

CHAPTER 191
Income Tax

PURPOSE		DETERMINATION OF	
191.0101	Purpose of levy of income tax.	191.0702	Sales made in City.
DEFINITIONS		191.0703	Total allocation.
191.0301	Definitions generally.	191.0704	Rentals.
191.0302	Administrator.	191.0705	Operating loss-carry forward.
191.0303	Association.	EXEMPTIONS	
191.0304	Board of Review.	191.0901	Sources of income not taxed.
191.0305	Business.	RETURNS	
191.0306	Corporation.	191.1101	When return required to be made.
191.0307	Employee.	191.1102	Form and contents of return.
191.0308	Employer.	191.1103	Extension of time for filing returns.
191.0309	Fiscal year.	191.1104	Consolidated returns.
191.0310	Fundamental change.	191.1105	Amended returns.
191.0311	Gross receipts.	PAYMENT OF TAX	
191.0312	Manager.	191.1301	Payment of tax on filing of returns.
191.0313	Net profits.	191.1302	Collection at source.
191.0314	Nonresident.	191.1303	Declarations of income not collected at source.
191.0315	Nonresident unincorporated business entity.	191.1304	Filing of declaration.
191.0316	Person.	191.1305	Form of declaration.
191.0317	Place of business.	191.1306	Payment to accompany declaration.
191.0318	Resident.	191.1307	Annual return.
191.0319	Resident unincorporated business entity.	191.1308	Extensions.
191.0320	Taxable income.		
191.0321	Taxable year.		
191.0322	Taxpayer.		
IMPOSITION OF INCOME TAX			
191.0501	Rate and income taxable.		
191.0502	Effective pe riod.		
ALLOCATION OF TAX			
191.0701	Method of determination.		

INTEREST AND PENALTIES

- 191.1501** Interest on unpaid tax.
- 191.1502** Penalties on unpaid tax.
- 191.1503** Exceptions.
- 191.1504** Abatement of interest and penalty.
- 191.1505** Violations.
- 191.1506** Limitation on prosecution
- 191.1507** Failure to procure forms not excused.

COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.

- 191.1701** Unpaid taxes recoverable as other debts.
- 191.1702** Refunds of taxes erroneously paid.

- 191.1703** Amounts of less than one dollar.

TAXPAYER RELIEF

- 191.1901** Tax credit.
- 191.1902** Claim for refund.

DISBURSEMENT OF RECEIPTS OF TAX COLLECTION

- 191.2101** Disbursement of funds collected.

DUTIES AND AUTHORITY OF THE ADMINISTRATOR

- 191.2301** Duty to receive tax imposed.
- 191.2302** Duty to enforce collection
- 191.2303** Authority to make and enforce regulations.

CROSS REFERENCES

- Taxation - see CHTR. Sec. XI
- Payroll deductions - see Ohio R.C. 9.42
- Municipal income tax - see Ohio R.C. Ch. 718

PURPOSE

191.0101 PURPOSE OF LEVY OF INCOME TAX.

To provide funds for the purposes of general municipal functions of the City, including the operation of the water/sewer system, the provision of recreational services, and capital improvements, including the payment of debt service charges on bonds and notes issued to pay costs of those capital improvements, there shall be levied a tax on all salaries, wages, commissions and other compensations, and on net profits as hereinafter provided. (Ord. 92-70. Passed 11-16-92.)

<p>191.2304 Authority to arrange installment payments.</p> <p>191.2305 Authority to determine amount of tax due.</p> <p>191.2306 Authority to make investigation.</p> <p>191.2307 Authority to compel productions of records.</p> <p>191.2308 Refusal to produce records.</p> <p>191.2309 Confidential nature of information.</p> <p>191.2310 Taxpayer required to retain records.</p> <p>191.2311 Authority to contract for central collection facilities</p>	<p>191.2312 Assignment of Administrator's duties.</p> <p style="text-align: center;">BOARD OF REVIEW</p> <p>191.2501 Board of Review established.</p> <p>191.2502 Duty to approve regulations and to hear appeals.</p> <p>191.2503 Right of appeal.</p> <p style="text-align: center;">OTHER PROVISIONS</p> <p>191.2701 Declaration of legislative intent.</p> <p>191.2702 Collection of tax after termination of chapter.</p>
--	--

DEFINITIONS

191.0301 DEFINITIONS GENERALLY.

For the purposes of this chapter the terms, phrases, words and their derivatives shall have the meanings given in the next succeeding sections. The singular shall include the plural, and the masculine shall include the feminine and the neuter.
(Ord. 1966-110. Passed 12-27-66.)

191.0302 ADMINISTRATOR.

"Administrator" means the individual designated by the Mayor to administer and enforce the provisions of the City income tax.
(Ord. 1966-110. Passed 12-27-66.)

191.0303 ASSOCIATION.

"Association" mean any partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
(Ord. 1966-110. Passed 12-27-66.)

191.0304 BOARD OF REVIEW.

"Board of Review" means the Board created by and constituted as provided in Section 191.2501.
(Ord. 1966-110. Passed 12-27-66.)

191.0305 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. 1966-110. Passed 12-27-66.)

191.0306 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. 1966-110. Passed 12-27-66.)

191.0307 EMPLOYEE.

"Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.
(Ord. 1966-110. Passed 12-27-66.)

191.0308 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 or more persons on a salary, wage, commission or other basis of compensation.
(Ord. 1966-110. Passed 12-27-66.)

191.0309 FISCAL YEAR.

"Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31.
(Ord. 1966-110. Passed 12-27-66.)

1993 Replacement

191.0310

ADMINISTRATIVE CODE

82

191.0310 FUNDAMENTAL CHANGE.

"Fundamental change" means any substantial alteration by an employer including liquidation, dissolution, bankruptcy and reorganizations such as merger, consolidation, acquisition, transfer or change in identity, form or organization.
(Ord. 92-91. Passed 9-8-92.)

191.0311 GROSS RECEIPTS.

"Gross receipts" means the total income from any source whatever.
(Ord. 92-91. Passed 9-8-92.)

191.0312 MANAGER.

"Manager" means any of the employer's officers, responsible persons, employees having control or supervision, and employees charged with the responsibility of filing the return, paying taxes, and otherwise complying with the ordinance.
(Ord. 92-91. Passed 9-8-92.)

191.0313 NET PROFITS.

"Net profits" means a 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. 92-91. Passed 9-8-92.)

191.0314 NONRESIDENT.

"Nonresident" means an individual domiciled outside the City of Berea.
(Ord. 92-91. Passed 9-8-92.)

191.0315 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 Berea.
(Ord. 92-91. Passed 9-8-92.)

191.0316 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, means the partners or members thereof, and as applied to corporations, the officers thereof.
(Ord. 92-91. Passed 9-8-92.)

191.0317 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 or more of his regular employees regularly in attendance.
(Ord. 92-91. Passed 9-8-92.)

191.0318 RESIDENT.

"Resident" means an individual domiciled in the City of Berea.
(Ord. 92-91. Passed 9-8-92.)

1993 Replacement

191.0319 RESIDENT UNINCORPORATED BUSINESS ENTITY.

"Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City of Berea.
(Ord. 92-91. Passed 9-8-92.)

191.0320 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. 92-91. Passed 9-8-92.) "Taxable income" also includes winnings and income derived from lotteries, gaming, wagering or schemes of chance in the amount of \$100,000 or more.
(Ord. 2004-16. Passed 3-1-2004.)

191.0321 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. 92-91. Passed 9-8-92.)

191.0322 TAXPAYER.

"Taxpayer" means a person, whether an individual, partnership, association or any corporation or other entity, required hereunder to file a return or pay a tax. (Ord. 92-91. Passed 9-8-92.)

IMPOSITION OF INCOME TAX

191.0501 RATE AND INCOME TAXABLE.

An annual tax for the purposes specified in Section 191.0101 hereof shall be imposed on and after January 1, 1993, (except that subsections (f) and (g) herein shall be effective on and after April 15, 2004), at the rate of two percent (2%) per annum upon the following:

- (a) On all salaries, wages, commissions and other compensation earned on and after January 1, 1993, by residents of the City of Berea;
- (b) On all salaries, wages, commissions and other compensation earned on and after January 1, 1993, by non-residents of the City of Berea for work done or services performed or rendered within the City of Berea;
- (c) (1) On the portion attributable to the City of Berea of the net profits earned on and after January 1, 1993, 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 Berea;
- (2) On the portion of the distributive share of the net profits earned on and after January 1, 1993, of a resident partner or owner of a resident unincorporated business entity not attributable to the City of Berea and not levied against such unincorporated business entity by the City of Berea;

1993 Replacement

- (d) (1) On the portion attributable to the City of Berea of the net profits earned on or after January 1, 1993, of all non-resident 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 Berea, whether or not such unincorporated business entity has an office or place of business in the City of Berea;
- (2) On the portion of the distributive share of the net profits earned on and after January 1, 1993, of a resident partner or owner of a nonresident unincorporated business entity not attributable to the City of Berea and not levied against such unincorporated business entity by the City of Berea;
- (e) On the portion attributable to the City of Berea of the net profits earned on and after January 1, 1993, of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the City of Berea, whether or not such corporations have an office or place of business in the City of Berea. (Ord. 92-70. Passed 11-16-92.)
- (f) On all lottery winnings and income derived from lotteries, gaming, wagering or schemes of chance in that amount of \$100,000 or more received on or After 15, 2004, by residents of the City.
- (g) On all lottery winnings, gaming , wagering or schemes of chance in the amount of \$100,000 or more received within the City on or after April 15, 2004, by nonresidents of the City. (Ord. 2004-16. Passed 3-1-2004.)

191.0502 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 January 1, 1993, except that subsections (f) and (g) of Section 191.0501 shall be effective on and after April 15, 2004. (Ord. 2004-16. Passed 3-1-2004.)

1993 Replacement

DETERMINATION OF ALLOCATION OF TAX

191.0701 METHOD OF DETERMINATION.

In the taxation of income which is subject to City income taxes, 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 profit 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 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
- Berea

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 the preceding paragraph, "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.

- (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 the foregoing allocation formula does not produce an equitable result, another basis, may, under uniform regulations, be substituted so as to produce such result.
(Ord. 1966-110. Passed 12-27-66.)

191.0702 SALES MADE IN CITY.

As used in subsection (c) of Section 191.0701, "sales made in the City" means:

- (a) All sales of tangible personal property which is delivered within the City of Berea regardless of where title passes if shipped or delivered from a stock of goods within the City of Berea;
- (b) All sales of tangible personal property which is delivered within the City of Berea, regardless of where title passes even though transported from a point outside the City of Berea, if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Berea 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 of Berea to purchasers outside of the City of Berea, 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. 1966-110. Passed 12-27-66.)

191.0703 TOTAL ALLOCATION.

Add together the percentages determined in accordance with subsections (a), (b) and (c) of Section 191.0701 or such of the aforesaid percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving such total in order to obtain the business allocation percentage referred to in Section 191.0701.

A factor is applicable even though it may be allocable entirely in or outside the City.
(Ord. 1966-110. Passed 12-27-66.)

191.0704 RENTALS.

Rental income received by a taxpayer shall be included in the computation of net profits from business activities under subparagraph (c), (d) and (e) of Section 191.0501, only if

and to the extent that the rental, ownership, management or operations 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, aggregated 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 and 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 and fifty dollars (\$250.00) per month. (Ord. 1971-108. Passed 12-6-71.)

191.0705 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 profit of succeeding tax years allocable to the City, until exhausted, but in no event for more than five 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.

87

Income Tax

191.0901

(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. 1966-110. Passed 12-27-66.)

EXEMPTIONS

191.0901 SOURCES OF INCOME NOT TAXED.

The tax provided for herein 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 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 of Ohio from which the City is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (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. 1966-110. Passed 12-27-66.)

RETURNS

191.1101 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 30 of the year following the effective date of this chapter and on or before April 30 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or period. Any person who has no income need not file an annual return. Any person who has exempt income must file a return and declare to the Administrator the nature of his exemption. Any person who has taxable income must file a tax return with the Tax Administrator.

191.1102 FORM AND CONTENTS 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 activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to such 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.
(Ord. 1966-110. Passed 12-27-66.)

191.1103 EXTENSION OF TIME FOR FILING RETURNS.

The Administrator may extend the time for filing of the annual return upon the request of the taxpayer for a period of not to exceed six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal Income Tax Return. The Administrator may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. 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. 1966-110. Passed 12-27-66.)

191.1104 CONSOLIDATED RETURNS.

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

(b) In the case of a corporation that carried on transaction with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, or in the case any person operates a division, branch, factory, office, laboratory or activity within the City of Berea constituting a portion only of its total business, the Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City of Berea. If the Administrator finds that net profits are not properly allocated to the City of Berea by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the City.

(Ord. 1966-110. Passed 12-27-66.)

191.1105 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 as refund of tax overpaid, subject to the requirements, limitations or both contained in Sections 191.1701, 191.1702 and 191.1703 and Sections 191.1901 and 191.1902. Such amended return shall be on a form obtainable on 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.

(b) Within three 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. 1966-110. Passed 12-27-66.)

PAYMENT OF TAX

191.1301 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, however, that:

(1) Where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 191.1302 hereof or,

- (2) Where any portion of the tax shall have been paid by the taxpayer pursuant to the provisions of Section 191.1303 hereof or,
- (3) 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 191.1901, 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 of Berea 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.

(c) 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 that the predecessor employer has paid such taxes, interest and penalties. If the successor fails to withhold such amount, then the successor and, in a personal manner, the successor's manager shall be jointly and severally liable for the payment of such taxes, interest and penalty.

(Ord. 92-91. Passed 9-8-92.)

1993 Replacement

191.1302 COLLECTION AT SOURCE.

(a) In accordance with rules and regulations prescribed by the Administrator each employer within or doing business within the City of Berea shall deduct, at the time of the payment of such salary, wages, commission or other compensation, the tax at its then applicable percentage 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 each month, make a return and pay to the Administrator the amount of taxes so deducted during the previous month; provided, however, that if the amount of the tax so deducted by any employer in any one 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 of Berea as a trustee for the benefit of the City of

Berea, and any such tax collected by such employer from his employees shall, until the same is paid to the City of Berea 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 of Berea, but such employee shall be subject to all of the requirements of this chapter.
(Ord. 1976-88. Passed 11-15-76.)

(e) Manager's Obligation.

- (1) Every manager is deemed to be a trustee of this Municipality in collecting and holding the tax required under this chapter to be withheld, and the funds so collected by such withholding are deemed to be trust funds. Every manager is liable directly to this Municipality for payment of such trust, whether actually collected by such employer or not. Any tax deducted and withheld is to be considered paid to this Municipality, whether or not the employer actually remits the tax to this Municipality, 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, 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 by an employer, including a fundamental change, discharges its managers from liability for the employees' or manager's failure to remit funds held in trust, to file a tax return or to pay taxes.
(Ord. 92-91. Passed 9-8-92.)

1993 Replacement

91

Income Tax

191.1307

191.1303 DECLARATIONS OF INCOME NOT COLLECTED AT SOURCE.

Any person whose income tax is not fully withheld in the City of Berea or in another municipality in which taxes are withheld at a rate the same as or higher than the rate provided in Section 191.0501 hereof shall file a declaration setting forth estimated 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:

- (a) Tax withheld within the City of Berea.
- (b) The tax credit allowed in Section 191.1901 hereof.

If the estimated tax for the current year, less the tax withheld and the tax credit allowed pursuant to (a) and (b) above, amounts to less than fifty dollars (\$50.00), no declaration or payment of estimated tax is required.
(Ord. 98-44. Passed 6-1-98.)

191.1304 FILING OF DECLARATION.

(a) The declaration required by Section 191.1303 shall be filed on or before April 30 of each year during the effective period set forth in Section 191.0502 or within four months of the date the taxpayer becomes subject to tax for the first time.

(b) Those taxpayers reporting on a fiscal year basis shall file a declaration within four months after the beginning of each fiscal year or period.
(Ord. 1966-110. Passed 12-27-66.)

191.1305 FORM OF DECLARATION.

(a) The declaration required by Section 191.1303 hereof shall be filed upon a form furnished by or obtainable from the Administrator. As provided in Section 191.1303 hereof, credit shall be taken for the City of Berea 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 191.1901 hereof.

(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.
(Ord. 1971-108. Passed 12-6-71.)

191.1306 PAYMENT TO ACCOMPANY DECLARATION.

Such declaration of estimated tax to be paid to the City of Berea shall be accompanied by a payment of at least one-fourth of the estimated annual tax and at least a similar amount shall be paid on or before the last day of the sixth and ninth months after the beginning of the taxable year, and on or before the last day of the first month of the succeeding year following the taxable year. Provided, however, that 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 date or dates.
(Ord. 1971-108. Passed 12-6-71.)

191.1307 ANNUAL RETURN.

On or before the last 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 of Berea shall be paid therewith in accordance with the provisions of Section 191.1301 hereof. Provided, however, that 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 such 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. 1971-108. Passed 12-6-71.)

191.1308

ADMINISTRATIVE CODE

92

191.1308 EXTENSIONS.

The Administrator may extend the time of filing any return required, of making any payment or performing any other act required by Sections 191.1301 to 191.1308 for a period not to exceed six months beyond the original required date.
(Ord. 1966-110. Passed 12-27-66.)

INTEREST AND PENALTIES

191.1501 INTEREST ON UNPAID TAX.

All taxes imposed and all moneys withheld or required to be withheld by employers and all installments of estimated taxes required to be paid under the provisions of this chapter of the City of Berea and remaining unpaid after they become due, shall bear interest at the rate of six percent (6%) per annum. (Ord. 1971-108. Passed 12-6-71.)

191.1502 PENALTIES ON UNPAID TAX.

In addition to interest as provided in Section 191.1501 hereof, penalties based on the unpaid tax or installments of estimated tax are hereby imposed as follows:

- (a) For failure to pay taxes or estimated taxes due, other than taxes withheld: ten percent (10%) per annum, but not less than twenty-five dollars (\$25.00).
- (b) For failure to remit taxes withheld from employees: ten percent (10%) per month or fraction thereof, but accumulated penalty shall not exceed fifty percent (50%) upon any unpaid amount and shall not be less than twenty-five dollars (\$25.00). (Ord. 98-44. Passed 6-1-98.)

191.1503 EXCEPTIONS.

A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator; and provided, further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment against a taxpayer by the Administrator resulting from a Federal audit, providing an amended return is filed and the additional tax is paid within three months after a final determination of the Federal tax liability. (Ord. 1966-110. Passed 12-27-66.)

191.1504 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. 1971-108. Passed 12-6-71.)

191.1505 VIOLATIONS.

Any person who shall:

- (a) Fail, neglect or refuse to make any return or declaration required by this chapter; or
- (b) Make any incomplete, false or fraudulent return; or
- (c) Intentionally or willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
- (d) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or

- (e) Refuse 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
 - (f) Fail 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 of subpoena of the Administrator; or
 - (g) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
 - (h) Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby; or
 - (i) Give to an employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or
 - (j) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and City tax withheld or knowingly give the Administrator false information; or
 - (k) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter,
- is guilty of a misdemeanor of the first degree for each offense.

191.1506 LIMITATION ON PROSECUTION.

All prosecutions under this chapter shall be commenced within the time specified in Ohio R.C. 718.06.

191.1507 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. 1966-110. Passed 12-27-66.)

COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

191.1701 UNPAID TAXES RECOVERABLE AS OTHER DEBTS.

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. 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 years from the time the return was due or filed, whichever is later, provided, 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 year from the time of the final determination of the Federal tax liability.
(Ord. 1966-110. Passed 12-27-66.)

191.1702 REFUNDS OF TAXES ERRONEOUSLY PAID.

Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date which such payment was made or the return was due, or within three months after the final determination of the Federal tax liability, whichever is later.
(Ord. 1966-110. Passed 12-27-66.)

1993 Replacement

191.1703 AMOUNTS OF LESS THAN ONE DOLLAR.

Amounts of less than one dollar (\$1.00) shall not be collected or refunded.
(Ord. 1966-110. Passed 12-27-66.)

TAXPAYER RELIEF**191.1901 TAX CREDIT.**

(a) When the taxable income of a resident of the City of Berea 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 one hundred percent (100%) of the amount obtained by multiplying the lower of the tax rate of such other municipality or of the City of Berea by the taxable income earned or attributable to the municipality of employment or business activity, but, in any event, such credit shall not be applied to a rate in excess of one and one-half percent (1.5%) of the taxable income earned in or attributable to the municipality of employment or business activity. For the purposes of this section taxable income shall include the distributive share of net profits of a resident partner or owner of an unincorporated business entity.

(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 City of Berea 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. 92-87. Passed 8-10-92.)

191.1902 CLAIM FOR REFUND.

Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date on which such payment was made or the return was due.

(Ord. 1971-108. Passed 12-6-71.)

DISBURSEMENT OF RECEIPTS OF TAX COLLECTION**191.2101 DISBURSEMENT OF FUNDS COLLECTED.**

The funds collected under the provisions of this chapter shall be allocated and 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) Upon the approval by the United States Department of Housing and Urban Development of an application by the City for a loan and grant for urban redevelopment purposes, and prior to the issuance of the bonds heretofore authorized by the electors of the City for urban redevelopment purposes, the Board of Control may direct the Director of Finance to pay from the balance of such funds, into the fund from which such urban redevelopment bonds are to be retired, an amount not to exceed seventy-five thousand dollars (\$75,000) in any one year, in prepayment of debt service on such bonds or notes in anticipation thereof.

- (c) In the event there shall in any year be outstanding any bonds issued by the City for the purposes of urban redevelopment, which have been authorized by a vote of the electors of the City, then during each year any such bonds are outstanding there shall be paid from the balance of the municipal income tax funds collected, into the fund from which such urban redevelopment bonds are to be retired, the amount payable from such fund during such year for interest and principal payments with respect to such urban redevelopment bonds.
- (d) The balance remaining after the payments referred to in subsection (a) hereof, and after any such prepayment of debt service referred to in subsection (b) hereof, and after payment of any debt service referred to in subsection (c) hereof, shall, on and after January 1, 1993, be used for the purpose of providing funds to pay the cost of general municipal functions of the City including the operation of the water/sewer system, the provision of recreational services, and capital improvements, including the payment of debt service charges on bonds and notes issued to pay costs of those capital improvements.
(Ord. 92-70. Passed 11-16-92.)

DUTIES AND AUTHORITY OF THE ADMINISTRATOR

191.2301 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. 1966-110. Passed 12-27-66.)

191.2302 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 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 amount of payments thereof.

(Ord. 1966-110. Passed 12-27-66.)

191.2303 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. 1966-110. Passed 12-27-66.)

191.2304 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 191.1701 and 191.1505 shall apply.
(Ord. 1966-110. Passed 12-27-66.)

191.2305 AUTHORITY TO DETERMINE AMOUNT OF TAX DUE.

(a) Preparation of Return by Administrator. If any taxpayer fails to file a tax return which is required by this Municipality's ordinances within the time prescribed therefor but consents to disclose all information necessary to the preparation thereof, then the Administrator may prepare such return which, after being signed by such person, may be received by the Administrator as the return of such person.

(b) Execution of Return by Administrator. If any taxpayer fails to file a tax return which is required by this Municipality's ordinances within the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, then the Administrator shall make in a reasonable manner such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(c) Assessment of a Taxpayer by Administrator. The Administrator may calculate and assess any taxpayer for the amount of tax, penalty and interest which is imposed by this Municipality's ordinances and which is due and owing. Such assessment shall be made by the Administrator's issuing summary records to the last known address of the taxpayer of the assessment. This summary shall include the identification of the taxpayer, the character of the liability assessed, the taxation period and the amount of the assessment.

(d) Status of Executed Returns and Assessments. Any return executed by or any assessment made by the Administrator pursuant to this Municipality's ordinances shall be prima facie good and sufficient for all legal purposes. The Administrator may execute supplemental tax returns and may issue supplemental assessments whenever the Administrator has knowledge derived from any source including the taxpayer's financial data that any executed tax return or assessment is imperfect or incomplete in any material respect.

(e) Limitation of Prosecutions. Neither the Tax Administrator's execution of a return nor the Tax Administrator's assessment of a taxpayer shall start the running of the period of limitations on prosecutions set forth elsewhere in this Municipality's ordinances.

191.2306 AUTHORITY TO MAKE INVESTIGATION.

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 duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(Ord. 1966-110. Passed 12-27-66.)

1993 Replacement

191.2307 AUTHORITY TO COMPEL PRODUCTIONS 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. 1966-110. Passed 12-27-66.)

191.2308 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 191.1505.

(Ord. 1966-110. Passed 12-27-66.)

191.2309 CONFIDENTIAL NATURE OF INFORMATION.

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 guilty of a misdemeanor of the first degree. 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 disclosures of confidential information shall be guilty of an offense punishable by immediate dismissal.

(Ord. 1966-110. Passed 12-27-66.)

191.2310 TAXPAYER REQUIRED TO RETAIN RECORDS.

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

(Ord. 1966-110. Passed 12-27-66.)

191.2311 AUTHORITY TO CONTRACT FOR CENTRAL COLLECTION FACILITIES.

The City of Berea having already entered into an agreement for the establishment of a Regional Council of Governments pursuant to ordinance number 1971-54, 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 Berea, and the duties and authority of the Administrator hereunder may be performed by the Board of Trustees of such agency

through the Administrator of such agency. Provided, however, the Administrator of such agency shall have no authority to abate penalties or interest provided for in Sections 191.1501 and 191.1502 hereunder.
(Ord. 1971-108. Passed 12-6-71.)

191.2312

ADMINISTRATIVE CODE

98

191.2312 ASSIGNMENT OF ADMINISTRATOR'S DUTIES.

In the event the Administrator, on behalf of the City of Berea, enters into an agreement with any other municipal corporation to act as agent of the City of Berea 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 191.2311, then all or part of the duties and authority of the Administrator may be assigned by such agreement to such other municipal corporation.
(Ord. 1966-110. Passed 12-27-66.)

BOARD OF REVIEW

191.2501 BOARD OF REVIEW ESTABLISHED.

A Board of Review, consisting of the Director of Law and a member of Council to be elected by that body, and a member appointed by the Mayor of the City of Berea, is hereby created. The Board shall select, each year for a one-year term, one of its members to serve as chairman and one 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 191.2309 hereof 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.
(Ord. 1968-101. Passed 11-18-68.)

191.2502 DUTY TO APPROVE REGULATIONS AND TO 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. 1966-110. Passed 12-27-66.)

191.2503 RIGHT OF APPEAL.

Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter may appeal therefrom to the Board of Review within thirty days from the announcement of such ruling or decision by the Administrator, and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.
(Ord. 1966-110. Passed 12-27-66.)

OTHER PROVISIONS

191.2701 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 hereof not been included herein.
(Ord. 1966-110. Passed 12-27-66.)

191.2702 COLLECTION OF TAX AFTER TERMINATION OF 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 191.1701, 191.1702, 191.1703, 191.1505, 191.1506 and 191.1507.

(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 191.1101 and 191.1302 as though the same were continuing.
(Ord. 1968-34. Passed 4-15-68.)