

## CHAPTER 191 Income Tax

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#### CROSS REFERENCES

Finance Director - see CHTR., Art. IV, §2  
 Limitation on levying income tax - see CHTR., Art. VIII, §3  
 Power to levy income tax - see Ohio Const., Art. XII, §8  
 Municipal income taxes - see Ohio R.C. Ch. 718  
 Payroll deductions - see Ohio R. C. Ch. 942

#### PURPOSE

##### 191.0101 PURPOSE OF LEVY OF INCOME TAX.

To provide funds for the purposes of general Municipal functions of the City of Independence, as determined by Council in accordance with law, there shall be and is hereby levied a tax on all salaries, wages, commissions and other compensations, and on net profits, and other income as hereinafter provided. (Ord. 2005-05. Passed 3-8-05.)

#### DEFINITIONS

##### 191.0301 DEFINITIONS GENERALLY.

For the purposes of this chapter the terms, phrases, words and their derivatives shall have the meanings given in the following sections.  
 (Ord. 2005-05. Passed 3-8-05.)

**191.0301.1 ADJUSTED FEDERAL TAXABLE INCOME.**

“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 additions and deductions required by Section 718.01(a)(1) of the Ohio Revised Code. Pass-through entities and s corporations 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 Revised Code section 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. (Ord. 2005-05. Passed 3-8-05.)

**191.0302 ADMINISTRATOR.**

“Administrator” means the Director of Finance who shall administer and enforce the provisions of the City of Independence Income Tax. (Ord. 2005-05. Passed 3-8-05.)

**191.0303 ASSOCIATION.**

“Association” means any partnership, limited partnership, or any other form of unincorporated enterprise, owned by two or more persons. (Ord. 2005-05. Passed 3-8-05.)

**191.0304 BOARD OF REVIEW.**

“Board of Review” means the Board created by and constituted as provided in Section 191.2501. (Ord.2005-05. Passed 3-8-05.)

**191.0305 BUSINESS.**

“Business” means any enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, excluding however, all nonprofit corporations which are exempt from the payment of Federal Income Tax. (Ord. 2005-05. Passed 3-8-05.)

**191.0306 CORPORATION.**

“Corporation” means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory or foreign country or dependency. (Ord. 2005-05. Passed 3-8-05.)

**191.0307 EMPLOYEE.**

“Employee” means one who works for wages, salary, commission or other type of compensation in the service of an employer. (Ord. 2005-05. Passed 3-8-05.)

**191.0308 EMPLOYER.**

“Employer” means an individual, partnership, association, corporation, government body, unit or agency or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other basis of compensation. (Ord. 2005-05. Passed 3-8-05.)

**191.0309 FISCAL YEAR.**

“Fiscal year” means an accounting period of twelve months or less ending on any day other than December 31. (Ord. 2005-05. Passed 3-8-05.)

**191.03095 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. 2005-05. Passed 3-8-05.)

**191.0309.5 GENERIC FORM.**

“Generic form” means an electronic or paper form or forms, approved by the administrator, designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or requests for refunds, which contain all the information required on the city regular tax return, estimated payment form, and request for refund form, and are in a similar format that will allow processing of the generic forms without altering the city procedures for processing forms. (Ord. 2005-05. Passed 3-8-05.)

**191.0310 GROSS RECEIPTS.**

“Gross receipts” means the total income from any source. (Ord. 2005-05. Passed 3-8-05.)

**191.03105 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. 2005-05. Passed 3-8-05.)

**191.0311 NET PROFITS.**

For taxable years prior to 2004, “net profits” means a net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal Income Tax purposes without deduction of taxes imposed by this chapter, Federal, State, and other taxes based on income; and in the case of an association, without deduction of salaries paid to partners and other owners. For taxable years 2004 and later, the definition of “Adjusted Federal Taxable Income” modifies this definition with respect to “C” Corporations, S Corporations and Pass-through Entities. (Ord. 2005-05. Passed 3-8-05.)

**191.0312 NONRESIDENT.**

“Nonresident” means an individual domiciled outside the City. (Ord. 2005-05. Passed 3-8-05.)

**191.0313 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. 2005-05. Passed 3-8-05.)

**191.0313.1 OHIO BUSINESS GATEWAY.**

“Ohio business gateway” means the online computer network system, initially created by the department of administrative services under Section 125.30 of the Ohio Revised Code, that allows private businesses to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.

**191.0313.2 PASS-THROUGH ENTITY.**

“Pass-through entity” means a partnership, limited liability company, or any other class of entity the income or profits from which are given pass-through treatment except an S Corporation, under the Internal Revenue Code. (Ord. 2005-05. Passed 3-8-05.)

**191.0314 PERSON.**

“Person” means every natural person, partnership, fiduciary, association or corporation or other entity. Whenever used in any clause prescribing and imposing a penalty, the term “person”, as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers thereof. (Ord. 2005-05. Passed 3-8-05.)

**191.0315 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. 2005-05. Passed 3-8-05.)

**191.0315.1 QUALIFYING WAGE.**

“Qualifying wage” means wages as defined in section 3121 of the internal revenue code, without regard to any wage limitations, but including subsequent adjustments from additions and deductions required by Section 718.01(1) of the Ohio Revised Code. “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. (Ord. 2005-05. Passed 3-8-05.)

**191.0316 RESIDENT.**

“Resident” means an individual domiciled in the City. (Ord. 2005-05. Passed 3-8-05.)

**191.0317 RESIDENT UNINCORPORATED BUSINESS ENTITY.**

“Resident unincorporated business entity” means an unincorporated business entity having an office or place of business within the City. (Ord. 2005-05. Passed 3-8-05.)

**191.0318 TAXABLE INCOME.**

“Taxable income” means wages, salaries and other compensation paid by an employer or employers before any deduction and the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this chapter. (Ord. 2005-05. Passed 3-8-05.)

**191.0319 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. 2005-05. Passed 3-8-05.)

## 191.0320 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. Except as provided in division (j) of Section 718.01 of the Ohio Revised Code, taxpayer does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but “taxpayer” includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary. (Ord.2005-05. Passed 3-8-05.)

## IMPOSITION OF INCOME TAX

## 191.0501 RATE AND INCOME TAXABLE.

An annual tax for the purposes specified in Section 191.0101 shall be imposed on and after June 1, 1987, at the rate of two percent per year upon the following:

- (a) On all salaries, wages, commissions and other compensation earned on and after June 1, 1987, by residents of the City; on or after January 1, 2004, on qualified wages earned by residents of the City;
- (b) On all salaries, wages, commissions and other compensation earned on and after June 1, 1987, by nonresidents of the City for work done or services performed or rendered within the City; on or after January 1, 2004, on qualified wages earned by nonresidents 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 June 1, 1987, 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 June 1, 1987, 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 June 1, 1987, of all nonresident unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City, whether or not such unincorporated business entity has an office or place of business in the City.
  - (2) On the portion of the distributive share of the net profits earned on or after June 1, 1987, 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 and after June 1, 1987, 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; and

- (f) On the portion attributable to the City pursuant to the provisions of this chapter, as follows:
  - (1) 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 exceed 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 his or her consumer's accounts receivable shall be subject to such tax.
- (g) On and after January 1, 2003, in the case of a pass-through entity, income of a pass-through entity in the hands of the owners of the entity and not income in the hands of the entity. (Ord. 2005-05. Passed 3-8-05.)

#### 191.0502 EFFECTIVE PERIOD.

The annual tax for the purposes specified in Section 191.0101 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 and other income earned from January 1, 1968, to December 31, 1971, inclusive, at the rate of one-half of one percent per year; from January 1, 1972, to September 2, 1979, inclusive, at the rate of one percent per year; from September 3, 1979, to May 31, 1987, inclusive, at the rate of one and one-half percent per year; and, on and after June 1, 1987, at the rate of two percent per year. (Ord. 2005-05. Passed 3-8-05.)

#### 191.0503 FEDERAL INCOME TAX BASIS.

- (a) For taxable years beginning after January 1, 2004, net profit from a business or profession shall use as a base the taxpayer's adjusted federal taxable income:
  - (1) In the case of a taxpayer who has a net profit from a business or profession that is operated as a sole proprietorship, the City shall tax and use as the base for determining the amount of the net profit that shall be considered as having a taxable situs in the City, the net profit required to be reported by the taxpayer on federal income tax schedule C or F from such sole proprietorship for the taxable year.
  - (2) In the case of a taxpayer who has a net profit from rental activity required to be reported on federal income tax schedule E, the City shall tax and use as the base for determining the net profit that shall be considered as having a taxable situs in the City, the net profit from rental activities required to be reported by the taxpayer on schedule E for the taxable year.
- (b) If an individual's taxable income includes income against which the taxpayer has taken a deduction for federal income tax purposes as reportable on the taxpayer's Form 2106, and against which a like deduction has not been allowed by the City, the City shall deduct from the taxpayer's taxable income an amount equal to the deduction shown on such form allowable against such income, to the extent not otherwise so allowed as a deduction by the City. (Ord. 2005-05. Passed 3-8-05.)

## 191.0504 12-DAY OCCASIONAL ENTRY RULE.

(a) A non-resident individual who works in the city twelve (12) or fewer days per year shall be considered an occasional entrant, and shall not be subject to the city municipal income tax for those 12 days, except as provided in Sections 171.0901(q)(1) and (2). For purposes of the 12-day calculation, any portion of a day worked in the city shall be counted as one day worked in the city.

- (1) Beginning with the thirteenth day, the employer of said individual shall begin withholding the city income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to the city in accordance with the requirements of this chapter. The employer is further required to remit taxes on income earned in the city by the individual for the first twelve days.
- (2) If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the city  
(Ord. 2005-05. Passed 3-8-05.)

## DETERMINATION OF ALLOCATION OF TAX

## 191.0701 METHOD OF DETERMINATION.

(a) In the taxation of income which is subject to City income taxes, If the taxpayer shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the City, then only such portion shall be considered as having a taxable situs in the City for the purposes of municipal income taxation. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the City, 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:

- (1) The average original cost 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 original cost of all real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated:  
As used in the preceding paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.
- (2) 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 excluding compensation that is not taxable pursuant to Section 718.011 of the Ohio Revised Code.
- (3) 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;



(b) If the formula in subsection a does not produce an equitable result, another basis may be used as a substitute method under uniform regulations so as to produce such a result. If books and records are used, the following shall apply:

The net profits allocable to the city from business, professional or other activities conducted in the city by corporations or unincorporated entities (whether resident or non-resident) may be determined from the records of the taxpayer only if the taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within the city.

If the books and records of the taxpayer are used as the basis for apportioning net profits, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the administrator to determine whether the net profits attributable to the city are apportioned with reasonable accuracy.

In determining the income allocable to the city from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without the city.

(c) This section shall not apply to individuals who are residents of the city.  
(Ord. 2005-05. Passed 3-8-05.)

#### 191.0702 SALES MADE IN THE CITY.

As used in Section 191.0701(a)(3) "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 results 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. 2005-05. Passed 3-8-05.)

#### 191.0703 TOTAL ALLOCATION.

Add together the percentages determined in accordance with subsections (1), (2), and (3) of Section 191.0701(a) or such of the aforesaid percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving such total in order to obtain the business allocation percentage referred to in Section 191.0701.

A factor is applicable even though it may be allocable entirely in or outside the City.  
(Ord. 2005-05. Passed 3-8-05.)

**191.0704 RENTALS.**

Rental income received by a taxpayer shall be included in the computation of net profits from business activities under subsections (c), (d) and (e) of Section 191.0501, only if and to the extent that the rental ownership, management or operations of the real estate from which such rentals are derived (whether so rented, managed or operated by a taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.

Where the gross monthly rental of any and all real properties, regardless of number and value, 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 such taxpayer, and the net income of such rental property shall be subject to tax; provided that in the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds two hundred fifty dollars (\$250.00) per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds such two hundred fifty dollars (\$250.00) per month; and provided further that the person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds two hundred fifty dollars (\$250.00) per month.  
(Ord. 2005-05. Passed 3-8-05.)

**191.0705 OPERATING LOSS-CARRY FORWARD.**

(a) The portion of a net operating loss sustained in any taxable year 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 allocable to the City in the same manner as provided herein for allocating net profits to the City.

(c) The Administrator shall provide by rules and regulations the manner in which such net operating loss carry-forward shall be determined.  
(Ord. 2005-05. Passed 3-8-05.)

**EXEMPTIONS****191.0901 SOURCES OF INCOME NOT TAXED.**

The tax provided for herein shall not be levied on the following:

- (a) Pay or allowance for active members of the Armed Forces of the United States and members of their reserve components including the Ohio National Guard or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from 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) Intangible income as defined in Section 718.01(5) of the Ohio Revised Code.
- (i) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State 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 or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes.
- (l) Compensation paid under Section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually. Such compensation in excess of one thousand dollars shall be subjected to taxation by the city;
- (m) Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306, of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the city, unless the bus or vehicle is operated on a regularly scheduled route. The operator is subject to such a tax by reason of residence or domicile in the city, or the headquarters of the authority or commission is located within the city;
- (n) The income of a public utility, when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code, except the city shall tax the following, subject to Chapter 5745 of the Ohio Revised Code:
  - (1) Beginning January 1, 2002, the income of an electric company or combined company;
  - (2) Beginning January 1, 2004, the income of a telephone company.As used in division m of this section, "combined company," "electric company," and "telephone company" have the same meanings as in Section 5727.01 of the Ohio Revised Code.

- (o) 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.
  - (p) Employee compensation that is not "qualifying wages".
  - (q) The compensation paid to a nonresident individual for personal services performed by the individual in the city on twelve or fewer days in a calendar year unless one of the following applies:
    - (1) The individual is an employee of another person; the principal place of business of the individual's employer is located in another municipal corporation in this state that imposes a tax applying to compensation paid to the individual for services performed on those days; and the individual is not liable to that other municipal corporation for tax on the compensation paid for such services.
    - (2) The individual is a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter.
- (Ord. 2005-05. Passed 3-8-05.)

## RETURNS

### 191.1101 WHEN RETURN REQUIRED TO BE MADE.

Each taxpayer, except as herein provided, shall, whether or not a tax is due thereon, make and file a return on or before April 15 of each year. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the 15<sup>th</sup> day of the fourth month following the end of such fiscal year or period. Any person who has no income need not file an annual return. Any person who has exempt income must file a return and declare to the Administrator the nature of his or her exemption. Any person who has taxable income must file a tax return with the Tax Administrator.

(Ord. 2005-05. Passed 3-8-05.)

### 191.1102 FORM AND CONTENT OF RETURN.

The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from such Administrator or on a generic form, setting forth:

- (a) The aggregate amounts of salaries, wages, commissions and other compensation earned and gross income from business, professional or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to such tax;
  - (b) The amount of the tax imposed by this chapter on such earnings and profits; and
  - (c) Such other pertinent statements, information returns or other information as the Administrator may require.
- (Ord. 2005-05. Passed 3-8-05.)

**191.1103 EXTENSION OF TIME FOR FILING RETURNS.**

The filing with the administrator of a copy of the taxpayer's request for extension of time for filing the federal income tax return or a written request for extension shall constitute a request for extension of time for filing the city annual return. The administrator shall extend the time for filing to the last day of the month following the month to which the due date of the federal return has been extended. The administrator may deny the extension if the taxpayer's income tax account with the city is delinquent in any way. 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. 2005-05. Passed 3-8-05.)

**191.1104 CONSOLIDATED RETURNS.**

(a) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Administrator. On or after January 1, 2003, 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 Administrator.

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

(c) A pass-through entity which has net profits attributable to the city shall file a consolidated return on behalf of all resident recipients of distributions from the entity for the portion of the distributions attributable to the city and shall withhold and pay the city taxes due on said distributions. (Ord. 2005-05. Passed 3-8-05.)

**191.1105 AMENDED RETURNS.**

(a) Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements, limitations, or both, contained in Sections 191.1701, 191.1702, 191.1703, and Sections 191.1901, 191.1902, and 191.1903. Such amended return shall be on a form obtainable on request from the Administrator or on a generic form, 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 tax liability, such taxpayer shall make and file an amended return showing income subject to the tax based upon such final determination of Federal tax liability, and pay an additional tax shown due thereon or make claim for refund of any overpayment. (Ord. 2005-05. Passed 3-8-05.)

## PAYMENT OF TAX

### 191.1301 PAYMENT OF TAX ON FILING OF RETURN.

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

- (1) Where any portion of the tax so due has been deducted at the source pursuant to the provisions of Section 191.1302,
- (2) Where any portion of the tax has been paid by the taxpayer pursuant to the provisions of Section 191.1303, 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 191.1902, 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 who is liable for tax obligations imposed by this chapter undergoes a fundamental change, then the employer and his or her manager shall be liable for taxes due up to the date of the fundamental change. Taxes and final tax returns shall be due immediately after the fundamental change. Any successor employer shall withhold, from any purchase price that the successor owes to the predecessor, an amount sufficient to pay all unpaid taxes, interest and penalties 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 penalties. (Ord. 2005-05. Passed 3-8-05.)

### 191.1302 COLLECTION AT SOURCE.

(a) In accordance with rules and regulations prescribed by the Administrator, each employer within or doing business within the City shall deduct, at the time of the payment of such salary, wages, commission or other compensation, the tax of two percent 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 return and pay to the Administrator 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 by or acceptable to the Administrator or on a generic form and shall be subject to the rules and regulations prescribed therefore by the Administrator. The 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 same 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) (1) Every manager is deemed to be a trustee of this Municipality in collecting and holding the tax required under this chapter to be withheld, and the funds so collected by such withholding are deemed to be trust funds. Every manager is liable directly to this Municipality for payment of such trust, whether actually collected by such employer or not. Any tax deducted and withheld shall be considered paid to this Municipality, whether or not the employer actually remits the tax to this Municipality, for purposes of determining employee payments or credits.
- (2) All managers shall be personally liable to the extent of the tax, interest and penalty, jointly and severally, for failure to file the employer's return or to pay the employer's tax, interest and penalty as required under this chapter.
- (3) No change in structure by an employer, including a fundamental change, discharges its managers from liability for the employees' or manager's failure to remit funds held in trust, to file a tax return or to pay taxes.  
(Ord. 2005-05. Passed 3-8-05.)

#### 191.1303 DECLARATIONS OF INCOME NOT COLLECTED AT SOURCE.

Any person whose income tax is not fully withheld in the City of Independence or in another municipality in which taxes are withheld at a rate the same as or higher than the rate provided in Section 191.0505 shall file a declaration setting forth estimated taxable income, including distributive shares of net profits of unincorporated business entities and pass-through entities estimated to be earned by the taxpayer during the current tax year, together with the estimated tax due thereon less:

- (a) Tax withheld within the City of Independence; and
- (b) The tax credit allowed in Section 191.1902.

However, if the estimated tax for the current year, less the tax to be withheld and less the tax credit referred to in subsections (a) and (b) hereof, amounts to not more than ten dollars (\$10.00), no such declaration or payment of estimated tax shall be required.  
(Ord. 2005-05. Passed 3-8-05.)

**191.1304 FILING OF DECLARATION.**

(a) The declaration required by Section 191.1303 shall be filed on or before April 15, of each year for individual taxpayers, and beginning on January 1, 2003, on or before April 15 of each year for taxpayers who are not individuals during the effective period set forth in Section 191.0502 or within four months of the date the taxpayer becomes subject to tax for the first time.

(b) Those taxpayers reporting on a fiscal year basis shall file a declaration within four months after the beginning of each fiscal year or period.  
(Ord. 2005-05. Passed 3-9-05.)

**191.1305 FORM OF DECLARATION.**

(a) The declaration required by Section 191.1303 shall be filed upon a form furnished by, or obtainable from, the Administrator, or on a generic form, provided, however, credit shall be taken for City tax to be withheld from any portion of such income. In accordance with the provisions of Section 191.1902, credit may be taken for tax to be paid or to be withheld and remitted to another taxing municipality.

(b) The original declaration (or any subsequent amendment thereof) may be increased or decreased on or before any subsequent quarterly payment date as provided for herein.  
(Ord. 2005-05. Passed 3-9-05.)

**191.1306 PAYMENT TO ACCOMPANY DECLARATION.**

(a) As used in this section:

- (1) "Estimated tax liability" or "estimated annual tax" means the amount that a taxpayer estimates to be the taxpayer's liability for the city's income tax for a year prior to applying any credits, estimated tax payments, or withheld taxes for the year.
- (2) "Fiscal year taxpayer" means a taxpayer that reports the city's income tax on the basis of a twelve-month period that does not coincide with the calendar year.

(b) For tax years prior to January 1, 2003, 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.

(c) Beginning January 1, 2003, taxpayers who are individuals shall remit payment of estimated taxes as follows:

- (1) Twenty-two and one-half per cent of the taxpayer's estimated tax liability for the current year shall be remitted on or before the thirtieth day of April or the day on which the annual tax return for the prior year is required to be filed disregarding any extension, as prescribed by ordinance or rule of the city.
- (2) Forty-five per cent of the taxpayer's estimated tax liability for the current year shall have been remitted on or before the thirty-first day of July.



- (3) Sixty-seven and one-half per cent of the taxpayer's estimated tax liability for the current year shall have been remitted on or before the thirty-first day of October.
- (4) Ninety per cent of the taxpayer's estimated tax liability for the year referred to in subsection c(1), (2), and (3) of this section shall have been remitted on or before the thirty-first day of January following said year.

(d) Any amount deducted and withheld for taxes from the compensation of an individual shall be considered as estimated taxes paid in equal amounts on each of the payment dates prescribed by subsection c of this section.

(e) Beginning January 1, 2003, taxpayers that are not individuals shall remit payments of estimated taxes as follows:

- (1) Twenty-two and one-half per cent of the taxpayer's estimated tax liability for the current year shall be remitted on or before the day on which the annual tax return for the prior year is required to be filed disregarding any extension or, in the case of a fiscal year taxpayer, the fifteenth day of the fourth month of the taxpayer's taxable year.
- (2) Forty-five per cent of the taxpayer's estimated tax liability for the current year shall have been remitted on or before the fifteen day of June or, in the case of a fiscal year taxpayer, the fifteenth day of the sixth month of the taxpayer's taxable year.
- (3) Sixty-seven and one-half per cent of the taxpayer's estimated tax liability for the current year shall have been remitted on or before the fifteenth day of September or, in the case of a fiscal year taxpayer, the fifteenth day of the ninth month of the taxpayer's taxable year.
- (4) Ninety per cent of the taxpayer's estimated tax liability for the current year shall have been remitted on or before the fifteenth day of December or, in the cases of a fiscal year taxpayer, the fifteenth day of the twelfth month of the taxpayer's 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 or dates, but in no case shall a payment be required which constitutes a greater percentage of the taxpayer's estimated tax liability than required above.  
(Ord. 2005-05. Passed 3-8-05.)

#### 191.1307 ANNUAL RETURN.

On or before the last day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid therewith in accordance with the provisions of Section 191.1301. 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 such declaration or an amended declaration, and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax. (Ord. 2005-05. Passed 3-8-05.)

**191.1308 EXTENSION OF FILING TIME.**

Subject to the requirements of Section 191.1103, the Administrator may extend the time for filing of any return required making any payment or performing any other act required by this chapter for a period of not to exceed six months beyond the original required date. (Ord. 2005-05. Passed 3-8-05.)

**INTEREST AND PENALTIES****191.1501 INTEREST ON UNPAID TAX.**

All taxes imposed and all moneys withheld or required to be withheld by employers and all installment 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 per year. (Ord. 2005-05. Passed 3-8-05.)

**191.1502 PENALTIES ON UNPAID TAX.**

In addition to interest as provided in Section 191.1501, 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 per year, but not less than ten dollars (\$10.00).
  - (b) For failure to remit taxes withheld from 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 ten dollars (\$10.00).
- (Ord. 2005-05. Passed 3-8-05.)

**191.1503 EXCEPTIONS.**

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

(b) No penalties or interest shall be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period, or if ninety percent of the actual liability has been received.

(c) No penalties or interest shall be assessed on estimated tax payments if the taxpayer is an individual who resides in the municipal corporation but was not domiciled there on the first day of January of the current calendar year. (Ord. 2005-05. Passed 3-8-05.)

**191.1504 ABATEMENT OF INTEREST AND PENALTY.**

On recommendation of the Administrator, the Board of Review may abate any part or all of a penalty or interest, or both, or upon appeal from the refusal of the Administrator to recommend abatement of any part or all of a penalty or interest, or both, the Board may nevertheless abate any part or all of a penalty or interest, or both, for good cause shown. (Ord. 2005-05. Passed 3-8-05.)

**191.1505 VIOLATIONS.**

Any person who shall:

- (a) Fail, neglect or refuse to make any return or declaration required by this chapter; or
- (b) Make any incomplete, false or fraudulent return; or
- (c) Intentionally or willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
- (d) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
- (e) Refuse to permit the Administrator, or any duly authorized agent or employee to examine his books, records, papers and Federal income tax returns relating to the income or net profits of a taxpayer; or
- (f) Fail to appear before the Administrator and to produce his books, records, papers or Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or
- (g) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
- (h) Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby; or
- (i) Give to an employer false information as to his true name, correct social security number and residence address or fail to promptly notify an employer of any change in residence address and date thereof; or
- (j) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and City tax withheld, or to knowingly give the Administrator 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 fined not more than one thousand dollars (\$1,000) or imprisoned not more than six months, or both, for each offense.

(Ord. 2005-05. Passed 3-8-05.)

**191.1506 LIMITATION ON PROSECUTION.**

Prosecutions for an offense made punishable under the terms of this chapter shall be commenced within the time limitations established by Ohio R.C. 718.06.

(Ord. 2005-05. Passed 3-8-05.)

**191.1507 FAILURE TO PROCURE FORMS NOT EXCUSE.**

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

(Ord. 2005-05. Passed 3-8-05.)

### COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

#### 191.1701 UNPAID TAXES RECOVERABLE AS OTHER DEBTS.

All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, or omission of a substantial portion of income subject to this tax, or of failure to file a return, an additional assessment shall not be made after three years from the time the return was due or filed, whichever is later; provided, however, in those cases in which a Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which an additional assessment may be made by the Administrator shall be one year from the time of the final determination of the Federal tax liability.  
(Ord. 2005-05. Passed 3-8-05.)

#### 191.1702 REFUNDS OF TAXES ERRONEOUSLY PAID.

Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date which such payment was made or the return was due, or within three months after the final determination of the Federal tax liability, whichever is later.  
(Ord. 2005-05. Passed 3-8-05.)

#### 191.1703 AMOUNTS OF LESS THAN ONE DOLLAR.

Amounts of less than one dollar (\$1.00) shall not be collected or refunded.  
(Ord. 2005-05. Passed 3-8-05.)

### TAXPAYER RELIEF AND RECIPROCITY PROVISIONS

#### 191.1901 NONRESIDENT TAXPAYERS.

Notwithstanding any other provisions of this chapter, when a taxpayer who is a nonresident but who is domiciled in Cuyahoga County or in any county immediately contiguous to Cuyahoga County is subject to the tax imposed by this chapter and is also subject to tax on the same income in the municipality of his residence, a credit of twenty-five percent of the tax due under this chapter, or twenty-five percent of the tax due under the ordinance of such other municipality, whichever is the lesser, shall be allowed against the tax due under this chapter; provided, however, that such credit shall not be allowed unless such other municipality imposes on its residents a tax on the same income and reciprocal provision is made in the ordinance of such other municipality granting to nonresidents thereof a credit of not less than the percentage provided for herein against the tax levied thereby and provided further that such reciprocal credit shall not be allowed unless such nonresident is liable and has acknowledged such liability in the municipality of his residence for any tax due after such reciprocal credit is allowed, and the municipality of his residence furnishes evidence of payment of tax therein or evidence of assignment by the taxpayer of his claim for reciprocal credit to such other municipality.

The credit allowed under this section to a taxpayer who is a nonresident but who is domiciled in Cuyahoga County or in any county immediately contiguous to Cuyahoga County may be assigned to the municipality of his residence and the amount of such credit paid to such other municipality in such manner as the Administrator designated by the City may prescribe.  
(Ord. 2005-05. Passed 3-8-05.)

**191.1902 TAX CREDIT.**

(a) When the taxable income of a resident of the City of Independence is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall be allowed a credit of the amount of income tax paid on such taxable income to such other municipality, equal to 100 percent of the amount obtained by multiplying the lower of the tax rate of such other municipality or of the City of Independence by the taxable income earned in 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 owner of an unincorporated business entity, or a resident recipient of distributions from a non-resident pass-through entity.

(b) Pursuant and subject to the requirements of Section 718.02.1 of the Ohio Revised Code, a credit for qualifying losses, as defined in said section, shall be allowed against taxes or withholding due the municipality for income tax or withholding paid.

(c) Pursuant and subject to the requirements of Section 718.12.1 of the Ohio Revised Code, a credit for tax paid to a first municipal corporation, as defined in said section, shall be allowed against taxes or withholding on income due the municipality for income tax or withholding paid on said income or wages.

(d) Pursuant and subject to the requirements of Section 718.14 of the Ohio Revised Code, a credit for income of or from pass through entities, as defined in said section, shall be allowed against taxes due the municipality for taxes paid another municipal corporation. (Ord. 2005-05. Passed 3-8-05.)

**191.1903 CLAIM FOR CREDIT.**

Any claim for credit pursuant to Section 191.1902 for income taxes paid another municipality on the same income taxable hereunder, or claim for or assignment of any refund due to the credit provided for herein, must be filed with the Administrator on or before December 31, of the year following that for which such credit is claimed; provided that, in the case such claim for reciprocity refund shall have been assigned to the municipality of residence, such municipality of residence shall file a claim for refund with the Administrator of the City on or before January 31, following. Failure to file such claim for reciprocity credit or refund, or assignment thereof, within the time prescribed herein shall render such credit claim for refund or assignment null and void. (Ord. 2005-05. Passed 3-8-05.)

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

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

- (a) First, such part thereof as shall be necessary to defray all expenses of collecting the tax and of administering and enforcing the provisions of this chapter shall be paid;
  - (b) The balance remaining after payment of the expenses referred to in subsection (a) hereof shall be deposited in the Undivided Income Tax Fund for municipal purposes, or any such other special fund as may be designated in the appropriation ordinance or otherwise as may be provided by Council.
- (Ord. 2005-05. Passed 3-8-05.)

## DUTIES AND AUTHORITY OF THE ADMINISTRATOR

### 191.2301 DUTY TO RECEIVE TAX IMPOSED.

It shall be the duty of the Administrator to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, to keep an accurate record thereof, and to report all moneys so received.

(Ord. 2005-05. Passed 3-8-05.)

### 191.2302 DUTY TO ENFORCE COLLECTION.

It shall be the duty of the Administrator to enforce payment of all taxes owing to the City, to keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and make any return, or both, including taxes withheld, and to show the dates and amounts of payments thereof.

(Ord. 2005-05. Passed 3-8-05.)

### 191.2303 AUTHORITY TO MAKE AND ENFORCE REGULATIONS.

The Administrator is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.

(Ord. 2005-05. Passed 3-8-05.)

### 191.2304 AUTHORITY TO ARRANGE INSTALLMENT PAYMENTS.

The Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under this chapter.

Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 191.1701 and 191.1505 of this chapter shall apply.

(Ord. 2005-05. Passed 3-8-05.)

### 191.2305 AUTHORITY TO DETERMINE AMOUNT OF TAX DUE.

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

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

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

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

(e) Limitation of Prosecutions. Neither the Tax Administrator's execution of a return nor the Tax Administrator's assessment of a taxpayer shall start the running of the period of limitations on prosecutions set forth in this chapter.  
(Ord. 2005-05. Passed 3-8-05.)

#### 191.2306 AUTHORITY TO MAKE INVESTIGATIONS.

The Administrator or any authorized employee is hereby authorized to examine the books, papers, records and Federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Administrator believes is subject to the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Administrator or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.  
(Ord. 2005-05. Passed 3-8-05.)

#### 191.2307 AUTHORITY TO COMPEL PRODUCTION OF RECORDS.

The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and Federal income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.  
(Ord. 2005-05. Passed 3-8-05.)

#### 191.2308 REFUSAL TO PRODUCE RECORDS.

The refusal to produce books, papers, records and Federal income tax returns, or the refusal to submit to such examination by an employer or persons subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this chapter or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 191.1505.  
(Ord. 2005-05. Passed 3-8-05.)

**191.2309 CONFIDENTIAL NATURE OF INFORMATION.**

Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by Chapter 718 of the Ohio Revised Code or by an ordinance of the city is confidential, and no person shall disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the city as authorized by said chapter or ordinance authorizing the tax. The Administrator may furnish copies of returns filed under this chapter to the Internal Revenue Service and to the Tax Commissioner. Any person divulging such information in violation of this section, shall be subject to a fine or penalty of not more than one thousand dollars (\$1,000) or imprisoned for not more than six months, or both. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the City who violates the provisions of this section relative to the disclosures of confidential information shall be guilty of an offense punishable by immediate dismissal.  
(Ord. 2005-05. Passed 3-8-05.)

**191.2310 TAXPAYER REQUIRED TO RETAIN RECORDS.**

Every taxpayer shall retain all records necessary to compute his tax liability for a period of five years from the date his return is filed or the withholding taxes are paid.  
(Ord. 2005-05. Passed 3-8-05.)

**191.2311 AUTHORITY TO CONTRACT FOR CENTRAL COLLECTION FACILITIES**

Because the City has entered into an agreement for the establishment of a Regional Council of Governments pursuant to Ordinance 1971-31, which Council has organized a municipal tax collection agency known as the Regional Income Tax Agency, the Board of Trustees of such Regional Income Tax Agency is authorized to administer and enforce the provisions of this chapter as the agent of the City, and the duties and authority of the Administrator hereunder may be performed by the Board of Trustees of such agency through the Administrator of such agency. However, the Administrator of such agency shall have no authority to abate penalties or interest provided for in Sections 191.1501 and 191.1502.  
(Ord. 2005-05. Passed 3-8-05.)

**191.2312 OHIO BUSINESS GATEWAY.**

Notwithstanding Section 191.1103, on and after January 1, 2005, any taxpayer that is subject to the city's tax on the net profit from a business or profession and which has received an extension to file the federal income tax return shall not be required to notify the city of the federal extension and shall not be required to file any annual return until the last day of the month following that to which the due date for filing the federal return has been extended, provided that, on or before the date for filing the annual return, the person notifies the tax commissioner of the federal extension through the Ohio business gateway. An extension of time to file is not an extension of the time to pay any tax due.

For taxable years beginning on or after January 1, 2005, a taxpayer subject to the city's tax on the net profit from a business or profession may file any tax return or estimated tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio business gateway.



- (1) As used in this division, "qualifying wages" has the same meaning as in Section 718.03 of the Ohio revised code.
- (2) Any employer may report the amount of tax withheld from qualifying wages paid on or after January 1, 2007, and may make remittance of such amounts, by using the Ohio business gateway.

Nothing in this section affects the due dates for filing employer withholding tax returns.  
(Ord. 2005-05. Passed 3-8-05.)

#### 191.2313 INTERNET SITE.

The Administrator shall either establish an internet site or utilize the site established by the Tax Commissioner pursuant to Section 5703.49 of the Ohio Revised Code. The Administrator shall post thereon rules and ordinances governing the city's income tax, including, but not limited to, ordinances or rules governing the rate of tax; payment and withholding of taxes; filing any prescribed returns, reports, or other documents; dates for filing or paying taxes, including estimated taxes; penalties, interest, assessment, and other collection remedies; rights of taxpayers to appeal; and procedures for filing appeals. The Administrator shall also make blanks of such returns, reports, or documents, and any instructions pertaining thereto, available to the public electronically through the internet. If the Administrator establishes such an internet site, the administrator shall incorporate an electronic link between that site and the site established pursuant to Section 5703.49 of the Ohio Revised Code, and shall provide to the Tax Commissioner the uniform resource locator of the site.  
(Ord. 2005-05. Passed 3-8-05.)

### BOARD OF REVIEW

#### 191.2501 BOARD OF REVIEW ESTABLISHED.

A Board of Review, consisting of the Mayor or a person designated by him, the Law Director or an Assistant Law Director designated by him, and a member of Council to be elected by that body, is hereby created. The Board shall select each year for a one year term one of its members to serve as chairman and one to serve as secretary. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 191.2309 hereof with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.  
(Ord. 2005-05. Passed 3-8-05.)

#### 191.2502 DUTY TO APPROVE REGULATIONS AND HEAR APPEALS.

All rules and regulations and amendments or changes thereto which are adopted by the Administrator under the authority conferred by this chapter must be approved by the Board of Review before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the Administrator, and, at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.  
(Ord. 2005-05. Passed 3-8-05.)

**191.2503 RIGHT OF APPEAL.**

(a) Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter may appeal therefrom to the Board of Review within thirty days from the announcement of such ruling or decision by the Administrator, 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. 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 record, shall be in writing and filed with the administrator, who within 15 days of its decision shall send notice of its decision by ordinary mail to the taxpayer making the appeal.

(b) For tax years beginning on or after January 1, 2004, any person dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to the Ohio Board of Tax Appeals or to the Common Pleas Court of Cuyahoga County, pursuant to Section 5717.011 of the Ohio Revised Code. (Ord. 2005-05. Passed 3-8-05.)

**191.2701 DECLARATION OF LEGISLATIVE INTENT.**

If any sentence, clause, section or part of this chapter, or any tax against any individual or any of the several groups specified herein is found to be unconditional, 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. 2005-05. Passed 3-8-05.)

**191.2702 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.**

This chapter shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions and proceedings for collecting tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of such taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Sections 191.1701, 191.1702, 191.1703, 191.1505, 191.1506 and 191.1507.

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Sections 191.1101 and 191.1302 of this chapter as though the same were continuing. (Ord. 2005-05. Passed 3-8-05.)