

CHAPTER 185
Municipal Income Tax

EDITOR'S NOTE: Ordinance 1971-93, passed September 21, 1971, as amended by Ordinance 1980-115, passed May 20, 1980, authorizes an income tax collection agreement with the Central Collection Agency.

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PURPOSE

185.0101 PURPOSE OF LEVY OF INCOME TAX.

To provide funds for the purpose of general municipal functions of the City of Willoughby and to augment the capital improvement fund of the City, the tax imposed by Charter Article VIII, Section 2 as amended November 5, 1968 is hereby levied and imposed on all salaries, wages, commissions and other compensations and all net profits as hereinafter provided.
(Ord. 1968-71. Passed 11-11-68.)

DEFINITIONS

185.0301 DEFINITIONS .

For the purpose of this chapter, the terms, phrases, words and their derivatives shall have the meanings given in the next succeeding sections of this chapter. The singular includes the plural, and the masculine shall include the feminine and the neuter.
(Ord. 1968-71. Passed 11-11-68.)

185.0302 ADMINISTRATOR.

"Administrator" means the individual designated to administer and enforce the provisions of the City Income Tax.
(Ord. 1968-71. Passed 11-11-68.)

185.0303 ASSOCIATION.

"Association" means any partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
(Ord. 1968-71. Passed 11-11-68.)

185.0304 BOARD OF REVIEW.

"Board of Review" means the Board created by and constituted as provided in Section 185.2501.
(Ord. 1968-71. Passed 11-11-68.)

185.0305 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. 1968-71. Passed 11-11-68.)

185.0306 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. 1968-71. Passed 11-11-68.)

185.0307 EMPLOYEE.

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

(Ord. 1968-71. Passed 11-11-68.)

185.0308 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 any other basis of compensation.

(Ord. 1968-71. Passed 11-11-68.)

185.0309 FISCAL YEAR.

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

(Ord. 1968-71. Passed 11-11-68.)

185.0310 GROSS RECEIPTS.

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

(Ord. 1968-71. Passed 11-11-68.)

185.0311 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. 1968-71. Passed 11-11-68.)

185.0312 NONRESIDENT.

"Nonresident" means an individual domiciled outside the City.

(Ord. 1968-71. Passed 11-11-68.)

185.0313 NONRESIDENT UNINCORPORATED BUSINESS ENTITY.

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

(Ord. 1968-71. Passed 11-11-68.)

185.0314 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. 1968-71. Passed 11-11-68.)

185.0315 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 or more of his regular employees regularly in attendance.

(Ord. 1968-71. Passed 11-11-68.)

185.0316 RESIDENT.

"Resident" means an individual domiciled in the City.

(Ord. 1968-71. Passed 11-11-68.)

185.0317 RESIDENT UNINCORPORATED BUSINESS ENTITY.

"Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City. (Ord. 1968-71. Passed 11-11-68.)

185.0318 TAXABLE INCOME.

"Taxable income" means any and all income earned or received by an individual or an entity, the taxation of which by the City is not prohibited by Federal law, State law, or specifically exempted under Section 185.0901 of this Chapter. Salaries, wages, commissions, lottery winnings, other gambling winnings, and other compensation earned shall be considered taxable income. All employee compensation, before any deduction, and/or the net profits from the operator of a business, profession, or other enterprise or activity adjusted in accordance with the provisions of this chapter shall be considered taxable income.

(Ord. 2004-34. Passed 3-16-04.)

185.0319 TAXABLE YEAR.

"Taxable year" means the calendar year, or 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. 1968-71. Passed 11-11-68.)

185.0320 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. 1968-71. Passed 11-11-68.)

IMPOSITION OF INCOME TAX

185.0501 RATE AND INCOME TAXABLE.

The annual tax imposed by Charter Article VIII, Section 2 for the purposes specified in Section 185.0101 is hereby imposed and levied on and after January 1, 1969, at the rate of one percent (1%) per annum on the following. For the purposes specified in Section 185.0101, on or after January 1, 1969, an annual tax of one percent (1%) per annum shall be imposed upon the following income:

(a) All salaries, wages, commissions, lottery winnings, other gambling winnings, and other compensation earned on or after January 1, 1969, by residents of the City. Provided, however, there shall be no tax imposed upon lottery winnings or other gambling winnings of less than one hundred thousand dollars (\$100,000). In the event lottery winnings or other gambling winnings are to be received by two (2) or more persons, there shall be no tax imposed unless the funds received by any one person are more than one hundred thousand dollars (\$100,000).

(b) Lottery and gambling losses are deductible against lottery and gambling winnings. The administration shall provide by rules and regulations the manner in which to determine such losses.

(c) On all salaries, wages, commissions and other compensations earned on and after January 1, 1969 by nonresidents of the City for work done or services performed or rendered within the City.

(d) (1) On the portion attributable to the City on the net profits earned on and after January 1, 1969 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.

(2) On the portion of the distributive share of the net profits earned on and after January 1, 1969, of a resident partner or owner of a resident unincorporated business entity not attributable to the City and not levied against such unincorporated business entity.

(e) (1) On the portion attributable to the City of the net profits earned on and after January 1, 1969 of all nonresident unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City, whether or not such unincorporated business entity has an office or place of business in the City.

(2) On the portion of the distributive share of the net profits earned on and after January 1, 1969 of a resident partner or owner of a nonresident unincorporated business entity not attributable to the City and not levied against such unincorporated business entity.

(f) On the portion attributable to the City of the net profits earned on and after January 1, 1969 of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the City, whether or not such corporations have an office or place of business in the City. (Ord. 2004-34. Passed 3-16-04.)

185.0502 EXCESS TAX.

In addition to the one percent (1%) income tax provided by Charter Article VIII, Section 2 and referred to in Section 185.0501, there is hereby imposed and levied annually, commencing January 1, 1981, a tax on income at the rate of one-half of one percent (.5%) per annum for the purposes of general municipal functions, maintenance, new equipment, extension and enlargement and improvement of municipal services and facilities and capital improvements, including the payment of debt service charges on bonds and notes issued for such purposes, and which tax is imposed and levied on all salaries, wages, commissions and other compensations specified in Section 185.0501, the allocation of proceeds of such additional tax to such purposes.
(Ord. 1980-188. Passed by voters 11-4-80.)

185.0503 EFFECTIVE PERIOD.

The 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, 1969.
(Ord. 1968-71. Passed 11-11-68.)

185.0504 EXCESS TAX.

In addition to the one percent (1%) income tax provided by Charter Article VIII, Section 2, and referred to in Section 185.0501, and in addition to the one-half of one percent (.5%) income tax imposed and levied by Section 185.0502 there is hereby imposed and levied annually, commencing July 1, 1986, a tax on income at the rate of one-half of one percent (.5%) per annum for the purposes of general municipal functions, maintenance, new equipment, extension and enlargement and improvement of municipal services and facilities and capital improvements, including the payment of debt service charges on bonds and notes issued for such purposes, and which tax is imposed and levied on all salaries, wages, commissions and other compensations specified in Section 185.0501, the allocation of proceeds of such additional tax to such purposes.
(Ord. 1986-14. Passed by voters 5-6-86.)

DETERMINATION OF ALLOCATION OF TAX

185.0701 METHOD OF DETERMINATION.

In the taxation of income which is subject to City income taxes 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 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 subsection (a) hereof, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.

(b) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in 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 results.

(Ord. 1968-71. Passed 11-11-68.)

185.0702 SALES MADE IN THE CITY .

As used in Section 185.0701(c) "sales made in the City" 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 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. 1968-71. Passed 11-11-68.)

185.0703 TOTAL ALLOCATION.

Add together the percentages determined in accordance with Section 185.0701 (a), (b) and (c) 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 185.0701.

A factor is applicable even though it may be allocable entirely in or outside the City.

(Ord. 1968-71. Passed 11-11-68.)

185.0704 RENTALS.

Rental income received by a taxpayer shall be included in the computation of net profits from business activities under subsections (c) to (e) of Section 185.0501, 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, aggregates in excess of one hundred twenty-five dollars (\$125.00) 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, receipt; or profits of the lessee, whether or not such rental exceeds one hundred twenty-five dollars (\$125.00) 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 one hundred twenty-five dollars (\$125.00) per month; and provided further that the person who operates a rooming house shall be considered in business whether or not the gross income exceeds one hundred twenty-five dollars (\$125.00) per month. (Ord. 1968-71. Passed 11-11-68.)

185.0705 OPERATING LOSS-CARRY FORWARD.

(a) The portion of a net operating loss sustained in any taxable year subsequent to January 1, 1969 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.

(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. 1968-71. Passed 11-11-68.)

EXEMPTIONS

185.0901 SOURCES OF INCOME NOT TAXED.

The tax provided for here 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. 1968-71. Passed 11-11-68.)

RETURNS

185.1101 WHEN RETURN REQUIRED TO BE MADE.

Each taxpayer, except as herein provided, 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.

(Ord. 1982-135. Passed 6-15-82.)

185.1102 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, lottery winnings, other gambling winnings, and other compensation earned and gross income from business, profession, other enterprise or activity, or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to such tax.

(Ord. 2004-34. Passed 3-16-04.)

(b) The amount of the tax imposed by this chapter on such earnings and profits, and (Ord. 1968-71. Passed 11-11-68.)

(c) Such other pertinent statements, information returns, or other information, as the Administrator may require including, but not limited to a copy of each and every Form 1099 - Miscellaneous.

(Ord. 1992-153. Passed 9-1-92.)

185.1103 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. 1968-71. Passed 11-11-68.)

185.1104 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 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 deem necessary to ascertain whether net profits are 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 deems appropriate to produce a fair and proper allocation of net profits to the City.
(Ord. 1968-71. Passed 11-11-68.)

185.1105 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 185.1701, 185.1702, 185.1703 and 185.1901, 185.1902 and 185.1903. 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 of 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. 1968-71. Passed 11-11-68.)

PAYMENT OF TAX

185.1301 PAYMENT OF TAX ON FILING OF RETURN.

(a) The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 185.1302 or where any portion of such tax shall have been paid by the taxpayer pursuant to the provisions of Section 185.1303 or whether an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 185.1901 or Section 185.1902 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 such 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. 1968-71. Passed 11-11-68.)

185.1302 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 payment of such salary, wage, commission or other compensation, the tax of one and one-half percent (1-1/2%) per annum of the gross salaries, wages, commissions or other compensation due by the employer to the employee, or the tips or gratuities reported to the employer by each such employee for Social Security or Federal Income Tax purposes and shall, on or before the twentieth day of the month following the close of each calendar quarter make a return and pay to the Administrator the amount of taxes so deducted, subject to the provisions of subsections (c), (d) and (e) hereof. The returns shall be on a form or forms prescribed by 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.

(b) 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.

(c) Such employer who deducts the tax in the amount of one hundred dollars (\$100.00) or more in the first or second month of a calendar quarter shall, on or before the twentieth day of the following month, pay to the Administrator the amount of taxes so deducted.

(d) Such employer who makes such payments on a monthly basis for the first two months of a calendar quarter shall pay such tax deducted for the third month of a calendar quarter at the regular time for filing the employer's quarterly return of income tax withheld.

(e) Such payments shall be on a form or forms furnished by or obtainable upon request from the Administrator, setting forth the amount of tax deducted for the month. A receipted copy of such form shall be returned to the employer to be attached to and filed with the employer's quarterly return of income tax withheld.

(f) 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. 1982-135. Passed 6-15-82.)

185.1303 DECLARATIONS OF INCOME NOT COLLECTED AT SOURCE.

Any person who anticipates any taxable income which is not subject to Section 185.1302, or who engages in any business, profession, enterprise or activity subject to the tax imposed by this chapter, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any, provided, however, if a person's income is wholly from wages from which the tax shall be withheld and remitted to the City in accordance with Section 185.1302, such person need not file a declaration.
(Ord. 1980-286. Passed 12-2-80.)

185.1304 FILING OF DECLARATION.

(a) The declaration required by Section 185.1303 shall be filed on or before April 30 of each year during the effective period set forth in Section 185.0503 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. 1968-71. Passed 11-11-68.)

185.1305 FORM OF DECLARATION.

(a) The declaration required by Section 185.1303 shall be filed upon a form furnished by, or obtainable from, the Administrator, provided, however, credit shall be taken for City tax to be withheld from any portion of such income. In accordance with the provisions of Section 185.1901 or 185.1902, credit may be taken for tax to be paid or to be withheld and remitted to another taxing municipality.

(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. 1968-71. Passed 11-11-68.)

185.1306 PAYMENT TO ACCOMPANY DECLARATION.

Such declaration of estimated tax to be paid to the City 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, ninth and thirteenth months after the beginning of 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 dates .
(Ord. 1972-233. Passed 11-14-72.)

185.1307 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 shall be paid therewith in accordance with the provisions of Section 185.1301.
(Ord. 1968-71. Passed 11-11-68.)

INTEREST AND PENALTIES

185.1501 INTEREST ON UNPAID TAX.

All taxes imposed and all moneys withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid after they become due shall bear interest at the rate of one and one-half percent (1-1/2%) per month or fraction thereof.
(Ord. 1980-114. Passed 5-20-80.)

185.1502 PENALTIES ON UNPAID TAX.

In addition to interest as provided in Section 185.1501, penalties based on the unpaid tax are hereby imposed as follows:

(a) For failure to pay taxes due, other than taxes withheld; one and one-half percent (1-1/2%) per month or fraction thereof.

(b) For failure to remit taxes withheld from employees; ten percent (10%) per month or fraction thereof.

(c) Minimum penalty for failure to file annual return when due, twenty-five dollars (\$25.00).
(Ord. 1980-114. Passed 5-20-80.)

185.1503 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 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. 1968-71. Passed 11-11-68.)

185.1504 ABATEMENT OF INTEREST AND PENALTY.

Upon recommendation of the Administrator, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Administrator to recommend abatement of penalty and interest, the Board may nevertheless abate penalty, or interest, or both, for good cause shown.
(Ord. 1968-71. Passed 11-11-68.)

185.1505 VIOLATIONS.

(a) No person shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (2) Make any incomplete, false or fraudulent return;
- (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;
- (4) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator;
- (5) 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;

- (6) 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 or subpoena of the Administrator;
- (7) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer;
- (8) Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby;
- (9) 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
- (10) Fail 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.

(b) A violation of this section is a misdemeanor of the first degree and shall be in addition to any penalties, interests or taxes owed.
(Ord. 1995-68. Passed 5-2-95.)

185.1506 LIMITATION ON PROSECUTION.

All prosecutions under this section must be commenced within five years from the time of the offense complained of except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which event the limitation of time within which prosecution must be commenced shall be ten years from the date the return was due or the date the false or fraudulent return was filed.

(Ord. 1968-71. Passed 11-11-68.)

185.1507 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 . 1968- 71. Passed 11-11-68.)

COLLECTION OF UNPAID TAXES AND
REFUNDS OF OVERPAYMENTS

185.1701 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. 1968-71. Passed 11-11-68.)

185.1702 REFUND 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. 1968-71. Passed 11-11-68.)

185.1703 AMOUNTS OF LESS THAN ONE DOLLAR.

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

(Ord . 1968-71. Passed 11-11-68.)

TAXPAYER RELIEF AND RECIPROCITY PROVISIONS

185.1901 NONRESIDENT TAXPAYERS.

(EDITOR'S NOTE: Former Section 185.1901 was repealed by Ordinance 1971-64, passed November 23, 1971.)

185.1902 TAX CREDIT.

(a) When a resident of Willoughby is subject to and has paid a municipal income tax in another municipality or political subdivision of the State on the same income taxable under this chapter and which other municipality or political subdivision does not allow a credit to a nonresident then such Willoughby resident may claim a credit in the amount of the income tax paid to such other municipality or political subdivision but not in excess of the amount of the tax assessed by this chapter.

(b) In the event a Willoughby resident is entitled to credit for taxes paid in the taxed authority pursuant to subsection (a) hereof such Willoughby resident shall be required to file a return or form in such manner as may be prescribed by the Tax Administrator of the City.

(c) In the event such Willoughby resident fails, neglects or refuses to file such return or form as is prescribed by the Tax Administrator, he shall not be entitled to such credit and shall be considered in violation of this chapter for failure to file a return and make payment of taxes due hereunder.
(Ord. 1971-64. Passed 11-23-71.)

185.1903 CLAIM FOR CREDIT.

(EDITOR'S NOTE: Former Section 185.1903 was repealed by Ordinance 1971-64, passed November 23, 1971.)

DISBURSEMENTS OF RECEIPTS OF TAX COLLECTION

185.2101 DISBURSEMENT OF FUNDS COLLECTED.

The funds collected under the provisions of Sections 185.0501 and 185.0502 shall be credited to the General Fund for Municipal purposes.
(Ord. 1980-286. Passed 12-2-80.)

DUTIES AND AUTHORITY OF THE ADMINISTRATOR

185.2301 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. 1968-71. Passed 11-11-68.)

185.2302 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 amounts of payments thereof.

(Ord. 1968-71. Passed 11-11-68.)

185.2303 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. 1968-71. Passed 11-11-68.)

185.2304 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 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 185.1701 and 185.1505 shall apply.

(Ord. 1968-71. Passed 11-11-68.)

185.2305 AUTHORITY TO DETERMINE AMOUNT OF TAX DUE.

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

(Ord. 1968-71. Passed 11-11-68.)

185.2306 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, 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. 1968-71. Passed 11-11-68.)

185.2307 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. 1968-71. Passed 11-11-68.)

185.2308 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 185.1505.
(Ord. 1968-71. Passed 11-11-68.)

185.2309 CONFIDENTIAL NATURE OF INFORMATION OBTAINED.

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, upon conviction, thereof, be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than one thousand dollars (\$1,000) or imprisoned for

not more than six 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 disclosures of confidential information shall be guilty of an offense punishable by immediate dismissal.
(Ord. 1968-71. Passed 11-11-68.)

185.2310 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 withholding taxes are paid.
(Ord. 1968-71. Passed 11-11-68.)

185.2311 AUTHORITY TO CONTRACT FOR CENTRAL COLLECTION FACILITIES.

The Mayor may and he is hereby authorized to enter into an agreement on behalf of the City with any other municipal corporation to permit such other municipal corporation to act as agent for the City for the purpose of administering the income tax laws of the City and providing a central collection facility for the collection of the income tax on behalf of the City in the event such contract is entered into, then all or part of the duties and authority of the Administrator as herein granted may be assigned by such agreement to such other municipal corporation.
(Ord. 1968-71. Passed 11-11-68.)

BOARD OF REVIEW

185.2501 BOARD OF REVIEW ESTABLISHED.

A Board of Review, consisting of the Mayor or a person designated by him, the Director of Law or a person designated by him and a member of Council to be elected by that body, 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 185.2309 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.
(Ord. 1968-71. Passed 11-11-68.)

185.2502 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 becomes 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 the Administrator, is empowered to substitute alternate methods of allocation.
(Ord. 1968-71. Passed 11-11-68.)

185.2503 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. 1968-71. Passed 11-11-68.)

OTHER PROVISIONS

185.2701 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, section, clause or part thereof not been included herein.
(Ord. 1968-71. Passed 11-11-68.)

185.2702 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(a) This chapter shall continue effective insofar as the levy of taxes is concerned until it and Charter Article VIII, Section 2 are 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 185.1701, 185.1702, 185.1703, 185.1505, 185.1506 and 185.1507.

(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 185.1101 and 185.1302 of this chapter as though the same were continuing.
(Ord. 1968-71. Passed 11-11-68.)