than five hundred dollars (\$500) or imprisoned not more than six months, or both, for each offense.

(c) All prosecutions of an offense made punishable under this chapter shall be commenced within three years after the commission of the offense, except as otherwise provided in Section 181.11(b).

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

(e) In addition to the penalty provided in subsection (b) hereof, any employee of the City who violates Section 181.09(d), relative to the disclosure of confidential information, shall be guilty of an offense punishable by immediate dismissal.
(Ord. 147(04-05). Passed 2-17-05.)

