

CHAPTER 173 Income Tax

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PURPOSE

173.0101 PURPOSE FOR THE TAX LEVY.

To provide funds for the purpose of general Municipal operations, procurement of fixed assets or permanent improvements, payment of debt charges and for all other lawful purposes of the City there is levied a tax on all salaries, wages, commissions and other compensation and on net profits as hereinafter provided.
(Ord. 89-21. Approved by Electors 5-2-89.)

173.0102 ADDITIONAL PURPOSES.

To provide funds for the purpose of acquiring, constructing, operating, maintaining and otherwise improving permanent improvements and their sites, including recreational facilities as an integral part of a cooperative project with the Fairview Park City School District, and paying debt charges related thereto. (Ord. 04-54. Passed 3-21-05.)

DEFINITIONS

173.0301 DEFINITIONS GENERALLY.

For purposes of this chapter certain terms, phrases, words and their derivatives have the meanings designated in Section 173.0302 through 173.0320. The singular includes the plural and the masculine includes the feminine and the neuter.
(Ord. 66-67. Passed 12-19-66.)

173.0302 DIRECTOR OF FINANCE.

"Director of Finance" means the individual designated to administer and enforce the provisions of the City Income Tax.
(Ord. 66-67. Passed 12-19-66.)

173.0303 ASSOCIATION.

"Association" means any partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
(Ord. 66-67. Passed 12-19-66.)

173.0304 BOARD OF REVIEW.

"Board of Review" means the Board created by and constituted as provided in Section 173.2501. (Ord. 66-67. Passed 12-19-66.)

173.0305 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. 66-67. Passed 12-19-66.)

173.0306 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. 66-67. Passed 12-19-66.)

173.0307 EMPLOYEE.

"Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.
(Ord. 66-67. Passed 12-19-66.)

173.0308 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. 66-67. Passed 12-19-66.)

173.0309 FISCAL YEAR.

"Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31. (Ord. 66-67. Passed 12-19-66.)

173.0310 GROSS RECEIPTS.

"Gross receipts" means the total income from any source whatever. (Ord. 66-67. Passed 12-19-66.)

173.0311 NET PROFITS.

"Net profits" means a 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. 66-67. Passed 12-19-66.)

173.0312 NONRESIDENT.

"Nonresident" means an individual domiciled outside the City. (Ord. 66-67. Passed 12-19-66.)

173.0313 NONRESIDENT UNINCORPORATED BUSINESS ENTITY.

"Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the City. (Ord. 66-67. Passed 12-19-66.)

173.0314 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, means the partners or members thereof, and as applied to corporations, the officers thereof. (Ord. 66-67. Passed 12-19-66.)

173.0315 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. 66-67. Passed 12-19-66.)

173.0316 RESIDENT.

"Resident" means an individual domiciled in the City. (Ord. 66-67. Passed 12-19-66.)

173.0317 RESIDENT UNINCORPORATED BUSINESS ENTITY.

"Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City. (Ord. 66-67. Passed 12-19-66.)

173.0318 TAXABLE INCOME.

"Taxable income" means wages, salaries, and other compensation paid by an employer or employers before any deduction and/or net profits from the operation of a business, profession or other enterprise or activity, including income from gaming, wagering and lottery winnings in excess of one thousand dollars (\$1,000) adjusted in accordance with the provisions of this chapter. Lottery winnings shall include but not be limited to the Ohio State Lottery (including all Ohio State Lottery games); and other state and multi-state lotteries.
(Ord. 04-11. Passed 2-17-04.)

173.0319 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. 66-67. Passed 12-19-66.)

173.0320 TAXPAYER.

"Taxpayer" means a person, whether an individual, partnership, association or any corporation or other entity, required hereunder to file a return or pay a tax.
(Ord. 66-67. Passed 12-19-66.)

173.0321 MANAGER.

"Manager" means any of the employer's officers, responsible persons, employees having control or supervision, and employees charged with the responsibility of filing the return, paying taxes and otherwise complying with this chapter.
(Ord. 84-70. Passed 4-15-85.)

173.0322 FUNDAMENTAL CHANGE.

"Fundamental change" means any substantial alteration by an employer including liquidation, dissolution, bankruptcy and reorganizations such as merger, consolidation, acquisition, transfer or change in identity, form or organization.
(Ord. 84-70. Passed 4-15-85.)

IMPOSITION OF INCOME TAX**173.0501 RATE AND INCOME TAXABLE.**

An annual tax for the purposes specified in Sections 173.0101 and 173.0102 shall be imposed on and after January 1, 2006, at the rate of two percent (2%) per annum until December 31, 2013, on which date the tax rate shall revert back to one and three-quarters percent (1.75%) upon the following: (Ord. 05-31. Passed 6-6-05.)

- (a) On all salaries, wages, commissions and other compensation earned on or after July 1, 1989, by residents of the City;
- (b) On all salaries, wages, commissions and other compensation earned on or after July 1, 1989, 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, 1989, of all resident unincorporated business entities or professions or other activities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City;
- (2) On the portion of the distributive share of the net profits earned on and after July 1, 1989, 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 by the City;
- (d) (1) On the portion attributable to the City of the net profits earned on or after July 1, 1989, 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, 1989, 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 by the City;
- (e) On the portion attributable to the City of the net profits earned on or after July 1, 1989, 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.
- (f) On the portion attributable to the City pursuant to the terms of this chapter and including:
 - (1) "Royalty income" means income earned by a taxpayer from a royalty interest in the production of an oil or gas well whether managed, extracted or operated by the taxpayer individually or through an agent or other representative, shall be included in the computation of net profits from a business activity to the extent that such royalty interest constitutes a business activity of the taxpayer.
Where the gross income received by a taxpayer from a royalty interest in the production of an oil or gas well in a taxable year exceeds three thousand dollars (\$3,000), it shall be prima facie evidence that the income was derived from a business activity of such taxpayer and the net income from such royalty interest shall be subject to tax.
 - (2) The employer's income derived from finance and carrying charges associated with their consumer's accounts receivable.
(Ord. 04-54. Passed 3-21-05.)

173.0502 EFFECTIVE PERIOD.

The income tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of businesses, professions or other activities earned on and after January 1, 1967.
(Ord. 66-67. Passed 12-19-66.)

DETERMINATION OF ALLOCATION OF TAX

173.0701 METHOD OF DETERMINATION.

In the taxation of income which is subject to the City income tax, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of the City shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the City, then only that portion shall be considered as having a taxable situs in the City for the purposes of Municipal income taxation. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the City, in the absence of actual records thereof, shall be determined as follows:

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

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

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

- (b) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed;
- (c) Gross receipts of the business or profession, from sales made and services performed during the taxable period in the City to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

In the event that the above allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such result.
(Ord. 66-67. Passed 12-19-66.)

173.0702 SALES MADE IN THE CITY DEFINED.

As used in subsection (c) of Section 173.0701 "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. 66-67. Passed 12-19-66.)

173.0703 TOTAL ALLOCATION.

Add together the percentages determined in accordance with subsections (a), (b) and (c) of Section 173.0701 or such of the percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving the total in order to obtain the business allocation percentage referred to in Section 173.0701.

A factor is applicable even though it may be allocable entirely in or outside the City.
(Ord. 66-67. Passed 12-19-66.)

173.0704 RENTALS.

(a) Rental income received by a taxpayer shall be included in the computation of net profits from business activities under subsections (c) through (e) of Section 173.0501, only if and to the extent that the rental ownership, management or operation of the real estate from which such rentals are derived, whether so rented, managed or operated by a taxpayer individually or through agents or other representatives, constitutes a business activity of the taxpayer in whole or in part.

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

(c) It shall be mandatory for every property owner subject to this section to personally or through a management agent submit a list to the Finance Director of names and addresses of all persons, firms, corporations or other entities occupying, leasing, renting or otherwise using the premises within this City in such a manner as to produce economic benefit to the property owner, whether or not such benefit is called "rent" and whether or not such benefit results in a profit or loss. The required list shall be prepared as of December 31 of each year and submitted on or before January 31 of each year and submitted on or before January 31 of the following year and at such other times as may be prescribed by the Finance Director.
(Ord. 72-10. Passed 4-17-72.)

173.0705 OPERATING LOSS-CARRY FORWARD.

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

(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 Director of Finance shall provide by rules and regulations the manner in which such net operating loss carry-forward shall be determined.
(Ord. 66-67. Passed 12-19-66.)

EXEMPTIONS**173.0901 SOURCES OF INCOME NOT TAXED.**

The City income tax shall not be levied on the following:

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

- (k) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes. (Ord. 66-67. Passed 12-19-66.)

RETURNS

173.1101 WHEN RETURN REQUIRED TO BE MADE.

Each taxpayer, 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 section 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 the fiscal year or period.

Any person who has no taxable income need not file an annual return. Any person who has exempt income must file a return and declare to the Director of Finance the nature of his exemption. Any person who has taxable income must file a tax return with the Director of Finance. (Ord. 84-72. Passed 4-15-85.)

173.1102 FORM AND CONTENT OF RETURN.

The return shall be filed with the Director of Finance on a form furnished by or obtainable upon request from the Director setting forth:

- (a) The aggregate amount of salaries, wages, commissions and other compensation earned and gross income from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to this tax;
 - (b) The amount of the tax imposed by this chapter on such earnings and profits; and
 - (c) Such other pertinent statements, information returns or other information as the Director may require.
- (Ord. 66-67. Passed 12-19-66.)

173.1103 EXTENSION OF TIME FOR FILING RETURNS.

The Director of Finance may extend the time for filing of an annual return upon the request of the taxpayer for a period of not to exceed six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax returns. The Director 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. 66-67. Passed 12-19-66.)

173.1104 CONSOLIDATED RETURNS.

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

(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 Director shall require such additional information as he may believe necessary to ascertain whether net profits are properly allocated to the City. If the Director finds that net profits are not properly allocated to the City by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation as he believes appropriate to produce a fair and proper allocation of net profits to the City.
(Ord. 66-67. Passed 12-19-66.)

173.1105 AMENDED RETURNS.

(a) Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements, limitations, or both, contained in Sections 173.1701, 173.1702, 173.1703 and 173.1902. The amended return shall be on a form obtainable on request from the Director of Finance. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

(b) Within three months from the final determination of any Federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City return showing income subject to the City tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.
(Ord. 66-67. Passed 12-19-66.)

PAYMENT OF TAX**173.1301 PAYMENT OF TAX ON FILING OF RETURNS.**

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

- (1) Where any portion of the tax so due has been deducted at the source pursuant to the provisions of Section 173.1302; or
- (2) Where any portion of the tax has been paid by the taxpayer pursuant to the provisions of Section 173.1303; or

- (3) Where an income tax has been paid on the same income to another municipality, credit for the amount so deducted or paid, or credit to the extent provided for in Section 173.1902, 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.

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

(Ord. 84-73. Passed 4-15-85.)

173.1302 COLLECTION AT SOURCE.

(a) In accordance with rules and regulations prescribed by the Director of Finance, 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-quarter percent (1-1/4%) (unless a different tax rate is imposed in Section 173.0501) per year of the gross salaries, wages, commissions or other compensation due by the employer to the employee, and shall, on or before the last day of each month, make a return and pay to the Director the amount of taxes so deducted during the previous month. However, if the amount of the tax so deducted by any employer in any one month is less than one hundred dollars (\$100.00), the employer may defer the filing of a return and payment of the amount deducted until the last day of the month following the end of the calendar quarter in which such month occurred.

(b) Returns shall be on a form or forms prescribed or acceptable to the Director and shall be subject to the rules and regulations prescribed by the Director. Such employer shall be liable for the payment of the tax required to be deducted and withheld whether or not such taxes have, in fact, been withheld.

(c) The 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 tax is paid to the City, be deemed a trust fund in the hands of such employer.

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

(e) Manager's Obligation.

- (1) Every manager is deemed to be a trustee of the City in collecting and holding the tax required under this chapter to be withheld, and the funds so collected by such withholding are deemed to be trust funds. Every manager is liable directly to the City for payment of such trust, whether actually collected by such employer or not. Any tax deducted and withheld is to be considered paid to the City, whether or not the employer actually remits the tax to the City, for purposes of determining employee payments or credits.
- (2) All managers shall be personally liable to the extent of the tax, interest and penalty, jointly and severally, for failure to file the employer's return or to pay the employer's tax, interest and penalty as required under this chapter.
- (3) No change in structure by an employer, including a fundamental change, discharges its managers from liability for the employees' or managers' failure to remit funds held in trust, to file a tax return or to pay taxes.
(Ord. 84-74. Passed 4-15-85.)

173.1303 DECLARATION OF INCOME.

Except as provided in this chapter, every person shall file a declaration setting forth taxable income, including distributive shares of net profits of unincorporated business entities, estimated to be earned by the taxpayer during the current tax year, together with the estimated tax due thereon, less tax withheld within the City, less the tax credit allowed in Section 173.1902 hereof, unless such taxpayer anticipates that such tax will be fully withheld within the City, and any income earned outside of the City will be fully taxed at the same or higher rate of tax in another municipality. If the estimated tax for the current year, less the tax to be withheld and less such tax credit, amounts to not more than ten dollars (\$10.00), no declaration or payment of estimated tax is required. (Ord. 73-81. Passed 11-19-73.)

173.1304 FILING OF DECLARATION.

(a) The declaration required by Section 173.1303 shall be filed on or before April 30 of each year during the effective period set forth in Section 173.0502 or within four months of the date the taxpayer becomes subject to the 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. 66-67. Passed 12-19-66.)

173.1305 FORM OF DECLARATION.

(a) The declaration required by Section 173.1303 shall be filed upon a form furnished by or obtainable from the Director of Finance. As provided in Section 173.1303, credit shall be taken for the City of Fairview Park tax to be withheld from any portion of such income and credit shall be taken for tax to be paid or withheld and remitted to another taxing municipality, in accordance with the provisions of Section 173.1902.

(b) The original declaration or any subsequent amendment thereof may be increased or decreased on or before any subsequent quarterly payment date as provided for herein. (Ord. 71-54. Passed 12-6-71.)

173.1306 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 seventh and tenth months after the beginning of the taxable year, and on or before the last day of the first month of the succeeding year following the taxable year. 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 date. (Ord. 73-81. Passed 11-19-73.)

173.1307 ANNUAL RETURN.

On or before the last day of the fourth month of the year following that for which the 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 173.1301. However, any taxpayer may file, on or before the last day of the first month of the year following that for which such declaration or amended declaration was filed, an annual return and pay any balance due at such time, in lieu of filing a declaration or an amended declaration, and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax. (Ord. 71-54. Passed 12-6-71.)

INTEREST AND PENALTIES**173.1501 INTEREST ON UNPAID TAX.**

All taxes imposed and all moneys withheld or required to be withheld by employers and all installments of estimated taxes required to be paid under the provisions of this chapter and remaining unpaid after they become due shall bear interest at the rate of six percent (6%) per year. (Ord. 71-54. Passed 12-6-71.)

173.1502 PENALTIES ON UNPAID TAX.

In addition to interest as provided in Section 173.1501, penalties based on the unpaid tax or installments of estimated tax are hereby imposed as follows:

- (a) For failure to pay taxes or estimated taxes due, other than taxes withheld: ten percent (10%) per year, but not less than twenty-five dollars (\$25.00).
- (b) For failure to remit taxes withheld from employees: ten percent (10%) per month or fraction thereof, but accumulated penalty shall not exceed fifty percent (50%) of any unpaid amount and shall not be less than fifty dollars (\$50.00) for the first offense and one hundred dollars (\$100.00) for each offense thereafter.
(Ord. 84-75. Passed 4-15-85.)

173.1503 EXCEPTIONS.

A penalty shall not be assessed on any additional tax assessment against a taxpayer made by the Director of Finance when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Director. In the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, providing an amended return is filed and the additional tax is paid within three months after a final determination of the Federal tax liability.
(Ord. 66-67. Passed 13-19-66.)

173.1504 ABATEMENT OF INTEREST AND PENALTY.

Upon recommendation of the Director of Finance, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Director to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest, or both, for good cause shown. (Ord. 66-67. Passed 12-19-66.)

173.1505 VIOLATIONS AND PENALTY.

Any person who shall:

- (a) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (b) Make any incomplete, false or fraudulent return;
- (c) Intentionally or willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;
- (d) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Director of Finance;
- (e) Refuse to permit the Director, 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;
- (f) Fail to appear before the Director 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 Director;
- (g) Refuse to disclose to the Director any information with respect to the income or net profits of a taxpayer;
- (h) Fail to comply with the provisions of this chapter or any order or subpoena of the Director authorized hereby;

- (i) Give to any employer false information as to his true name, correct social security number and residence address or fails to promptly notify an employer of any change in residence address and date thereof;
- (j) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and City tax withheld, or knowingly gives the Director false information; or
- (k) Attempt to do anything to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter; shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both, for each offense.
(Ord. 84-76. Passed 4-15-85.)

173.1506 LIMITATION ON PROSECUTION.

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

173.1507 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. 66-67. Passed 12-19-66.)

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

173.1701 UNPAID TAXES RECOVERABLE AS OTHER DEBTS.

All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, of omission of a substantial portion of income subject to this tax, or of failure to file a return, an additional assessment shall not be made after three years from the time the return was 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 Director of Finance shall be one year from the time of the final determination of the Federal tax liability.
(Ord. 66-67. Passed 12-19-66.)

173.1702 REFUNDS OF TAXES ERRONEOUSLY PAID.

Taxes erroneously paid shall not be refunded unless a claim for refund is made within the time prescribed by Ohio R.C. 718.06.

173.1703 AMOUNTS OF LESS THAN ONE DOLLAR.

Amounts of less than one dollar (\$1.00) shall not be collected or refunded.
(Ord. 66-67. Passed 12-19-66.)

TAX RELIEF AND RECIPROCITY

173.1902 TAX CREDIT.

(a) Effective July 1, 1989, when the taxable income of a resident of the City of Fairview Park is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall be allowed a credit of the amount of income tax paid on such taxable income to the other municipality, equal to seventy-five percent (75%) of the amount obtained by multiplying the lower of the tax rate of such other municipality or of the City of Fairview Park by the taxable income earned in or attributable to the municipality of employment or business activity, but in any event, such credit shall not be applied to a rate in excess of one and one-quarter percent (1.25%) of the taxable income earned or attributable to the municipality of employment or business activity. For the purposes of this section, "taxable income" includes the distributive share of net profits of a resident partner or owner of an unincorporated business entity.

(b) A claim for credit or refund under this section shall be made in such manner as the Director of Finance may by regulation provide. In the event such City resident fails, neglects or refuses to file an annual return or declaration on the form prescribed by the Director, he shall not be entitled to such credit or refund and shall be considered in violation of this chapter for failure to file a return. (Ord. 89-25. Passed 5-1-89.)

DISBURSEMENT OF RECEIPTS OF TAX COLLECTION

173.2101 DISBURSEMENT OF FUNDS COLLECTED.

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

- (a) First, such part of the funds as is necessary to defray all expenses of collecting the tax and of administering and enforcing the provisions of this chapter shall be paid.
- (b) After payment of the expenses referred to in subsection (a) hereof, one hundred percent (100%) of the proceeds of the one and one-quarter percent (1.25%) income tax levy shall provide funds for the purpose of Section 173.0101. Until December 31, 2005, one hundred percent (100%) of the proceeds from the one-quarter percent (.25%) income tax levy shall be deposited in a special fund to be used primarily to pay the costs of the resurfacing and rehabilitation of City streets as determined by the City Engineer; the balance remaining in the special fund may be used for motor vehicle and equipment acquisitions, and to pay principal of and interest on general obligation bonds and bond anticipation notes issued by the City to pay the costs of permanent improvements. One hundred percent (100%) of the proceeds of the one-half percent (.50%) income tax levy shall provide funds for the purpose of Section 173.0102.
- (c) Funds reserved for the streets purposes as set forth in subsection (b) hereof shall not include any cost associated with or attributable to the compensation, salary, wages, benefits and all other terms, conditions and privileges of employment of any municipal employee.
(Ord. 04-54. Passed 3-21-05.)

DUTIES AND AUTHORITY OF DIRECTOR OF FINANCE**173.2301 DUTY TO RECEIVE TAX IMPOSED.**

It shall be the duty of the Director of Finance to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, to keep accurate records thereof and to report all moneys so received. (Ord. 66-67. Passed 12-19-66.)

173.2302 DUTY TO ENFORCE COLLECTION.

It shall be the duty of the Director of Finance 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. 66-67. Passed 12-19-66.)

173.2303 AUTHORITY TO MAKE AND ENFORCE REGULATIONS.

The Director of Finance 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. 66-67. Passed 12-19-66.)

173.2304 AUTHORITY TO ARRANGE INSTALLMENT PAYMENTS.

The Director of Finance 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 Director 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 173.1701 and 173.1505 of this chapter shall apply. (Ord. 66-67. Passed 12-19-66.)

173.2305 AUTHORITY TO DETERMINE AMOUNT OF TAX DUE.

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

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

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

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

(e) Limitation of Prosecutions. Neither the Director of Finance's execution of a return nor the Director of Finance's assessment of a taxpayer shall start the running of the period of limitations on prosecutions set forth elsewhere in City ordinances.
(Ord. 84-77. Passed 4-15-85.)

173.2306 AUTHORITY TO MAKE INVESTIGATIONS.

The Director of Finance, 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 Director believes is subject to the provisions of this chapter, or 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 Director or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.
(Ord. 66-67. Passed 12-19-66.)

173.2307 AUTHORITY TO COMPEL PRODUCTION OF RECORDS.

The Director of Finance 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 the inquiry.
(Ord. 66-67. Passed 12-19-66.)

173.2308 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 Director of Finance authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 173.1505.
(Ord. 66-67. Passed 12-19-66.)

173.2309 CONFIDENTIAL NATURE OF INFORMATION OBTAINED; PENALTY.

Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential except for official purposes or in accordance with proper judicial order. Any person divulging such information in violation of this section, 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.

In addition to the above penalty, any employee of the City who violates any provision of this section relative to the disclosure of confidential information shall be immediately dismissed.
(Ord. 66-67. Passed 12-19-66.)

173.2310 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. 66-67. Passed 12-19-66.)

173.2311 AUTHORITY TO CONTRACT FOR CENTRAL COLLECTION FACILITIES.

The City, having already entered into an agreement for the establishment of a Regional Council of Governments pursuant to Ordinance 71-34, which Council has organized a municipal tax collection agency known as the "Regional Income Tax Agency, " the Board of Trustees of the Regional Income Tax Agency is authorized to administer and enforce the provisions of this chapter as the agent of the City, and the duties and authority of the Director of Finance hereunder may be performed by the Board of Trustees of the Agency through the Administrator of such Agency. However, the Administrator of the Agency shall have no authority to abate penalties or interest provided for in Section 173.1501 and 173.1502.
(Ord. 71-54. Passed 12-6-71.)

173.2312 DELEGATION OF AUTHORITY.

In order to facilitate the administration of this chapter, the Director of Finance, with the approval of the Mayor, may delegate or assign to a central collection facility any part or all of his duties as set forth in this chapter.
(Ord. 66-67. Passed 12-19-66.)

BOARD OF REVIEW

173.2501 BOARD OF REVIEW ESTABLISHED.

A Board of Review, consisting of the Mayor or his designee, the Director of Law or his Assistant designee 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 173.2309 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. 66-67. Passed 12-19-66.)

173.2502 DUTY TO APPROVE REGULATIONS AND TO HEAR APPEALS.

All rules and regulations and amendments or changes thereto, which are adopted by the Director of Finance under the authority conferred by this chapter, must be approved by the Board of Review before the same becomes effective. The Board shall hear and pass on appeals from any ruling or decision of the Director, and, at the request of the taxpayer or Director, is empowered to substitute alternate methods of allocation.
(Ord. 66-67. Passed 12-19-66.)

173.2503 RIGHT OF APPEAL.

Any person dissatisfied with any ruling or decision of the Director of Finance 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 Director, and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision or any part thereof. (Ord. 66-67. Passed 12-19-66.)

OTHER PROVISIONS

173.2701 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. 66-67. Passed 12-19-66.)

173.2702 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(a) This chapter shall continue effective insofar as the levy of the income tax is concerned until repealed and insofar as the collection of tax 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 the taxes levied in such period are fully paid and any and all suits and prosecutions for the collection of the taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in Sections 173.1701, 173.1702, 173.1703, 173.1505, 173.1506 and 173.1507.

(b) Annual returns due for all or part of the last effective year of this chapter shall be due on the date provided in Sections 173.1101 and 173.1302 of this chapter as though the tax levied in this chapter was continuing.
(Ord. 66-67. Passed 12-19-66.)