

Sponsored by:

FINANCE:

V. Stewart III  
F. Bullocks  
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G. Gibbs

9/27/11  
"1400" discovered  
& fixed  
191.99 PENALTY

ORDINANCE NO. 2010-35

AN ORDINANCE AMENDING SUBSECTIONS 191.10 (a), INTEREST AND PENALTIES, 191.11 (b), COLLECTION OF UNPAID TAXES; REFUNDS OF OVERPAYMENTS, AND 191.99 (a) AND CREATING A NEW SUBSECTION 191.99 (d), PENALTY, AND REPEALING EXISTING SUBSECTIONS 191.10 (a), 191.11 (b), AND 191.99 (a), CODIFIED ORDINANCES OF THE CITY OF ELYRIA, OHIO.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ELYRIA, STATE OF OHIO:

SECTION 1: That Subsections 191.10 (a), Interest And Penalties, 191.11 (b), Collection Of Unpaid Taxes; Refunds Of Overpayments, and 191.99 (a) and creating a new Subsection (d), Penalty, Codified Ordinances of the City of Elyria, Ohio, be and the same are hereby amended and created and shall now read as follows:

191.10 INTEREST AND PENALTIES.

(a) Interest. All taxes imposed and all monies 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 interest prescribed by Section 5703.47 of the Ohio Revised Code. Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety days after the final filing date of the annual return, or ninety days after the complete return is filed, or ninety days of filing the application for refund, whichever is later, no interest shall be allowed and paid on the refunded overpayment. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest on overpayments shall be paid at the rate of interest prescribed by Section 5703.47 of the Ohio Revised Code.

191.11 COLLECTION OF UNPAID TAXES; REFUNDS OF OVERPAYMENTS

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

municipal income tax shall file an application for a refund within three years of December 31<sup>st</sup> of the year in which such erroneously payments were made.

#### 191.99 PENALTY

(a) Whoever violates any of the provisions of this chapter, for which no penalty is otherwise provided, shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than one hundred eighty (180) days, or both for each offense. For any violation of this chapter which occurs after April 14, 2010, for which no penalty is otherwise provided, the penalty shall be a fine of not more than one thousand dollars (\$1,000.00) or imprisonment not more than one hundred eighty (180) days, or both.

(d) In a civil court action to collect taxes due under this chapter or criminal court action for failure to make payment or file a return required by this chapter, a fee shall be imposed and paid to the Tax Administrator. This fee shall be in addition to other penalties provided by this chapter. The fee for failure to file a return shall be fifty dollars (\$50.00) for each return not timely filed and the fee for failure to pay taxes shall be fifty dollars (\$50.00) or ten percent (10%) of the municipal income tax due and not paid, whichever is greater.

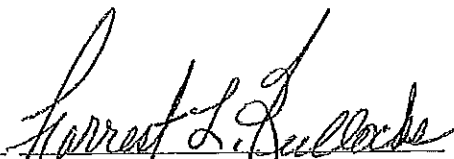
SECTION 2: That existing Subsections 191.10 (a), Interest And Penalties, 191.11 (b), Collection Of Unpaid Taxes; Refunds Of Overpayments, and 191.99 (a), Penalty, Codified Ordinances of the City of Elyria, be and the same are hereby repealed.

SECTION 3: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in meetings open to the Public, in compliance with Ohio law.


SECTION 4: That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED:

3/15/10

  
Forrest L. Bullocks, President

ATTEST:

  
Arthur J. Weber, Clerk

APPROVED:

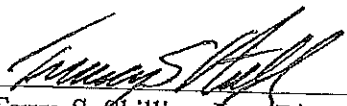
3/15/10

  
William M. Grace, Mayor

DATE:

3-16-10

Approved as to form:

  
Terry S. Shilling, Law Director

CERTIFICATE OF PUBLICATION

I, THE UNDERSIGNED CLERK OF COUNCIL OF THE CITY OF ELYRIA, OHIO, HEREBY CERTIFY THAT THE FULL TEXT OF THE FOREGOING ORDINANCE NO. 2010-35 WAS POSTED IN THREE PLACES WITHIN THE CITY AS DETERMINED BY COUNCIL, AND THAT SUCH PLACES WERE AS FOLLOWS: CITY HALL, CENTRAL FIRE STATION AND THE POLICE STATION.

DATED: 3/16/10



CLERK OF COUNCIL  
CITY OF ELYRIA, OHIO

Date presented to the Mayor: 3/16-10

## TITLE ELEVEN - Taxation

Chap. 191. Earned Income Tax.

Chap. 193. Transient Lodging Tax.

Chap. 195. Motor Vehicle License Tax.

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 CHAPTER 191  
 Earned Income Tax

191.01	Purpose.	191.10	Interest and penalties.
191.02	Definitions.	191.11	Collection of unpaid taxes; refunds of overpayments.
191.03	Imposition of tax; operating loss carry-forward; consolidated returns; sources of income.	191.12	Violations; statute of limitations.
191.04	Effective period.	191.13	Board of Review.
191.05	Filing of returns.	191.14	Taxpayer relief and credit provisions.
191.06	Collection at source.	191.15	Collection of tax after termination of chapter.
191.07	Declaration of estimated tax.	191.16	Allocation of funds.
191.08	General powers and duties of the Administrator; R.I.T.A.	191.17	Separability.
191.09	Investigative powers of the Administrator; divulging confidential information.	191.99	Penalty.

## CROSS REFERENCES

Power to levy income tax - see Ohio Const., Art. XVIII § 3

State law applicability - see CHTR. § 20.01

Limitation on tax rate - see CHTR. § 20.02

Limitation of debt - see CHTR. § 20.03

Payroll deductions - see Ohio R.C. 9.42

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

Tax Administrator - see ADM. Ch. 131

## 191.01 PURPOSE.

To provide funds for the purposes of general Municipal operation, maintenance, new equipment, extension and enlargements of Municipal services and facilities, capital improvements and law enforcement in and for the City of Elyria there shall be, and is hereby levied a tax on salaries, wages, commissions, and other compensation, and on net profits, as hereinafter provided. (Ord. 98-169. Passed 7-6-98; Ord. 2003-16. Passed 2-3-03; Ord. 2003-133. Passed 8-19-03; Ord. 2008-113. Passed 8-4-08.)

## 191.02 DEFINITIONS.

As used in this chapter, unless the context clearly indicates or requires a different meaning:

- (a) "Adjusted Federal Taxable Income" means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute "Adjusted Federal Taxable Income" as if the pass-through entity was a C corporation. This definition does not apply to any taxpayer required to file a return under Ohio R.C. 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.
- (b) "Administrator" means the individual designated by this chapter, appointed by the Mayor and approved by Council, to administer and enforce the provisions of this chapter.
- (c) "Assignment" means the assignment made by a resident of the City of a claim for a refund due from another taxing municipality granting credit to nonresidents thereof.
- (d) "Association" means a partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
- (e) "Board of Review" means the Board established by and constituted as provided in Section 191.13.
- (f) "Business" means an 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.
- (g) "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 of dependency.
- (h) "Employee" means a person who works for wages, a salary, commissions or other type of compensation in the service of an employer.
- (i) "Employer" means an individual, partnership, association, corporation, governmental 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 compensation basis.
- (j) "Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31.
- (k) "Generic form" means an electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or requests for refunds, which contains all the information required on City regular tax return, estimated payments forms, and request for refund forms, and are in a similar format that will allow processing of the generic forms without altering City procedures for processing forms.
- (l) "Gross receipts" means the total income from any source whatsoever.
- (m) "Net profits" for taxable years prior to 2004, means the net gains 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, or a system approved by the

Administrator, without deduction of taxes imposed by this chapter or of 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, and otherwise adjusted to the requirements of this chapter. For taxable years 2004 and later, see "Adjusted Federal taxable income", as defined in this section.

- (n) "Nonresident" means an individual domiciled outside of the City.
- (o) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the City.
- (p) "Person" means every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, "person," as applied to any unincorporated entity, shall mean the partners or members thereof, and, as applied to corporations, the officers thereof.
- (q) "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 or her regular agents or employees regularly in attendance.
- (r) "Qualifying wage" means wages as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. "Qualifying wage" represents employees' income, including non-qualified deferred compensation and stock options, from which municipal tax shall be deducted by the employer, and any wages not considered a part of "qualifying wage" shall not be taxed by the City. This definition is effective January 1, 2004, for taxable years 2004 and later.
- (s) "Reciprocity credit" means the credit granted by a municipality to its residents and to nonresidents whose city of residence grants a similar credit to nonresidents thereof, based on twenty-five percent of the lesser of the two rates.
- (t) "Rental income" means income received by a taxpayer from the rental of real estate, which shall be included in the computation of net profits from business activities 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, equals the sum of two hundred and fifty dollars (\$250.00) or more per month, it shall be prima-facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental property shall be subject to tax, provided that in the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental equals the sum of two hundred and fifty dollars (\$250.00) or more per month, and provided, further, that in the case of farm property, the owner shall

be considered engaged in a business activity when he or she shares 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 equals two hundred and fifty dollars (\$250.00) or more per month, and provided, further, that the person who operates a licensed rooming house shall be considered in business, whether or not the gross income equals two hundred and fifty dollars (\$250.00) or more per month.

- (u) "Resident" means an individual domiciled in the City.
- (v) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City.
- (w) "Taxable income" means wages, salaries and other compensation paid by an employer or employers before any deductions, 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.
- (x) "Taxable year" means the calendar year, or the fiscal year upon the basis of which 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.
- (y) "Taxing municipality" means any municipal corporation levying a municipal income tax on salaries, wages, commissions and other compensation earned by individuals and on net profits earned from the operation of a business, profession or other activity.
- (z) "Taxpayer" means a person, whether an individual, partnership, association, corporation or other entity, required hereunder to file a return or pay a tax.  
(Ord. 69-54. Passed 5-26-69; Ord. 73-303. Passed 12-17-73; Ord. 2005-7. Passed 1-18-05.)

191.03 IMPOSITION OF TAX; OPERATING LOSS CARRY-FORWARD;  
CONSOLIDATED RETURNS; SOURCES OF INCOME.

(a) Imposition of Tax. Subject to the provisions of Section 191.14, an annual tax for the purposes specified in Section 191.01, shall be imposed at the rate of one and one-half percent per annum, for a five year period, from July 1, 2009 through June 30, 2014 and thereafter at a rate of one percent per annum, and an additional annual tax for law enforcement purposes only shall be imposed at the rate of one-quarter of one percent per annum, on and after January 1, 1992, upon the following:

- (1) On all salaries, wages, commissions and other compensation and net profits from unincorporated business entities and professions earned during the effective period of this chapter by residents of the City.
- (2) On all salaries, wages, commissions and other compensation earned during the effective period of this chapter by non-residents for work done or services performed or rendered in the City.
- (3) On the portion attributable to the City of the net profits earned during the effective period of this chapter of all resident unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business or other activities performed in the City.
- (4) On the portion of the distributive shares of the net profits earned during the effective period of this chapter 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; provided, however, that the liability of an individual partner or owner taxable hereunder on income attributable to another taxing municipality shall be subject to the provision of Section 191.14.

- (5) On the portion attributable to the City of the net profits earned during the effective period of this chapter of all non-resident unincorporated businesses, professions or other entities derived from sales made, work done or 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.
- (6) On the portion of the distributive share of the net profits earned during the effective period of this chapter of a resident partner or owner of a non-resident unincorporated business entity not attributable to the City and not levied against such incorporated business entity.
- (7) On the portion attributable to the City, of the net profits earned during the effective period of this chapter 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. 98-169, Passed 7-6-98; Ord. 2008-113, Passed 8-4-08.)

(b) Operating Loss Carry-Forward.

- (1) The portion of a net operating loss sustained in any taxable year subsequent to August 1, 1969, allocable to the City, may be applied against the portion of the profit of the succeeding year(s) allocable to the City, until exhausted, but in no event for more than five taxable years. No portion of a net operating loss shall be carried back against the net profits of any prior year.
- (2) The portion of a net operating loss sustained shall be allocated to the City in the same manner as provided herein for the allocating of net profits to the City.
- (3) The Administrator shall provide, by rules and regulations, the manner in which such net operating loss carry-forward shall be determined.

(c) Consolidated Returns.

- (1) The filing of consolidated returns may be permitted or required in accordance with the rules and regulations prescribed by the Administrator. Any affiliated group which files a consolidated return for Federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the City. However, once the affiliated group has elected to file a consolidated return or a separate return with the City, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the City.
- (2) 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 or she may deem necessary to ascertain whether the net profits are properly allocated to the City. If the Administrator finds that the 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 or she shall make such allocation of net profits to the City.

(d) Sources of Income Not Taxed. The tax provided for in this chapter shall not be levied on the following:

- (1) 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.
- (2) Poor relief, unemployment insurance benefits, old age pensions or similar payments, including disability benefits, received from local or state governments, or the Federal Government, or charitable, religious or educational organizations.
- (3) Proceeds of insurance paid by reason of the death of the insured, pensions, including industrial pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered, from whatever source derived.
- (4) Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any of the same are conducted by bona fide charitable, religious or educational organizations and associations.
- (5) Alimony received.
- (6) Personal earnings of any natural person under eighteen years of age.
- (7) Compensation for personal injuries or for damage to property by way of insurance or otherwise.
- (8) Interest, dividends and other revenue from intangible property.
- (9) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State 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.
- (10) 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.
- (11) 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 a municipality to impose net income taxes.
- (12) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation. The ordained minister must be duly ordained, commissioned, or licensed by a religious body constituting

a church or church denomination, and must have authority to perform all sacraments of the church.

(Ord. 69-54. Passed 5-26-69; Ord. 70-27. Passed 3-16-70; Ord. 94-25. Passed 2-16-94; Ord. 2003-16. Passed 2-3-03; Ord. 2005-7. Passed 1-18-05.)

#### 191.04 EFFECTIVE PERIOD.

The annual tax provided for in this chapter shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of persons, businesses, professions or other activities earned at the rate of two and one-quarter percent per annum on and after January 1, 2010 to and including the date of revocation or amendment of this chapter.

(Ord. 98-169. Passed 7-6-98; Ord. 2003-16. Passed 2-3-03; Ord. 2008-113. Passed 8-4-08; Ord. 2009-178. Passed 8-3-09.)

#### 191.05 FILING OF RETURNS.

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

(b) Returns shall be filed with the Administrator on a form or forms (including generic forms as defined in Section 191.02) furnished by, or obtainable upon request from, the Administrator, setting forth:

- (1) The aggregate amount of salaries, wages, commissions and other compensation earned;
- (2) The gross income from a business, profession or other activity less allowable expenses incurred in the acquisition of such gross income;
- (3) The amount of tax imposed by this chapter on such earnings and profits;
- (4) The amount of tax imposed by this chapter on income reported;
- (5) Any credits to which the taxpayer may be entitled under the provisions of Sections 191.06, 191.07 and 191.14;
- (6) Such other pertinent statements, information returns or other information as the Administrator may require.

(c) The Administrator may extend the time for the filing of an annual return upon the request of a 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 a 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 shall be assessed in those cases in which the return is filed and final tax paid within the period as extended. Interest shall be charged on the unpaid balance at the rate of six percent per annum figured monthly for the period of the extension, with any portion of a month to be charged as a full month. The extension request may be made by filing a copy of the taxpayer's request for a Federal filing extension, or by filing a written request. The Administrator may deny the extension if the taxpayer's income tax account with the City is delinquent in any way.

(d) The taxpayer making a return shall, at the time of filing thereof, pay to the Administrator the balance of tax due, if any, after deducting:

- (1) The amount of Elyria income tax deducted or withheld at the source pursuant to Section 191.06;
- (2) The portion of the tax that has been paid on declaration by the taxpayer pursuant to Section 191.07; and
- (3) Any credit allowable under the provisions of Section 191.14;

Should the return or the records of the Administrator indicate any overpayment of the tax to which the City is entitled under the provisions of this chapter, such overpayment shall first be applied against any existing liability, and the balance, if any, at the election of the taxpayer communicated to the Administrator, shall be refunded or transferred against any subsequent liability.

(e) 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 and/or limitations contained in Sections 191.11 and 191.14. Such amended returns 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.

(f) 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 to be due thereon or make a claim for refund of any overpayment. (Ord. 69-54. Passed 5-26-69; Ord. 70-27. Passed 3-16-70; Ord. 71-168. Passed 12-6-71; Ord. 2005-7. Passed 1-18-05.)

#### 191.06 COLLECTION AT SOURCE.

(a) Each employer within the City, or doing business within the City, who employs one or more persons on a salary, wage, commission or other compensation basis, shall, at the time of payment thereof, deduct the tax imposed by Section 191.03 from the gross salaries, wages, commissions, or other compensation earned by City residents regardless of where such compensation was earned, and shall deduct such tax from the salaries, wages, commissions or other compensation earned within the City by nonresidents.  
(Adopting Ordinance)

(b) Notwithstanding the provisions of subsection (a) hereof, where such employer employs a City resident in another taxing municipality requiring such employer to deduct its tax from all employees engaged therein, such employer shall withhold for and remit to the City only the difference, if any, between the tax imposed by such other taxing municipality and the tax imposed by this chapter.

(c) Each employer shall, on or before the last day of each month, make a return and remit to the City, the tax withheld in the previous month. Such return shall be on a form or forms prescribed by or acceptable to the Administrator and shall be subject to the rules and regulations prescribed 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. However, if the amount of the tax so deducted by any employer in any one month is less than one hundred dollars (\$100.00), the employer may defer the filing of a return and payment of the amount deducted until the last day of the month following the end of the calendar quarter in which such month occurred.

(d) On or before January 31 following any calendar year, such employer shall file with the Administrator an information return for such employee from whom City income tax has been, or should have been, withheld, showing the name, address and Social Security number of the employee, the total amount of compensation paid during the year and the amount of City income tax withheld from such employee.

(e) An employer, in collecting said 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 or her employees shall, until the same is paid to the City, be deemed a trust fund in the hands of such employer.

(Ord. 69-54. Passed 5-26-69; Ord. 71-168. Passed 12-6-71.)

(f) Any officer or employee having control or supervision of or charged with the responsibility of filing any return or declaration required by this chapter and making payment of any tax or employer withholding due by this chapter, or any officer of a corporation who is responsible for execution of the corporation's fiscal responsibilities, shall be personally liable for failure to file any return or declaration or pay the tax or employer withholding due by the provisions of this chapter. The dissolution, termination or bankruptcy of a corporation does not discharge a responsible officer's or employee's liability for a failure of the corporation to file returns or declarations or pay tax or employer withholding due.

(Ord. 2000-168. Passed 9-5-00.)

#### 191.07 DECLARATION OF ESTIMATED TAX.

(a) Every person who anticipates any taxable income which is not subject to Section 191.06, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 191.03 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. No declaration or payment of estimated tax is required if the estimated tax for the current year amounts to not more than one hundred dollars (\$100.00) or 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 191.06. The taxpayer, in determining the estimated annual tax due under the declaration, may deduct therefrom:

- (1) Any portion of such tax to be deducted or withheld at the source pursuant to Section 191.06; and
- (2) Any credits allowable under provisions of Section 191.14; and
- (3) Any overpayment of the previous year's tax liability which the taxpayer has not elected to have refunded.

(Ord. 97-210. Passed 9-2-97.)

(b) Such declarations shall be filed on or before April 15 of each year, or within four months of the date the taxpayer becomes subject to tax for the first time.

(c) Those taxpayers reporting on a fiscal-year basis shall file a declaration within four months after the beginning of each fiscal year or period.

(d) Such declarations shall be filed upon a form furnished by, or obtainable from, the Administrator. Credit shall be taken for City income tax to be withheld, if any, from any portion of such income. In addition, credit may be taken for tax payable to other taxing municipalities in accordance with the provisions of Section 191.14.

- (e) (1) Effective January 1, 2003, the declaration of estimated tax to be paid to the City by taxpayers who are individuals shall be accompanied by a payment of at least one-fourth of the declaration amount and at least a similar amount shall be paid on or before July 31 and October 31 of the taxable year, and January 31 of the following year.
- (2) Effective January 1, 2003, such declaration of estimated tax to be paid to the City by corporations and associations shall be accompanied by a payment of at least one-fourth of the declaration amount and at least a similar amount shall be paid on or before June 15, September 15, and December 15. In the case of a fiscal year taxpayer the second, third, and fourth quarterly estimated payments shall be due on the fifteenth day of the sixth, ninth, and twelfth months of the taxable year, respectively.

(f) 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 to the City shall be paid therewith in accordance with the provisions of Section 191.05, provided, however, that any taxpayer may file, on or before the last day of the first month of the year following that for which such declaration or amended declaration was filed, an annual return and pay any balance due at such time in lieu of filing such declaration or any amended declaration, and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax.

(g) An amended declaration must be filed on or before January 31 of the following year, or in the case of a taxpayer on a fiscal year, on or before the date fixed by regulation of the Administrator, if it appears that the original declaration made for such taxable year underestimated the taxpayer's income by 25% or more. At such time, a payment which, together with prior payments, is sufficient to pay the taxpayer's entire estimated liability shall be made. If, upon the filing of the return required by Section 191.05, it appears that the taxpayer did not pay 80% of the tax liability, as shown on said return, on or before January 31, or the date fixed by regulations, whichever is applicable, the difference between eighty percent of said taxpayer's tax liability and the amount of estimated tax actually paid on or before January 31, or the date fixed by regulation, whichever is applicable, shall be subject to the interest and penalty provisions of Section 191.10. Provided, however, no penalties shall be assessed on estimated payments if the taxpayer has remitted an amount equal to 100% of the previous year's tax liability, provided that the previous year reflected a 12-month period, or if 90% of the actual liability has been received.

(Ord. 69-54. Passed 5-26-69; Ord. 70-27. Passed 3-16-70; Ord. 71-168. Passed 12-6-71; Ord. 73-303. Passed 12-17-73; Ord. 2005-7. Passed 1-18-05.)

#### 191.08 POWERS AND DUTIES OF THE ADMINISTRATOR; R.I.T.A.

(a) The Administrator of Taxation shall:

- (1) Receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; keep an accurate record thereof; and report all monies so received.

- (2) Enforce payment of all taxes owed to the City; keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld; and show the dates and amounts of payments thereof.

(b) 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, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.

(c) The Administrator is hereby 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 or she 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 or her under this chapter.

Failure of a taxpayer to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand, and the provisions of Sections 191.11, 191.12 and 191.99 shall apply.

(d) 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.

(e) Subject to the consent of the Board of Review or pursuant to regulations approved by said Board, the Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 191.10.

(f) The City, having already entered into an agreement for the establishment of a Regional Council of Governments, pursuant to Ordinance 71-95, passed June 21, 1971, which Council has organized a municipal tax collection agency known as the Regional Income Tax Agency (R.I.T.A.), the Board of Trustees of R.I.T.A. is hereby authorized to administer and enforce the provisions of this chapter as the agent of the City in conjunction with the Administrator, and the duties and authority of the Administrator hereunder may be performed by the Board of Trustees of R.I.T.A. through the Administrator of R.I.T.A., provided, however, that the Administrator of R.I.T.A. shall have no authority to abate the penalties and interest provided for in Section 191.10(a) and (b). (Ord. 69-54. Passed 5-26-69; Ord. 71-168. Passed 12-6-71.)

#### 191.09 INVESTIGATIVE POWERS OF THE ADMINISTRATOR; DIVULGING CONFIDENTIAL INFORMATION.

(a) The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and Federal Income Tax Returns of any employer or of any taxpayer or person

subject to, or whom the Administrator believes is subject to, the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request by the Administrator or his or her duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

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

(c) The refusal to produce books, papers, records and Federal Income Tax Returns, or the refusal to submit to such examination, by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Administrator authorized hereby, shall be deemed a violation of this chapter, punishable as provided in Section 191.99.

(d) Any information gained as the result of any return, investigation, hearing or verification required or authorized by this chapter shall be confidential, except for official purposes, or except in accordance with proper judicial order. No person shall divulge such information in violation of this chapter.

(e) Every taxpayer shall retain all records necessary to compute his or her tax liability for a period of five years from the date his or her return is filed, or the withholding taxes are paid. (Ord. 69-54. Passed 5-26-69.)

#### 191.10 INTEREST AND PENALTIES.

(a) Interest. All taxes imposed and all monies 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 interest prescribed by Ohio R.C. 5703.47. Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within 90 days after the final filing date of the annual return, or 90 days after the complete return is filed, or 90 days of filing the application for refund, whichever is later, no interest shall be allowed and paid on the refunded overpayment. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest on overpayments shall be paid at the rate of interest prescribed by Ohio R.C. 5703.47.



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

- (1) For failure to pay taxes due, other than taxes withheld: ten percent per annum, but not less than five dollars (\$5.00).
- (2) For failure to remit taxes withheld for employees: ten percent per month or fraction thereof, but the accumulated penalty shall not exceed fifty percent upon any unpaid amount and shall not be less than five dollars (\$5.00).

(c) 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. Further, in the absence of fraud, a penalty shall not be assessed on any additional tax assessment resulting from a Federal audit, provided that an amended return is filed and the additional tax, if any, is paid within three months after final determination of the Federal tax liability. Interest on any additional tax due will be assessed from the original due date of the return at the rate of six percent per annum. Interest will be paid on any overpayment of tax from the original due date of the return at the rate of six percent per annum.

(d) Abatement. The Administrator hereunder may abate a penalty or interest, or both, for good cause shown, in an amount up to and including five hundred dollars (\$500.00). (Ord. 70-27. Passed 3-16-70; Ord. 71-168. Passed 12-16-71; Ord. 98-158. Passed 7-6-98; Ord. 2010-35. Passed 3-15-10.)

#### 191.11 COLLECTION OF UNPAID TAXES; REFUNDS OF OVERPAYMENTS.

(a) All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of a substantial portion of income subject to taxation or 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, that 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 of the Federal tax liability shall be one year from the time of the final determination of the Federal tax liability.

(b) Taxes erroneously paid shall not be refunded unless a claim for a refund is made within three years from the date of which such payment was made, the return was due, or within three months after final determination of the Federal tax liability, whichever is later. Nonresidents who erroneously paid any municipal income tax shall file an application for a refund within three years of December 31 of the year in which such erroneously payments were made. (Ord. 70-27. Passed 3-16-70; Ord. 2010-35. Passed 3-15-10.)

#### 191.12 VIOLATIONS; STATUTE OF LIMITATIONS.

(a) No person shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter, except as stated in subsection 191.99(c);

- (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 or her employees or remit such withholding to the Administrator;
- (5) Refuse to permit the Administrator or any duly authorized agent or employee to examine his or her books, records, papers and Federal Income Tax Returns relating to the income or net profits of a taxpayer;
- (6) Fail to appear before the Administrator and to produce his or her books, records, papers or Federal Income Tax Returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator;
- (7) 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 or her true name, correct Social Security number and residence address, or fail to promptly notify an employer of any change in residence address and the date thereof;
- (10) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and City tax withheld, or knowingly give the Administrator false information; or
- (11) 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. 69-54. Passed 5-26-69; Ord. 71-168. Passed 12-6-71.)

(b) All prosecutions under this section must be commenced within the periods provided for in Ohio R.C. 718.06.

(Adopting Ordinance)

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

(Ord. 69-54. Passed 5-26-69.)

#### 191.13 BOARD OF REVIEW.

(a) A Board of Review, consisting of a chairperson and two other individuals, each to be appointed by the Mayor and approved by Council, is hereby established. The term of any Board member appointed after July 8, 2000, shall be three years. 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 shall be conducted privately, and the provisions of Section 191.09, with reference to the confidential character of information required to be disclosed by this chapter, shall apply to such matters as may be heard before the Board on appeal.

(Ord. 2000-127. Passed 7-10-00.)

(b) All rules and regulations, and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this chapter, must be approved by the Board before the same become effective. 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 alternative methods of allocation.

- (c) (1) 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 within 30 days from the announcement of such ruling or decision by the Administrator, provided the taxpayer making the appeal has filed with the City the required return or other documents concerning the obligation at issue. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful.
- (2) The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision or any part thereof. Such hearing shall be scheduled with 45 days from the date of appeal. The Board's ruling must be made within 30 days from the date of the closing of the record, shall be in writing and filed with the Administrator. The Board, within 15 days of its decision, shall send notice of its decision by ordinary mail to the taxpayer making the appeal.

(d) For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Review may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

(Ord. 69-54. Passed 5-26-69; Ord. 2005-7. Passed 1-18-05.)

#### 191.14 TAXPAYER RELIEF AND CREDIT PROVISIONS.

A taxpayer, subject to tax in more than one municipality on the same income, who has complied with the provisions of this chapter, shall be allowed a credit towards the City of Elyria income tax on such income as provided herein:

(a) Residents.

- (1) When the taxable income of a resident of the City is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall be allowed a credit of the amount of municipal income tax paid on such taxable income to such other municipality equal to 50% of an amount obtained by multiplying the lower of the tax rate of such other municipality or the tax rate of the City of Elyria by the taxable income earned in or attributable to the municipality of employment or business activity. For purposes of this section, taxable income shall include the distributive share of the net profits of a resident partner, shareholder of a subchapter S corporation, member of a limited liability company or any other pass-through entity, or owner of an unincorporated business entity.
- (2) When a resident of the City is subject to and has paid, or has acknowledged liability for, a municipal income tax in another municipality on the same income taxable

under this chapter, then such resident may claim a 100 percent credit allowance against the City's income tax.

- (b) Nonresidents. When a nonresident of the City is subject to the tax imposed by this chapter and is also subject to tax on the same income in the municipality of his or her residence, he or she shall not be allowed any credit or claim of refund, nor will the City acknowledge or allow any claim for refund of any portion of such tax so levied.
- (c) Timely Claims. The credits provided for in subsection (a) hereof will not be allowed unless the same are claimed in a timely return or form acceptable to, and filed with, the Administrator. In the event a taxpayer fails, neglects or refuses to file such timely return or form, he or she shall not be entitled to such credits and shall be liable for the full amount of tax assessed by this chapter, together with such interest and penalties, both civil and criminal, as are prescribed in this chapter.  
(Ord. 77-116. Passed 8-15-77; Ord. 2004-43. Passed 3-30-04.)

#### 191.15 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(a) This chapter shall continue effective insofar as the levy of taxes is concerned until revoked, and insofar as the collection of taxes levied hereunder, and actions or proceedings for collecting any tax so levied, or enforcing any provisions of this chapter, are concerned, it shall continue effective until all of said taxes levied in the aforesaid period are fully paid, and until any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Sections 191.11 and 191.12.

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Sections 191.05 and 191.06 as though the same were continuing.  
(Ord. 69-54. Passed 5-26-69.)

#### 191.16 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be credited to the General Fund of the City and shall be allocated in such manner as prescribed by legislation adopted by Council, subject to the following: The funds collected from the additional annual tax of one-quarter of one percent, as provided in Section 191.03(a) as amended, shall be allocated for law enforcement purposes only.  
(Ord. 94-25. Passed 2-16-94.)

#### 191.17 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 sentence, clause, section or part of this chapter and shall not affect or impair any of the remaining sentences, clauses, sections or 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. 69-54. Passed 5-26-69.)

191.99 PENALTY.

(a) Whoever violates any of the provisions of this chapter, for which no penalty is otherwise provided, shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than 180 days, or both, for each offense. For any violation of this chapter which occurs after April 14, 2010, for which no penalty is otherwise provided, the penalty shall be a fine of not more than one thousand dollars (\$1,000.00) or imprisonment not more than 180 days, or both.

(b) In addition to the penalty provided in subsection (a) hereof, any employee of the City who violates Section 191.09, relative to the disclosure of confidential information, shall be subject to immediate dismissal. Each disclosure shall constitute a separate offense.

(c) Every taxpayer having a taxable income, not having a tax due thereon, and failing, neglecting or refusing to make any return or declaration required by this chapter, shall be subject to a penalty of ten dollars (\$10.00) for said failure, neglect or refusal, said penalty to be imposed by the Administrator.

(d) In a civil court action to collect taxes due under this chapter or criminal court action for failure to make payment or file a return required by this chapter, a fee shall be imposed and paid to the Tax Administrator. This fee shall be in addition to other penalties provided by this chapter. The fee for failure to file a return shall be fifty dollars (\$50.00) for each return not timely filed and the fee for failure to pay taxes shall be fifty dollars (\$50.00) or 10% of the municipal income tax due and not paid, whichever is greater.

(Ord. 69-54. Passed 5-26-69; Ord. 71-168. Passed 12-6-71; Ord. 2010-35. Passed 3-15-10.)