

ORDINANCE NO. 101-2014(F)

By Council Member Stephens

An Ordinance enacting Section 157.0323 PENSION in Chapter 157, "Income Tax" of the Codified Ordinances of Cleveland Heights to clarify and explicitly define the term "Pension" as used in the City's tax code; and declaring an emergency.

WHEREAS, a need has arisen to clarify the meaning of the term "pension" as used in Chapter 157, "Income Tax," of the Codified Ordinances of Cleveland Heights to prevent recipients of income intended to be taxed to attempt to avoid taxation by claiming it is a non-taxable pension.

WHEREAS, this Council has determined it is in the best interests of the City and its residents to clarify the definition of pension to assure that taxes intended by the City tax code to be collected are actually collected.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Section 157.0323 "PENSION" of Chapter 157 of the Codified Ordinances of Cleveland Heights shall be, and is hereby, enacted and adopted in its entirety to read as Exhibit A attached hereto and incorporated herein. A complete copy of Exhibit A is also on file with the Clerk of Council.

SECTION 2. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to avoid the loss of tax revenue and eliminate any potential confusion regarding the tax code. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

  
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DENNIS R. WILCOX, Mayor  
President of the Council

  
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TOM RAGUZ  
Clerk of Council

PASSED: August 18, 2104

**EXHIBIT A**

157.0323 PENSION

For purposes of this Chapter, a “Pension” means any amount paid to an employee or former employee that is reported to the recipient on an IRS Form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS Form W-2, Wage and Tax Statement, or successor form.

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#### **PURPOSE**

##### **157.0101 PURPOSE OF LEVY OF INCOME TAX.**

To provide funds for the purposes of general municipal functions of the City of Cleveland Heights, there is hereby levied a tax on all salaries, wages, commissions and other compensations, and on net profits as provided in this chapter.  
(Ord. 77-1966. Passed 12-9-66.)

#### **DEFINITIONS**

##### **157.0301 DEFINITIONS GENERALLY.**

For the purposes of this chapter certain terms, phrases, words and their derivatives shall have the meanings given in Sections [157.0302](#) to [157.0321](#). The singular shall include the plural, and the masculine shall include the feminine and the neuter.  
(Ord. 77-1966. Passed 12-19-66.)

##### **157.0302 ADMINISTRATOR.**

"Administrator" means the Director of Finance of the City of Cleveland Heights, who is hereby designated to act in such capacity for all purposes of this Chapter 157. In his absence, the Assistant Director of Finance shall assume the duties of the Administrator and, in his absence, the Supervisor of Income Tax shall assume the duties of Administrator.

(Ord. 57-1984. Passed 7-2-84.)

**157.0303 ASSOCIATION.**

"Association" means any partnership, limited partnership or any other form of unincorporated enterprise owned by two (2) or more persons.

(Ord. 77-1966. Passed 12-19-66.)

**157.0304 BOARD OF REVIEW.**

"Board of Review" means the Board created by and constituted as provided in Section [157.2501](#).

(Ord. 5-1967. Passed 1-16-67.)

**157.0305 BUSINESS.**

"Business" means any 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, excluding however, all nonprofit corporations which are exempt from the payment of Federal Income Tax.

(Ord. 77-1966. Passed 12-19-66.)

**157.0306 CORPORATION.**

"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.

(Ord. 77-1966. Passed 12-19-66.)

**157.0307 EMPLOYEE.**

"Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.

(Ord. 77-1966. Passed 12-19-66.)

**157.0308 EMPLOYER.**

"Employer" means an individual, partnership, association, corporation, government body, unit or agency or any other entity, whether or not organized for profit, who or that employs one (1) or more persons on a salary, wage, commission or other basis of compensation.

(Ord. 77-1966. Passed 12-19-66.)

**157.0309 FISCAL YEAR.**

"Fiscal year" means an accounting period of twelve (12) months or less ending on any day other than December 31.

(Ord. 77-1966. Passed 12-19-66.)

**157.0310 GROSS RECEIPTS.**

"Gross receipts" means the total income from any source whatever.

(Ord. 77-1966. Passed 12-19-66.)

**157.0311 NET PROFITS.**

"Net profits" means the net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal Income Tax purposes without deduction of taxes imposed by this chapter, Federal, State and other taxes based on income; and in the case of an association, without deduction of salaries paid to partners and other owners.

(Ord. 77-1966. Passed 12-19-66.)

**157.0312 NONRESIDENT.**

"Nonresident" means an individual domiciled outside the City of Cleveland Heights.

(Ord. 77-1966. Passed 12-19-66.)

**157.0313 NONRESIDENT UNINCORPORATED BUSINESS ENTITY.**

"Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the City of Cleveland Heights.

(Ord. 77-1966. Passed 12-19-66.)

**157.0314 PERSON.**

"Person" means every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person", as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

(Ord. 77-1966. Passed 12-19-66.)

**157.0315 PLACE OF BUSINESS.**

"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 (1) or more of his regular employees regularly in attendance.

(Ord. 77-1966. Passed 12-19-66.)

**157.0316 RESIDENT.**

"Resident" means an individual domiciled in or whose usual place of abode is in the City of Cleveland Heights.

(Ord. 9-1995. Passed 2-6-95.)

**157.0317 RESIDENT UNINCORPORATED BUSINESS ENTITY.**

"Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City of Cleveland Heights.

(Ord. 77-1966. Passed 12-19-66.)

**157.0318 TAXABLE INCOME.**

"Taxable income" means wages, salaries and other compensation paid by an employer or

employers before any deduction and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this chapter.

(Ord. 77-1966. Passed 12-19-66.)

#### **157.0319 TAXABLE YEAR.**

"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.

(Ord. 77-1966. Passed 12-19-66.)

#### **157.0320 TAXPAYER.**

"Taxpayer" means a person, whether an individual, partnership, association or any corporation or other entity required in this chapter to file a return or pay a tax.

(Ord. 77-1966. Passed 12-19-66.)

#### **157.0321 FUNDAMENTAL CHANGE.**

"Fundamental change" means any substantial alteration in organizational form by an employer including liquidation, dissolution, bankruptcy and reorganizations such as merger, consolidation, acquisition, transfer or change in identity, form or organization.

(Ord. 63-1989. Passed 6-5-89.)

#### **157.0322 MANAGER.**

"Manager" means any of the employer's officers, partners, employees or persons having control or supervision of the employer's business, and/or employees or persons charged with the responsibility of filing the return, paying taxes, and otherwise complying with this chapter.

(Ord. 63-1989. Passed 6-5-89.)

### **IMPOSITION OF TAX**

#### **157.0501 RATE AND INCOME TAXABLE.**

An annual tax for the purposes specified in Section [157.0101](#) shall be imposed on and after April 1, 1979, at the rate of two percent (2%) per annum upon the following:

(Ord. 7-1979. Passed 4-16-79.)

(a) On all salaries, wages, commissions or other compensation earned on and after April 1, 1979, by residents of the City of Cleveland Heights. The term "other compensation" shall include, without limitation, income in the amount of one hundred thousand dollars (\$100,000) or more derived from gaming, wagering, schemes of chance and lotteries, including the Ohio State Lottery, earned on or after January 1, 2004 by residents of the City of Cleveland Heights.

(Ord. 23-2004. Passed 2-2-04.)

(b) On all salaries, wages, commissions and other compensation earned on and after April 1, 1979, by nonresidents of the City of Cleveland Heights for work done or services performed or rendered within the City of Cleveland Heights, provided that if a nonresident



individual works in the City of Cleveland Heights on twelve or fewer days in the calendar year and the principal place of business of the individual's employer, if applicable, is located outside the City of Cleveland Heights, in which case the employee shall be exempt from tax.

(Ord. 167-2000. Passed 12-18-00.)

(c) (1) On the portion attributable to the City of Cleveland Heights on the net profits earned on and after April 1, 1979 of all resident unincorporated business entities or professions or other activities derived from sales made, work done, services performed or rendered, and business or other activities conducted in the City of Cleveland Heights.

(2) On the portion of the distributive share of the net profits earned on and after April 1, 1979 of a resident partner or owner of a resident unincorporated business entity not attributable to the City of Cleveland Heights and not levied against such unincorporated business entity by the City of Cleveland Heights.

(d) (1) On the portion attributable to the City of Cleveland Heights of the net profits earned on or after April 1, 1979 of all nonresident unincorporated business entities, professions or other activities derived from sales made, work done, services performed or rendered, and business and other activities conducted in the City of Cleveland Heights, whether or not such unincorporated business entity has an office or place of business in the City of Cleveland Heights.

(2) On the portion of the distributive share of the net profits earned on and after April 1, 1979 of a resident partner or owner of a nonresident unincorporated business entity not attributable to the City of Cleveland Heights and not levied against such unincorporated business entity by the City of Cleveland Heights.

(e) On the portion attributable to the City of Cleveland Heights of the net profits earned on and after April 1, 1979 of all corporations derived from sales made, work done, services performed or rendered, and business or other activities conducted in the City of Cleveland Heights, whether or not such corporations have an office or place of business in the City of Cleveland Heights.

(Ord. 7-1979. Passed 4-16-79.)

#### **157.0502 EFFECTIVE PERIOD.**

Such tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of businesses, professions or other activities, earned on and after April 1, 1979.

(Ord. 7-1979. Passed 4-16-79.)

### **DETERMINATION OF ALLOCATION OF TAX**

#### **157.0701 METHOD OF DETERMINATION.**

In the taxation of income which is subject to City of Cleveland Heights Income Tax if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of the City shall disclose with reasonable accuracy what portion of its net profits is attributable to that part of the business or profession conducted within the boundaries of the City, then only such portion shall be considered as having a taxable situs in the City for the purposes

of municipal income taxation. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the City, in the absence of actual records thereof, shall be determined as follows:

Multiply the entire net profits by a business allocation percentage to be determined by a three-factor formula of property, payroll and sales, each of which shall be given equal weight as follows:

(a) The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City during the taxable period to the average net book value of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in this subsection (a), real property includes property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight (8).

(b) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed.

(c) Gross receipts of the business or profession from sales made and services performed during the taxable period in the City to gross receipts of the business or profession during the same period from sales and services wherever made or performed.

In the event that this allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such results.

(Ord. 77-1966. Passed 12-19-66.)

#### **157.0702 SALES MADE IN THE CITY OF CLEVELAND HEIGHTS.**

As used in subsection (c) of Section [157.0701](#) "sales made in the City of Cleveland Heights" means:

(a) All sales of tangible personal property which is delivered within the City regardless of where title passes if shipped or delivered from a stock of goods within the City.

(b) All sales of tangible personal property which is delivered within the City regardless of where title passes even though transported from a point outside the City if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion.

(c) All sales of tangible personal property which is shipped from a place within the City to purchasers outside of the City, 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.

(Ord. 77-1966. Passed 12-19-66.)

#### **157.0703 TOTAL ALLOCATION.**

Add together the percentages determined in accordance with subsections (a), (b) and (c) of Section [157.0701](#) or such of the percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving the total in order to obtain the business allocation percentage referred to in Section [157.0701](#).

A factor is applicable even though it may be allocable entirely in or outside the City.  
(Ord. 77-1966. Passed 12-19-66.)

#### **157.0704 RENTALS.**

Rental income received by a taxpayer shall be included in the computation of net profits from business activities under subsections (c), (d) and (e) of Section [157.0501](#), only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by a taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.

Where the gross monthly rental of any and all real properties, regardless of number and value, aggregate in excess of two hundred fifty dollars (\$250.00) per month, it shall be prima-facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental property shall be subject to tax; provided that in the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds two hundred fifty dollars (\$250.00) per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds two hundred fifty dollars (\$250.00) per month; and provided further that the person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds two hundred fifty dollars (\$250.00) per month.  
(Ord. 77-1971. Passed 12-20-71.)

#### **157.0705 OPERATING LOSS CARRY-FORWARD.**

(a) The portion of a net operating loss sustained in any taxable year subsequent to January 1, 1967, allocable to the City may be applied against the portion of the net profit of succeeding tax years allocable to the City until exhausted but in no event for more than five (5) taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

(b) The portion of net operating loss sustained shall be allocated to the City in the same manner as provided herein for allocating net profits to the City.

(c) The Administrator shall provide by rules and regulations the manner in which such net operating loss carry-forward shall be determined.

(Ord. 77-1966. Passed 12-19-66.)

### **DEDUCTIONS**

#### **157.0801 EMPLOYEE BUSINESS EXPENSES.**

If a taxpayer's taxable income includes income against which the taxpayer has taken a deduction for federal income tax purposes as reportable on Internal Revenue Service Form 2106,

such expenses shall be deducted from the taxpayer's taxable income to the extent that they are attributable to the income taxed under this chapter.

(Ord. 57-1984. Passed 7-2-84.)

## **EXEMPTIONS**

### **157.0901 SOURCES OF INCOME NOT TAXED.**

The tax provided for in this chapter shall not be levied on the following:

- (a) Pay or allowance of active members of the Armed Forces of the United States or 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.
- (b) Poor relief, unemployment insurance benefits, old age pensions or similar payments including disability benefits received from local, State or Federal governments or charitable, religious or educational organizations.
- (c) Proceeds of insurance paid by reason of the death of the insured; pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
- (d) Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations.
- (e) Alimony received.
- (f) Personal earnings of any natural person under eighteen (18) years of age.
- (g) Compensation for personal injuries or for damages to property by way of insurance or otherwise.
- (h) Interest, dividends and other revenue from intangible property.
- (i) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State from which the City is specifically prohibited from taxing, and income of a decedent's estate (except such income from the operation of a business).
- (j) Salaries, wages, commissions and other compensation and net profits, 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.
- (k) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes.

(Ord. 77-1966. Passed 12-19-66.)

## **RETURNS**

### **157.1101 WHEN RETURN REQUIRED TO BE MADE.**

Each taxpayer shall, whether or not a tax be due thereon, make and file a return on or before April 15 of the year following the calendar tax year for which the return was made. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the fifteenth day of the fourth month after the end of such tax period or fiscal tax year.

(Ord. 57-1984. Passed 7-2-84.)

#### **157.1102 FORM AND CONTENT OF RETURN.**

The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from such Administrator, setting forth:

(a) The aggregate amounts of salaries, wages, commissions and other compensation earned and gross income from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to tax;

(b) The amount of the tax imposed by this chapter on such earnings and profits; and

(c) Such other pertinent statements, information returns, or other information as the Administrator may require.

A generic form will be accepted providing it contains all of the pertinent information required to accurately assess tax due.

(Ord. 167-2000. Passed 12-18-00.)

#### **157.1103 EXTENSION OF TIME FOR FILING.**

(a) The Administrator may extend the time for filing of the annual return upon the request of the taxpayer for a period not to exceed six (6) months, or one (1) month beyond the extension requested of or granted by the Internal Revenue Service, or provided by operation of federal law for certain members of the Armed Forces on active military duty overseas, for the filing of the Federal Tax Return, whichever date is later. The Administrator may require a tentative return accompanied by a payment of the amount of tax shown to be due thereon, by the date the return is normally due, except that the Administrator shall not require such tentative return to be filed or payment to be made in cases in which the extension is granted by virtue of the active duty military status of the taxpayer. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

(Ord. 48-2003. Passed 4-7-03.)

(b) The extension request shall be made on Cleveland Heights Extension Form I-9 or by submitting a copy of a federal extension request form. All extension requests are due on or before the due date of the return. (Ord. 167-2000. Passed 12-18-00.)

#### **157.1104 CONSOLIDATED RETURNS.**

(a) Filing of consolidated returns may be permitted or required in accordance with the rules and regulations prescribed by the Administrator.

(b) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock 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 a portion only of its total business, the Administrator shall require such additional information as he may believe necessary to ascertain whether net profits are not properly allocated to the City. If the Administrator finds that net profits are not properly allocated to the City 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 believes appropriate to produce a fair and proper allocation of net profits to the City. (Ord. 77-1966. Passed 12-19-66.)

#### **157.1105 AMENDED RETURNS.**

(a) Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements, limitations, or both, contained in Sections [157.1701](#), [157.1702](#), [157.1703](#) and [157.1902](#). Such amended return shall be on a form obtainable on request from the Administrator. A taxpayer may not change the methods of accounting or apportionment of net profits after the due date for filing the original return.

(b) Within three (3) months from the final determination of any Federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City return showing income subject to the City 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.

(Ord. 77-1966. Passed 12-19-66.)

### **PAYMENT OF TAX**

#### **157.1301 PAYMENT OF TAX ON FILING OF RETURNS.**

(a) The taxpayer making a return shall, at the time of filing thereof, pay to the Administrator the amount of taxes shown as due thereon, provided that:

(1) Where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section [157.1302](#),

(2) Or where any portion of such tax has been paid by the taxpayer pursuant to the provisions of Section [157.1303](#),

(3) Or where an income tax has been paid on the same income to another municipality,

credit for the amount so deducted or paid, or credit to the extent provided for in Section [157.1902](#), 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.

(b) A taxpayer who has overpaid the amount of tax to which the City is entitled under the provisions of this chapter may have such overpayment applied against any subsequent liability hereunder or, at his election, indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

(Ord. 77-1971. Passed 12-20-71.)

**157.1302 COLLECTION AT SOURCE.**

(a) In accordance with rules and regulations prescribed by the Administrator, each employer within or doing business within the City shall deduct, at the time of the payment of such salary, wages, commissions or other compensation, the tax of one percent (1%) (unless a different tax rate is imposed in Section [157.0501](#)) per annum of the gross salaries, wages, commissions or other compensation due by the employer to the employee, and shall, on or before the last day of the month, make a return and pay to the Administrator the amount of taxes so deducted during the previous month. However, if the amount of the tax so deducted by any employer in any one (1) month is less than one hundred dollars (\$100.00), 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 the calendar quarter in which such month occurred.

(b) Such returns shall be on a form or forms prescribed or acceptable to the Administrator and shall be subject to the rules and regulations prescribed therefor 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.

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

(d) No person shall be required to withhold the tax on wages or other compensation paid domestic servants employed by him exclusively in or about such person's residence, even though such residence is in the City, but such employee shall be subject to all of the requirements of this chapter.

(Ord. 77-1971. Passed 12-20-71.)

(e) The Manager's obligations shall be as follows:

(1) Every manager is deemed to be a trustee of the City 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.

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

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

(3) No change in structure or organization by an employer, including a fundamental change, discharges its manager from liability for the employer's or manager's failure to remit funds held in trust, to file a tax return or to pay taxes. (Ord. 63-1989. Passed 6-5-89.)

(f) Employers who do business within the City of Cleveland Heights but who do not have

an office or place of business within the City of Cleveland Heights are exempt from the above withholding requirements if the annual aggregate amount of taxes withheld for the City of Cleveland Heights with regard to all of the employer's employees is one hundred fifty dollars (\$150.00) or less. (Ord. 167-2000. Passed 12-18-00.)

#### **157.13021 PAYMENT OF TAX.**

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

For the purposes of this section, "manager" means any of the employer's officers, partners, employees or persons having control or supervision of the employer's business, and/or employees or persons charged with the responsibility of filing the return, paying taxes, and otherwise complying with this chapter.  
(Ord. 18-2008. Passed 2-19-08.)

#### **157.1303 DECLARATION OF INCOME.**

Except as provided in this section, every person shall file a declaration setting forth taxable income, including distributive shares of net profits of unincorporated business entities estimated to be earned by the taxpayer during the current tax year, together with the estimated tax due thereon, less tax withheld within the City of Cleveland Heights, less the tax credit allowed in Section [157.1902](#), unless such taxpayer anticipates that such tax will be fully withheld within the City of Cleveland Heights, and any income earned outside of the City of Cleveland Heights will be fully taxed at the same or higher rate of tax in another municipality. If the estimated tax for the current year, less the tax to be withheld and less such tax credit, amounts to not more than one hundred dollars (\$100.00), no declaration or payment of estimated tax is required.  
(Ord. 83-1993. Passed 8-16-93.)

#### **157.1304 FILING OF DECLARATION.**

(a) The declaration required by Section [157.1303](#) shall be filed on or before April 15 of each year during the effective period set forth in Section [157.0502](#) or on or before the fifteenth day of the fourth month following the date the taxpayer became subject to the tax imposed by this chapter for the first time.

(b) Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year or period.  
(Ord. 57-1984. Passed 7-2-84.)

#### **157.1305 FORM OF DECLARATION.**



(a) The declaration required by Section [157.1303](#) shall be filed upon a form furnished by or obtainable from the Administrator. As provided in Section [157.1303](#), credit shall be taken for the City tax to be withheld from any portion of such income and credit shall be taken for tax to be paid or withheld and remitted to another taxing municipality, in accordance with the provisions of Section [157.1902](#).

(b) The original declaration or any subsequent amendment thereof may be increased or decreased on or before any subsequent quarterly payment date as provided for herein.

#### **157.1306 PAYMENT TO ACCOMPANY DECLARATION.**

Such declaration of estimated tax to be paid to the City of Cleveland Heights shall be accompanied by a payment of at least one-fourth (1/4) of the estimated annual tax, and at least a similar amount shall be paid on or before the fifteenth day of the seventh and tenth months after the beginning of the taxable year, and on or before the fifteenth day of the first month of the succeeding year following the taxable year. However, in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(Ord. 57-1984. Passed 7-2-84.)

#### **157.1307 ANNUAL RETURN.**

On or before the fifteenth day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City shall be paid therewith in accordance with the provisions of Section [157.1301](#). However, any taxpayer may file, on or before the last day of the first month of the year following that for which such declaration or amended declaration was filed, an annual return and pay any balance due at such time, in lieu of filing a declaration or an amended declaration, and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax.

(Ord. 83-1993. Passed 8-16-93.)

#### **157.1308 EXTENSION OF TIME.**

The Administrator may extend the time for filing any return required, making any payment, or performing any other act, which is required by the provisions of Sections [157.1301](#) to [157.1307](#), inclusive, for a period of not to exceed six (6) months beyond the original required date.

(Ord. 77-1966. Passed 12-19-66.)

### **INTEREST AND PENALTIES**

#### **157.1501 INTEREST ON UNPAID TAX.**

(a) If any amount of tax imposed by this chapter, including all moneys withheld or required to be withheld by employers and all installments of estimated taxes required to be paid, is not paid on or before the last date prescribed for payment, interest in the amount of ten percent (10%) per annum shall immediately become due on such amount and shall be paid for the period

from such last date to the date the tax amount due is paid in full.

(b) Interest prescribed under this section on any tax shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes. For the purposes of this section, any penalty and/or interest remaining unpaid after the prescribed due date set forth upon notice shall be treated as tax.

(Ord. 49-1984. Passed 6-18-84.)

#### **157.1502 PENALTIES ON UNPAID TAX.**

(a) If any amount of tax imposed by this chapter, other than moneys withheld or required to be withheld by employers, is not paid on or before the last date prescribed for payment, there shall be imposed a penalty of the amount equal to twenty percent (20%) of such tax not paid.

(Ord. 83-1993. Passed 8-16-93.)

(b) If any amount of tax imposed by this chapter which has been withheld, or is required to be withheld by employers, is not paid on or before the last date prescribed for payment, there shall be imposed a penalty of ten percent (10%) per month or fraction thereof, not to exceed fifty percent (50%), of the tax amount not paid.

(Ord. 49-1984. Passed 6-18-84.)

(c) For the underpayment of estimated taxes as provided in Section [157.1303](#) there is a charge of twenty-five dollars (\$25.00) when the sum of the amount of quarterly installment payments actually made for the current year tax totals less than eighty percent (80%) of the amount of tax due for the year as shown by the annual return. No penalty shall be assessed for the underpayment of estimated taxes when the amount of quarterly installments made for the current tax year is equal to or greater than the amount of tax due for the immediate preceding year.

(Ord. 83-1993. Passed 8-16-93.)

#### **157.1503 EXCEPTIONS.**

A penalty shall not be assessed on an additional tax assessment made by the Administrator against a taxpayer when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator; and 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 a final determination of the federal tax liability.

(Ord. 5-1967. Passed 1-16-67.)

#### **157.1504 ABATEMENT OF INTEREST AND PENALTY.**

Either the Administrator hereunder or the Board of Review may abate penalty or interest, or both for good cause shown.

(Ord. 77-1971. Passed 12-20-71.)

#### **157.1505 VIOLATIONS; PENALTY.**

Any person who:

- (1) Fails, neglects or refuses to make any return or declaration required by this chapter; or
  - (2) Makes any incomplete, false or fraudulent return; or
  - (3) Fails, neglects or refuses to pay the tax, penalties or interest imposed by this chapter; or
  - (4) Fails, neglects or refuses to withhold the tax from his employees or remit such withholding to the Administrator; or
  - (5) Refuses to permit the Administrator, or any duly authorized agent or employee to examine his books, records, papers and Federal Income Tax returns relating to the income or net profits of a taxpayer; or
  - (6) Fails to appear before the Administrator and to produce his 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; or
  - (7) Refuses to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
  - (8) Fails to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby; or
  - (9) Gives to an employer false information as to his true name, correct social security number and residence address or fails to promptly notify an employer of any change in residence address and date thereof; or
  - (10) Fails to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and City tax withheld, or to knowingly give the Administrator false information; or
  - (11) Attempts 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 fined not more than five hundred dollars (\$500.00) or imprisoned not more than six (6) months, or both, for each offense.  
(Ord. 77-1966. Passed 12-19-66.)

#### **157.1506 LIMITATION ON PROSECUTION.**

All prosecutions for violations of any of the provisions of this Chapter 157 shall be commenced within the time provided by the general laws of the State of Ohio.  
(Ord. 77-1966. Passed 12-19-66.)

#### **157.1507 FAILURE TO PROCURE FORMS NOT EXCUSE.**

The failure of any employer 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.  
(Ord. 77-1966. Passed 12-19-66.)

### **COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS**

#### **157.1701 UNPAID TAXES RECOVERABLE AS OTHER DEBTS.**

All taxes imposed by this chapter shall be collectible, together with interest and penalties

thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, of omission of a substantial portion of income subject to this tax, or of failure to file a return, an additional assessment shall not be made after three (3) years from the time the return was due or filed, whichever is later. However in those cases in which a 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 Administrator shall be one (1) year from the time of the final determination of the Federal tax liability.

(Ord. 5-1967. Passed 1-16-67.)

#### **157.1702 REFUNDS OF TAXES ERRONEOUSLY PAID.**

Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date which such payment was made or the return was due, or within three (3) months after the final determination of the Federal tax liability, whichever is later.

(Ord. 5-1967. Passed 1-16-67.)

#### **157.1703 AMOUNTS OF LESS THAN ONE DOLLAR.**

Amounts of less than one dollar (\$1.00) shall be not be collected or refunded.

(Ord. 5-1967. Passed 1-16-67.)

### **RECIPROCITY**

#### **157.1902 TAX CREDIT.**

(a) When the taxable income of a resident of the City of Cleveland Heights is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall be allowed a credit of the amount of income tax paid on such taxable income to such other municipality equal to fifty percent (50%) of the amount obtained by multiplying the lower of the tax rate of such other municipality or of the City of Cleveland Heights by the taxable income earned in or attributable to the municipality of employment or business activity; provided, however, that in no event shall such tax credit exceed an amount equal to fifty percent (50%) of a one percent (1%) tax rate. For the purpose of this section, "taxable income" includes the distributive share of net profits of a resident partner or owner of an unincorporated business entity.

(Ord. 5-1979. Passed 3-5-79.)

(b) A claim for credit or refund under this section shall be made in such manner as the Administrator may by regulation provide. In the event such Cleveland Heights resident fails, neglects or refuses to file an annual return or declaration on the form prescribed by the Administrator, he shall not be entitled to such credit or refund and shall be considered in violation of this chapter for failure to file a return.

(Ord. 77-1971. Passed 12-20-71.)

### **DISBURSEMENT OF RECEIPTS OF TAX COLLECTION**

### **157.2101 DISBURSEMENT OF FUNDS COLLECTED.**

The funds collected under the provisions of this chapter of the Codified Ordinances of the City of Cleveland Heights shall be disbursed in the following manner:

(a) First, such part thereof as shall be necessary to defray all expenses of collecting the tax and of administering and enforcing the provisions of this chapter shall be paid.

(b) The balance remaining after payment of the expenses referred to in subsection (a) hereof shall be deposited in the General Fund for municipal purposes.

(Ord. 77-1966. Passed 12-19-66.)

## **DUTIES AND AUTHORITY OF THE ADMINISTRATOR**

### **157.2301 DUTY TO RECEIVE TAX IMPOSED.**

It shall be the duty of the Administrator to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; to keep an accurate record thereof; and to report all moneys so received.

(Ord. 77-1966. Passed 12-19-66.)

### **157.2302 DUTY TO ENFORCE COLLECTION.**

It shall be the duty of the Administrator 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 make any return, or both, including taxes withheld, and to show the dates and amounts of payments thereof.

(Ord. 77-1966. Passed 12-19-66.)

### **157.2303 AUTHORITY TO MAKE AND ENFORCE REGULATIONS.**

The Administrator 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 and promulgate and to 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.

(Ord. 77-1966. Passed 12-19-66.)

### **157.2304 AUTHORITY TO ARRANGE INSTALLMENT PAYMENTS.**

The 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 Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him 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 [157.1701](#) and [157.1505](#) of this chapter shall apply.

(Ord. 77-1966. Passed 12-19-66.)

**157.2305 AUTHORITY TO DETERMINE AMOUNT OF TAX DUE; NOTICE; APPEAL.**

(a) In any case in which a taxpayer has failed to file a return or has filed a return which does not show the proper amount of income subject to tax as defined in this chapter, the Administrator may determine the amount of tax appearing to be due the City from the taxpayer. The determination of the Administrator, with certification, shall be served upon the taxpayer by a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

(b) The Administrator shall notify the taxpayer of the tax determined under subsection (a) hereinabove. Notice shall be deemed complete upon the depositing the tax determination and certification in the U.S. Mail, addressed to the taxpayer at the last known address with certificate of mailing.

(c) The taxpayer may appeal the determination of the Administrator by filing a written notice of appeal with the Director of Finance within sixty (60) days of the mailing of the notice of tax determination as provided in subsection (b) hereinabove. If such time for appeal has lapsed, and the taxpayer has not filed an appeal, the assessment so determined shall become final and the tax so determined shall be immediately due and payable.

(Ord. 74-2007. Passed 6-18-07.)

**157.2306 AUTHORITY TO MAKE INVESTIGATIONS.**

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, taxpayer or supposed taxpayer, is hereby directed and required to furnish upon written request by the Administrator, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(Ord. 77-1966. Passed 12-19-66.)

**157.2307 AUTHORITY TO COMPEL PRODUCTION OF RECORDS.**

The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such 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, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

(Ord. 77-1966. Passed 12-19-66.)

**157.2308 REFUSAL TO PRODUCE RECORDS.**

The refusal to produce books, papers, records and Federal Income Tax returns, or the refusal to submit to such examination by any employer or persons 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 [157.1505](#).

(Ord. 77-1966. Passed 12-19-66.)

**157.2309 CONFIDENTIAL NATURE OF INFORMATION OBTAINED;  
PENALTY.**

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 or except in accordance with proper judicial order. Any person divulging such information in violation of this section shall be subject to a fine or penalty of not more than five hundred dollars (\$500.00) or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the City who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(Ord. 77-1966. Passed 12-19-66.)

**157.2310 TAXPAYER REQUIRED TO RETAIN RECORDS.**

Every taxpayer shall retain all records necessary to compute his tax liability for a period of five (5) years from the date his return is filed, or the withholding taxes are paid.

(Ord. 77-1966. Passed 12-19-66.)

**157.2311 AUTHORITY TO CONTRACT FOR CENTRAL  
COLLECTION FACILITIES.**

The City of Cleveland Heights, having already entered into an agreement for the establishment of a Regional Council of Governments pursuant to Ordinance 36-1971, which Council has organized a municipal tax collection agency known as "Regional Income Tax Agency", the Board of Trustees of such Regional Income Tax Agency is authorized to administer and enforce the provisions of this chapter as the agent of the City of Cleveland Heights, and the duties and authority of the Administrator hereunder may be performed by the Board of Trustees of such agency through the Administrator of the agency. However, the Administrator of such agency shall have no authority to abate penalties or interest provided for in Section [157.1501](#) and Section [157.1502](#).

(Ord. 77-1971. Passed 12-20-71.)

**157.2312 ASSIGNMENT OF DUTIES AND AUTHORITY OF THE  
ADMINISTRATOR.**

In the event the Administrator, on behalf of the City, enters into an agreement with any other municipal corporation to act as agent of the City of Cleveland Heights for the purpose of administering the income tax laws of the City and of providing a central facility for the collection of the income tax, as provided in Section [157.2311](#), then all or a part of the duties and authority of the Administrator may be assigned by such agreement to such other municipal corporation.

(Ord. 77-1966. Passed 12-19-66.)

**157.2313 NOTICE OF APPEAL RIGHTS.**

Whenever 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 of the manner in which the taxpayer may appeal the decision.

(Ord. 167-2000. Passed 12-18-00.)

**BOARD OF REVIEW**

**157.2501 BOARD OF REVIEW ESTABLISHED.**

A Board of Review is hereby created, consisting of:

- (a) The City Manager,
- (b) The Director of Law, and
- (c) The chairman of the Council Committee having jurisdiction of the subject matter hereof or a member of that Committee.

The Board shall select, each year for a one (1) year term, one (1) of its members to serve as Chairman and one (1) to serve as Secretary. 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 may be conducted privately and the provisions of Section [157.2309](#) 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 on appeal.

**157.2502 DUTY TO APPROVE REGULATIONS AND HEAR APPEALS.**

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 of Review before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the Administrator, and, at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.

(Ord. 77-1966. Passed 12-19-66.)

**157.2503 RIGHT OF APPEAL.**

(a) Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred hereby may appeal therefrom to the Board of Review within thirty days from the announcement of such ruling or decision by the Administrator. Such appeal shall be in writing and shall state why the decision of the Administrator being appealed from should be deemed incorrect or unlawful.

(b) The Board of Review shall schedule a hearing within forty-five days of receipt of the request for hearing, unless the taxpayer waives a hearing and/or waives the forty-five day time period. The Board shall issue its decision on the appeal within ninety days of the Board's final hearing on the matter or within ninety days of receipt of notice of waiver of a hearing. On appeal the Board shall have jurisdiction to affirm, reverse or modify the ruling or decision being appealed or any part thereof. The Board shall send notice of its decision by ordinary mail to the taxpayer within fifteen business days after the issuance of the decision.



(Ord. 167-2000. Passed 12-18-00.)

**157.2504 CONFIDENTIALITY OF PROCEEDINGS.**

(a) Records of transactions before the Board of Review are not public records available for inspection under Ohio R.C. 149.43 or Codified Ordinances Section [105.02](#)(a).

(b) Hearings requested by taxpayers before the Board of Review are not meetings of a public body under Codified Ordinances Section [107.01](#) or Ohio R.C. 121.22 and shall not be open to the public unless requested by the taxpayer.

(Ord. 167-2000. Passed 12-18-00.)

**OTHER PROVISIONS**

**157.2701 DECLARATION OF LEGISLATIVE INTENT.**

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 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. 77-1966. Passed 12-19-66.)

**157.2702 COLLECTION OF TAX AFTER TERMINATION OF THIS CHAPTER.**

(a) This chapter shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions and proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of such taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Sections [157.1701](#), [157.1703](#), [157.1505](#), [157.1506](#) and [157.1507](#).

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Sections [157.1101](#) and [157.1302](#) of this chapter as though the same were continuing.

(Ord. 77-1966. Passed 12-19-66.)