

City of Willoughby Hills

ORDINANCE NO. 2010-38

AN ORDINANCE PROVIDING FOR AN INCREASE IN THE RATE OF THE MUNICIPAL INCOME TAX; AMENDING PART ONE – ADMINISTRATIVE CODE, TITLE NINE – TAXATION, CHAPTER 185 – INCOME TAX, SECTION 185.0101 – PURPOSE OF LEVY, SECTION 185.0501 – RATE AND INCOME TAXABLE, SECTION 185.0502 – EFFECTIVE PERIOD, SUBSECTION (a) of SECTION 185.1302 – COLLECTION AT SOURCE, AND SECTION 185.1902 – RESIDENT SUBJECT TO INCOME TAX IN OTHER MUNICIPALITY; REPEALING CONFLICTING LEGISLATION AND DECLARING AN EMERGENCY.

WHEREAS, on November 2, 2010, a majority of the electors voted to approve an amendment to Section 7.4 of the City Charter as set forth by Ordinance No. 2010-27; and

WHEREAS, said amendment requires this Council to levy a tax on all incomes subject to the City Income Tax at the rate of two percent (2%); and

WHEREAS, said amendment further stipulates that any and all income above one and one-half (1.50%) up to two percent (2%) of income tax paid on income earned within the City and net profits shall be exclusively used to support the City's Safety Forces only; and

WHEREAS, Existing **Section 185-0101 – Purpose of Levy** of the Codified Ordinances of the municipality shall be amended to reflect that effective of January 1, 2011 the aforementioned stipulation shall apply; and

WHEREAS, by the terms of Ordinance No. 2010-27, Council shall amend existing **Section 185.0501 – Rate and Income Taxable, Section 185.0502 – Effective Period, Subsection (a) of Section 185.1302 – Collection at Source** of the Codified Ordinances of the municipality so that the rate of the municipal income tax shall be increased from one and one-half percent (1.50%) to two percent (2%) per annum, effective January 1, 2011; and

WHEREAS, **Section 185.1902 – Resident Subject to Income Tax in Other Municipality** shall be amended to reflect a tax credit of one hundred percent (100%); such credit limit shall be equal to one and one-half percent (1.50%). The credit and limits by this Section shall remain in effect until repealed by amendment of this Charter by a vote of the electors of Willoughby Hills.

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, COUNTY OF LAKE, STATE OF OHIO THAT:

SECTION 1. Existing **Section 185.0101 – Purpose of Levy** of the Codified Ordinances of the City be and the same hereby is amended effective January 1, 2011, to read and provide as follows:

“185.0101 PURPOSE OF LEVY.

To provide funds for the purposes of general municipal functions of the City there is hereby levied a tax on all salaries, wages, commissions, lottery winnings, gambling and games of chance winnings, and other compensation, and on net profits as hereinafter provided.

Effective as of January 1, 2011 the following stipulation shall apply: any and all income above one and one-half (1.50%) up to two percent (2%) of income tax paid on income earned within the City and net profits shall be exclusively used to support the City's Safety Forces only."

SECTION 2. Existing **Section 185.0501 – *Rate and Income Taxable*** of the Codified Ordinances of the City be and the same hereby is amended effective January 1, 2011, to read and provide as follows:

"185.0501 RATE AND INCOME TAXABLE.

An annual tax for the purposes specified in Section 185.0101 shall be imposed on and after January 1, 2011, at the rate of two percent per annum upon the following:

- (a) On all salaries, wages, commissions, and any state lottery winnings, gambling or games of chance winnings totaling one hundred thousand dollars (\$100,000) gross in winnings or more and other compensation earned on or after January 1, 2011 by residents of the City.
- (b) On all salaries, wages, commissions and other compensation earned on and after January 1, 2011, by nonresidents of the City for work done or services performed or rendered within the City.
- (c)
 - (1) On the portion attributable to the city on the net profits earned on and after January 1, 2011, of all resident unincorporated business entities or 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 or after January 1, 2011, 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.
- (d)
 - (1) On the portion attributable to the City of the net profits earned on or after January 1, 2011, of all nonresident unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered and business and other activities conducted in the City, 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 or after January 1, 2011, 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.
- (e) On the portion attributable to the City of the net profits earned on and after January 1, 2011, 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."

SECTION 3. Existing **Section 185.0502 – *Effective Period*** of the Codified Ordinances of the City be and the same hereby is amended effective January 1, 2011, to read and provide as follows:

"185.0502 EFFECTIVE PERIOD.

The tax shall be levied, collected and paid with respect to the salaries, wages, commissions, and any state lottery winnings, gambling or games of chance winnings totaling one hundred thousand dollars (\$100,000) gross in winnings or more, and other compensation, and with respect to the net profits of businesses, professions or other activities earned on and after January 1, 2011."

SECTION 4. Existing **Subsection (a) of Section 185.1302 – *Collection at Source*** of the Codified Ordinances of the City be and the same hereby is amended effective January 1, 2011, to read and provide as follows:

“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 the payment of such salary, wages, commissions or other compensation, the tax of two percent (2%) per annum of the gross salaries, wages, commissions or other compensation due by the employer to an employee 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. Such 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 therefore by the Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.”

SECTION 5. Existing **Section 185.1902 – *Resident Subject to Income Tax in Other Municipality*** of the Codified Ordinances of the City be and the same hereby is amended effective January 1, 2011, to read and provide as follows:

“185.1902 RESIDENT SUBJECT TO INCOME TAX IN OTHER MUNICIPALITY.

When a resident of Willoughby Hills is subject to a municipal income tax in another municipality of the same income taxable under this Chapter, a credit shall be allowed against Willoughby Hills income tax of the amount of net tax for which he is liable under the ordinance of such other municipality but such credit shall not exceed the amount of tax due hereunder, or an amount equal to one and one-half percent (1.50%) of the total taxable income of the taxpayer, whichever amount is the lower. However, a resident of Willoughby Hills shall not be entitled to such credit in the event he fails, neglects or refuses to timely file a return or form as is prescribed by the Administrator and required by this Chapter.

The credit and limits by this Section shall remain in effect until repealed by amendment of this Charter by a vote of the electors of Willoughby Hills.”

SECTION 6. The actions of this Council concerning and relating to the passage of this legislation were conducted in lawful meetings of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 7. This Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Willoughby Hills insofar as it provides for the usual daily operation of a municipal department, and further reason being that this Ordinance must be immediately effective in order to ensure said amendments to be effective as of January 1, 2011; wherefore this Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

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PASSED: _____, 2010

Submitted to the Mayor for his approval
on this _____ day of _____, 2010

ATTEST:

Victoria Ann Savage, CMC
Clerk of Council

Kevin D. Malecek
President of Council

Approved by the Mayor

_____, 2010

Robert M. Weger
Mayor

CHAPTER 185 Income Tax

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Municipal income taxes - see Ohio R.C. Ch. 718

PURPOSE

185.0101 PURPOSE OF LEVY.

To provide funds for the purposes of general municipal functions of the City there is hereby levied a tax on all salaries, wages, commissions, lottery winnings, gambling and games of chance winnings, and other compensation, and on net profits as hereinafter provided. (Ord. 2004-8. Passed 5-13-04.)

DEFINITIONS

185.0301 INTERPRETATION OF DEFINITIONS.

For the purpose of this chapter, certain terms, phrases, words and their derivatives shall have the meanings given. The singular shall include the plural, and the masculine shall include the feminine and the neuter. (Ord. 1971-1. Passed 1-14-71.)

185.0302 ADMINISTRATOR.

"Administrator" means the individual designated by the Mayor to administer and enforce the provisions of this income tax. (Ord. 1971-1. Passed 1-14-71.)

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185.0303 ASSOCIATION.

“Association” means any partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
(Ord. 1971-1. Passed 1-14-71.)

185.0304 BOARD OF REVIEW.

“Board of Review” means the Board created by and constituted as provided in Section 185.2501. (Ord. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

185.0307 EMPLOYEE.

“Employee” means one who works for wages, salary, commission or other type of compensation in the service of an employer.
(Ord. 1917-1. Passed 1-14-71.)

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 other basis of compensation.
(Ord. 1971-1. Passed 1-14-71.)

185.0309 FISCAL YEAR.

“Fiscal year” means an accounting period of twelve months or less, ending on any day other than December 31. (Ord. 1971-1. Passed 1-14-71.)

185.0310 GROSS RECEIPTS.

“Gross receipts” means the total income from any source whatever.
(Ord. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

185.0312 NONRESIDENT.

“Nonresident” means an individual domiciled outside the City of Willoughby Hills.
(Ord. 1971-1. Passed 1-14-71.)

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 of Willoughby Hills.
(Ord. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

185.0316 RESIDENT.

“Resident” means an individual domiciled in the City of Willoughby Hills.
(Ord. 1971-1. Passed 1-14-71.)

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 of Willoughby Hills.
(Ord. 1971-1. Passed 1-14-71.)

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. Wages, salaries and any state lottery winnings, gambling or games of chance winnings, totaling one hundred thousand dollars (\$100,000) gross in winnings or more, shall be considered taxable income. All employee compensation, 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, shall be considered taxable income. (Ord. 2004-8. Passed 5-13-04.)

185.0319 TAXABLE YEAR.

“Taxable year” means the calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this chapter, and in the case of a return for a fractional part of a year, the period for which such return is required to be made.
(Ord. 1971-1. Passed 1-14-71.)

185.0320 TAXPAYER.

“Taxpayer” means a person, whether an individual, partnership, association or any other corporation or other entity, required hereunder to file a return or pay a tax.
(Ord. 1971-1. Passed 1-14-71.)

IMPOSITION OF INCOME TAX

185.0501 RATE AND INCOME TAXABLE.

An annual tax for the purposes specified in Section 185.0101 shall be imposed on and after July 1, 1976, at the rate of one and one-half percent per annum upon the following:

- (a) On all salaries, wages, commissions, and any state lottery winnings, gambling or games of chance winnings totaling one hundred thousand dollars (\$100,000) gross in winnings or more, and other compensation earned on or after June 1, 2004 by residents of the City. (Ord. 2004-8. Passed 5-13-04.)
- (b) On all salaries, wages, commissions and other compensation earned on and after July 1, 1976, by nonresidents of the City for work done or services performed or rendered within the City.
- (c)
 - (1) On the portion attributable to the City on the net profits earned on and after July 1, 1976, 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 or after July 1, 1976, 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.
- (d)
 - (1) On the portion attributable to the City of the net profits earned on or after July 1, 1976, of all nonresident unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered and business and other activities conducted in the City, 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 or after July 1, 1976, of a resident partner or owner of a nonresident unincorporated business entity not attributable to the City an not levied against such unincorporated business entity.
- (e) On the portion attributable to the City of the net profits earned on and after July 1, 1976, 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. 1976-36. Passed 6-24-76.)

185.0502 EFFECTIVE PERIOD.

The tax shall be levied, collected and paid with respect to the salaries, wages, commissions, and any state lottery winnings, gambling or games of chance winnings totaling one hundred thousand dollars (\$100,000) gross in winnings or more, and other compensation, and with respect to the net profits of businesses, professions or other activities earned on and after June 1, 2004. (Ord. 2004-8. Passed 5-13-04.)

DETERMINATION OF ALLOCATION OF TAX

185.0701 METHOD OF DETERMINATION.

In the taxation of income which is subject to this City income tax, if the books and records of the taxpayer conducting a business or profession both within and without the boundaries of the City of Willoughby Hills disclose with reasonable accuracy what portion

of its net profits is attributable to that part of the business or profession conducted within the boundaries of the City, then only such portion shall be considered as having a taxable situs in the City for the purposes of municipal income taxation. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the City, in the absence of actual records thereof, shall be determined as follows:

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

- (a) The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City during the taxable period to the average net book value of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated. As used in the preceding paragraph, 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 result. (Ord. 1971-1. Passed 1-14-71.)

185.0702 SALES MADE IN THE CITY DEFINED.

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 regardless of where title passes even though transported from a point outside the City if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion.
 - (c) All sales of tangible personal property which is shipped from a place within the City to purchasers outside of the City regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.
- (Ord. 1971-1. Passed 1-14-71.)

185.0703 TOTAL ALLOCATION.

Add together the percentages determined in accordance with subsections (a), (b) and (c) of Section 185.0701 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 the 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. 1971-1. Passed 1-14-71.)

185.0704 RENTALS.

Rental income received by a taxpayer shall be included in the computation of net profits from business activities under subsection (c), (d) and (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. 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 one hundred twenty-five dollars (\$125.00) per month. In the case of a 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. The person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds one hundred twenty-five dollars (\$125.00) per month.
(Ord. 1971-1. Passed 1-14-71.)

185.0705 OPERATING LOSS CARRY-FORWARD.

(a) The portion of a net operating loss sustained in any taxable year subsequent to January 1, 1971, 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. 1971-1. Passed 1-14-71.)

185.0706 REPORTS BY LANDLORDS, CONDOMINIUM ASSOCIATES AND OTHER ORGANIZATIONS.

(a) Every owner of two or more rental units is hereby directed and required to furnish to the Tax Administrator a yearly roster of names, addresses, and social security numbers of persons residing in the rental units and shall also file a statement of any changes in the roster at the end of each month. The yearly statement provided for herein shall be filed with the Tax Administrator on or before the 30th day of January of each year unless an extension of time of filing is granted by the Finance Director.

(b) Every condominium association or other organization of owners of condominiums units with residents in the City is directed and required to furnish to the Tax Administrator a yearly roster of the names, addresses, and social security numbers of their association or organization members which own condominium units in the City, and shall also file a statement of any changes in the roster at the end of each month. The president or chief executive officer of such association shall be responsible for providing the roster required by this Section. The yearly roster provided for herein shall be filed with the Tax Administrator on or before the 30th day of January of each year unless an extension of time of filing is granted by the Tax Administrator. (Ord. 1997-3. Passed 10-30-97.)

EXEMPTIONS

185.0901 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 or 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. 1971-1. Passed 1-14-71.)

RETURNS

185.1101 WHEN RETURN REQUIRED TO BE MADE.

Each taxpayer, except as herein provided, shall, whether or not a tax is 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. The Administrator is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by such employer or employers from the salaries, wages, commissions or other compensation of an employee, and paid by him or them to the Administrator shall be accepted as the return required by any employee whose sole income, subject to tax under this chapter, is such salary, wages, commissions or other compensation. (Ord. 1971-1. Passed 1-14-71.)

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, and any state lottery winnings, gambling or games of chance winnings totaling one hundred thousand dollars (\$100,000) gross in winnings or more, and other compensation earned and gross income, income from business, profession, other enterprise or activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to tax. (Ord. 2004-8. Passed 5-13-04.)
- (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. 1971-1. Passed 1-14-71.)

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 more than 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. 1971-1. Passed 1-14-71.)

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 be 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 activities 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. 1971-1. Passed 1-14-71.)

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 or limitations, or both, contained in Sections 185.0701, 185.1702 and 185.1703 and Section 185.1902. 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 a claim for refund of any overpayment.

(Ord. 1971-1. Passed 1-14-71; Ord. 1971-51. Passed 11-24-71.)

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. However, where any portion of the tax so due has been deducted at the source pursuant to the provisions of Section 185.1302, or where any portion of such tax has been paid by the taxpayer pursuant to the provisions of Section 185.1303, or an income tax has been paid to another municipality, credit for the amount so paid in accordance with 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 the return.

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

(Ord. 1971-1. Passed 1-14-71; Ord. 1971-51. Passed 11-24-71.)

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 the payment of such salary, wages, commissions or other compensation, the tax of one and one-half percent (1.5%) per annum of the gross salaries, wages, commissions or other compensation due by the employer to an employee 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. Such 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. (Ord. 1982-17. Passed 7-22-82.)

(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.

(Ord. 1971-1. Passed 1-14-71.)

(c) Such employer who deducts the tax of one hundred dollars (\$100.00) or more per month shall pay to the Administrator before the twentieth of the following month the amount of taxes so deducted on a monthly basis beginning with the first month the employer exceeds one hundred dollars (\$100.00) in taxes withheld.

(Ord. 1982-17. Passed 7-22-82.)

(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 from the Administrator upon request, 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. 1971-1. Passed 1-14-71.)

185.1303 DECLARATION OF INCOME NOT COLLECTED AT SOURCE.

Every 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 Section 185.0501, 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. However, if a person's income is wholly from wages from which the tax will be withheld and remitted to the City in accordance with Section 185.1302, such person need not file a declaration. (Ord. 1971-1. Passed 1-14-71.)

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 185.0502 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. 1971-1. Passed 1-14-71.)

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, that credit shall be taken for City tax to be withheld from any portion of such income. In accordance with the provisions of Section 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. 1971-1. Passed 1-14-71; Ord. 1971-51. Passed 11-24-71.)

185.1306 PAYMENT TO ACCOMPANY DECLARATION.

The 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 twelfth months after the beginning of the taxable year. However, in case an amended declaration has been filed,

the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates. (Ord. 1971-1. Passed 1-14-71.)

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.

All residents of the City shall file an annual return or an exemption certificate on or before the last day of the fourth month following the end of the year for which they are subject for any tax due. Joint returns may be filed by husband and wife. (Ord. 1980-19. Passed 7-24-80.)

185.1308 EXTENSIONS.

The Administrator may extend the time of filing any return required, of making any payment or performing any other act required by this chapter for a period not to exceed six months beyond the original required date.

(Ord. 1971-1. Passed 1-14-71.)

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 (1.5%) per month or fraction thereof. (Ord. 1980-19. Passed 7-24-80.)

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 (1.5%) per month or fraction thereof. Minimum penalty for failure to file an annual return when due, twenty-five dollars (\$25.00).
- (b) For failure to remit taxes withheld from employees: ten percent (10%) per month or fraction thereof. (Ord. 1980-19. Passed 7-24-80.)

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. 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. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

185.1505 VIOLATIONS.

No person 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) 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 or 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 properly 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 withhold, 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.
- (Ord. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

185.1701 UNPAID TAXES RECOVERABLE AT 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. 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. 1971-1. Passed 1-14-71.)

185.1702 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. 1971-1. Passed 1-14-71.)

185.1703 AMOUNTS OF LESS THAN ONE DOLLAR.

Amounts of less than one dollar (\$1.00) shall not be collected or refunded. (Ord. 1971-1. Passed 1-14-71.)

RELIEF AND RECIPROCITY

185.1901 NONRESIDENT TAXPAYERS.

(EDITOR'S NOTE: The provisions of this section were repealed by Ordinance 1971-51, passed November 24, 1971.)

185.1902 RESIDENT SUBJECT TO INCOME TAX IN OTHER MUNICIPALITY.

When a resident of Willoughby Hills is subject to a municipal income tax in another municipality of the same income taxable under this chapter, a credit shall be allowed against Willoughby Hills income tax of the amount of net tax for which he is liable under the ordinance of such other municipality but such credit shall not exceed the amount of tax due hereunder, or an amount equal to one percent of the total taxable income of the taxpayer, whichever amount is the lower. However, a resident of Willoughby Hills shall not be entitled to such credit in the event he fails, neglects or refuses to timely file a return or form as is prescribed by the Administrator and required by this chapter. (Ord. 1976-36. Passed 6-24-76.)

185.1903 CLAIM FOR CREDIT.

(EDITOR'S NOTE: The provisions of this section were repealed by Ordinance 1971-51. Passed 11-24-71.)

DISBURSEMENT OF RECEIPTS OF TAX COLLECTION

185.2101 DISBURSEMENT OF FUNDS COLLECTED.

The funds collected under the provisions of this chapter shall be disbursed in the following manner:

- (a) First, such part thereof as shall be necessary to defray all expenses of collecting the tax and of administering and enforcing the provisions of this chapter shall be paid.
- (b) The balance remaining after payment of the expenses referred to in subsection (a) hereof shall be deposited in the General Fund for municipal purposes.
(Ord. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

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 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 185.1701 and 185.1505 of this chapter shall apply. (Ord. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

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. 1971-1. Passed 1-14-71.)

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 185.2999. (Ord. 1971-1. Passed 1-14-71.)

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.

In addition to the penalty provided in Section 185.2999, any employee of the City who violates any provision of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal. (Ord. 1971-1. Passed 1-14-71.)

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 the withholding taxes are paid. (Ord. 1971-1. Passed 1-14-71.)

185.2311 AUTHORITY IN CONTRACT FOR CENTRAL COLLECTION FACILITIES.

The Administrator may and he is authorized hereby to enter into an agreement, subject to agreement of Council, 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 of providing a central collection facility for the collection of the income tax on behalf of the City.
(Ord. 1971-1. Passed 1-14-71.)

185.2312 ADMINISTRATOR'S AUTHORITY TO CONTRACT FOR SERVICE.

In the event the Administrator, on behalf of the City, enters into an agreement with any other municipal corporation to act as agent of the City 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 185.2311, then all or part of the duties and authority of the Administrator may be assigned by such agreement to such other municipal corporation. (Ord. 1971-1. Passed 1-14-71.)

BOARD OF REVIEW**185.2501 BOARD OF REVIEW ESTABLISHED.**

A Board of Review, consisting of the Finance Director, Law Director, 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. 1971-1. Passed 1-14-71.)

185.2502 DUTY TO APPROVE REGULATIONS AND TO HEAR APPEALS.

All rules and regulations and amendments to 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. 1971-1. Passed 1-14-71.)

185.2503 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. 1971-1. Passed 1-14-71.)

OTHER PROVISIONS

185.2701 SEPARABILITY.

If any sentence, clause, section or part of this chapter, or any tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal or invalid such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein. (Ord. 1971-1. Passed 1-14-71.)

185.2702 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 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. 1971-1. Passed 1-14-71.)

185.2703 CONTINUANCE OF PENDING MATTERS.

Pursuant to Article VII, Section 7.4 of the Charter, existing Ordinance 1968-26, in its entirety hereby is repealed effective January 1, 1971. However, pursuant to Article X, Section 10.3 of the Charter, all rights, claims, actions, orders, contracts and legal or administrative proceedings commenced under or by virtue of Ordinance 1968-26 shall be continued and be maintained, carried on or dealt with by the appropriate municipal department office or agency and nothing contained in this chapter or any section thereof shall be construed as the impairment or abridgment of the obligation of any contract to which the municipality is presently a party or the release of any party from the obligations of any contract with the municipality if such contract or contracts were entered into under or by virtue of the authority of existing Ordinance 1968-26. (Ord. 1971-1. Passed 1-14-71.)

185.2999 PENALTY.

(a) Whoever violates any provision of Section 185.1505 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both.

(b) Whoever violates Section 185.2309, divulging confidential information, shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than six months, or both. Each disclosure shall constitute a separate offense. (Ord. 1971-1. Passed 1-14-71.)