

**ORDINANCE NO. 2014-56  
INTRODUCED BY: ADMINISTRATION**

**AN ORDINANCE AMENDING CERTAIN SECTIONS OF  
CHAPTER 791 OF THE CODIFIED ORDINANCES OF THE  
CITY OF LYNDHURST ENTITLED "EARNED INCOME  
TAX"**

**WHEREAS**, it is Council's determination, upon recommendation by the Mayor, to update Chapter 791 of the Codified Ordinances of the City to provide additional revenue; and

**WHEREAS**, Ordinance No. 2014-25 adopted May 5, 2014, conditionally enacted such amendment, subject to the affirmative vote of a majority of the electorate; and

**WHEREAS**, in accordance with Section 718.01 of the Ohio Revised Code, said issue was placed on the ballot at the election on August 5, 2014, and was approved by a majority of the voters; and

**WHEREAS**, it is necessary to update additional Sections of Chapter 791. Now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNDHURST,  
CUYAHOGA COUNTY, STATE OF OHIO, THAT:**

**SECTION 1.** Section 791.02 entitled "DEFINITIONS" is hereby amended to read as follows (new material appears like THIS and deleted material appears like ~~this~~):

CHAPTER 791  
Earned Income Tax

\* \* \*

**791.02      DEFINITIONS.**

As used in this chapter:

(a) "Administrator" means the individual designated to administer and enforce this chapter. The Mayor or his or her appointee shall serve as Administrator. The Mayor is hereby authorized and directed to appoint the Director of Finance, if he or she so deems necessary, to act in the capacity of Tax Commissioner, to assist him or her or his or her appointee as Administrator in the administration of this chapter.

(b) "Association" means a partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.

(c) "Board of Review" means the Board established by and constituted as provided in Section 791.34.

(d) "Business" means an enterprise, activity, profession or undertaking of any kind 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.

(e) "Corporation" means a corporation or joint stock association organized under the laws of the United States, this State or any other state, territory, foreign country or dependency.

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

(g) "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other basis of compensation.

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

(i) "Fundamental change" means any substantial alteration by an employer, including liquidation, dissolution, bankruptcy and reorganization, such as merger, consolidation, acquisition, transfer or change in identity, form or organization.

(j) "Gross receipts" means the total income from any source.

(k) "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.

(l) "Net profits" for taxable years prior to 2004 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 or of federal, state and other taxes based on income and, in the case of an association, without deduction of salaries paid to partners and other owners. For taxable years 2004 and later, net profits shall mean "adjusted federal taxable income". (See "adjusted federal taxable income").

(m) "Nonresident" means a person domiciled outside the City.

(n) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business in the City.

(o) "PENSION" MEANS, FOR PURPOSES OF THIS CHAPTER, ANY AMOUNT PAID TO AN EMPLOYEE THAT IS REPORTED TO THE RECIPIENT ON AN IRS FORM 1099-R, OR SUCCESSOR FORM. PENSION DOES NOT INCLUDE DEFERRED COMPENSATION, OR AMOUNTS ATTRIBUTABLE TO NONQUALIFIED DEFERRED COMPENSATION PLANS, REPORTED AS FICA/MEDICARE WAGES ON AN IRS FORM W-2, WAGE AND TAX STATEMENT, OR SUCCESSOR FORM.

(p) "Person" means a natural person, partnership, fiduciary, association or corporation. When used in a clause prescribing and imposing a penalty, "person," as applied to an unincorporated entity, means the partners or members thereof and, as applied to a corporation, the officers thereof.

(q) "Place of business" means any bona fide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his or her regular employees regularly in attendance.

(r) "Resident" means a person domiciled in the City.

(s) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business in the City.

(t) "Taxable income" means qualifying wages, salaries and other compensation paid by an employer before any deduction and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with this chapter. "Taxable income" shall also include, but not be limited to, lottery winnings and income derived from gaming, wagering, lotteries or schemes of chance in the amount of \$5,000,000 or more. In addition, other compensation shall include all such compensation set forth and defined as such in the rules and regulations of the City's municipal income collection agency, the Regional Income Tax Agency, as the same may be promulgated from time to time.

(u) "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.

(v) "Taxpayer" means a person, whether an individual, partnership, association, corporation or other entity, required by this chapter to file a return or pay a tax.

(w) "Adjusted federal taxable income" means a "C" Corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute "adjusted federal taxable income" as if the pass-through entity was a "C" corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on and after January 1, 2004.

(x) "Intangible income" means intangible income as defined in Ohio R.C. 718.01(A)(5).



(x) (y) "Qualifying wage" means wages as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. "Qualifying wage" represents employees' income, including non-qualified deferred compensation and stock options, from which municipal tax shall be deducted by the employer, and any wages not considered a part of "qualifying wage" shall not be taxed by the City. This definition is effective as of January 1, 2004 for taxable years 2004 and later.

\* \* \*

**SECTION 2.** Section 791.03 entitled RATE AND TAXABLE INCOME is hereby amended to read as follows (new material appears like THIS and deleted material appears like ~~this~~):

CHAPTER 791  
Earned Income Tax

\* \* \*

**791.03 RATE AND INCOME TAXABLE.**

An annual tax for the purpose specified in Section 791.01 shall be imposed on and after ~~July 1, 1986~~ JANUARY 1, 2015, at the rate of ~~one and one-half~~ TWO percent per year upon the following:

(a) On all salaries, wages, commissions and other compensation earned on and after ~~July 1, 1986~~ JANUARY 1, 2015, by residents of the City. Other compensation shall include, but not be limited to, lottery winnings, and income derived from gaming, wagering, lotteries or schemes of chance in the amount of \$5,000,000 or more received on or after the effective date of this chapter.

(b) On all salaries, wages, commissions and other compensation earned on and after ~~July 1, 1986~~ JANUARY 1, 2015, by nonresidents of the City for work done or services performed or rendered in the City. A nonresident 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's municipal income tax for those twelve days. For purposes of the twelve-day calculation, any portion of a day worked in the City shall be counted as one day worked in the City. Beginning with the thirteenth day, the employer of said individual shall begin withholding the City's 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. Since the individual can no longer be considered to have an occasional entrant, the employer is further required to remit taxes on income earned in the City by the individual for the first twelve days. If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the City. The twelve-day occasional entrant rule does not apply to entertainers or professional athletes, their employees or individuals who perform services on their behalf, or to promoters and booking agents of such entertainment events and sporting events;

(c) On the portion attributable to the City of the net profits earned on and after ~~July 1, 1986~~ JANUARY 1, 2015 by all resident unincorporated business entities, professions or other activities, such net profits derived from sales made, work done, services performed or rendered and business or other activities conducted in the City;

(d) On the portion of the distributive share of the net profits earned on and after ~~July 1, 1986~~ JANUARY 1, 2015, by 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;

(e) On the portion attributable to the City of the net profits earned on and after ~~July 1, 1986~~ JANUARY 1, 2015 by all nonresident unincorporated business entities, professions or other activities, such net profits 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;

(f) On the portion of the distributive share of the net profits earned on and after ~~July 1, 1986~~ JANUARY 1, 2015, by 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; and

(g) On the portion attributable to the City of the net profits earned on and after ~~July 1, 1986~~ JANUARY 1, 2015, by all corporations, such net profits 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.

(h) On the portion attributable to the City of the following:

(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, which income 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) An employer's income derived from finance and carrying charges associated with his or her consumers' accounts receivable.

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**SECTION 3.** Section 791.02 entitled DEFINITIONS, is hereby amended to read as follows (new material appears like THIS and deleted material appears like ~~this~~):

CHAPTER 791  
Earned Income Tax

\* \* \*

**791.04 EFFECTIVE PERIOD.**

The tax provided for in this chapter shall be levied, collected and paid with respect to 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, 2015.

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**SECTION 4.** Should any portions of this "Earned Income Tax" Code specifically conflict with a specific section of Ohio Revised Code Chapter 718, than that specific section of the Ohio Revised Code shall supercede.

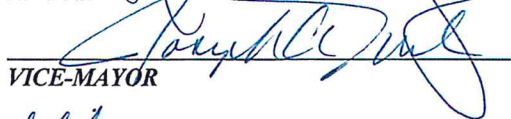
**SECTION 5.** Any and all provisions of Chapter 791 of the Codified Ordinances of the City inconsistent herewith are hereby repealed and all other sections of Chapter 791 shall remain in full force and effect.

**SECTION 6.** The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

**SECTION 7.** This Ordinance shall take effect at the earliest time allowed by law, and the provisions in Section 791.03 regarding rate of taxation shall not be effective until January 1, 2015.

PASSED: September 2, 2014

  
MAYOR

  
VICE-MAYOR

ATTEST:   
Clerk of Council

I, the undersigned Clerk of Council of the City of Lyndhurst, hereby certify that there is no newspaper published or having an office of publication in said City, and that I published the foregoing Resolution by advertising the same by title on one day in each of two consecutive weeks in a newspaper of general circulation in said City, on September 11, 2014 and September 18, 2014.

  
Clerk of Council

First Reading: September 2, 2014

Second Reading: Suspended

Third Reading: Suspended



**TITLE THREE - Taxation**

- Chap. 791. Earned Income Tax.  
 Chap. 793. Admissions Tax.  
 Chap. 795. Excise Tax on Lodgings.  
 Chap. 797. Motor Vehicle License Tax.
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**CHAPTER 791**  
**Earned Income Tax**

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| 791.01 Purpose.   | 791.21 Payment to accompany declaration.                  |
| 791.02 Definitions.                                     | 791.22 Annual return.                                     |
| 791.03 Rate and income taxable.                         | 791.23 Recovery of unpaid taxes.                          |
| 791.04 Effective period.                                | 791.24 Taxes erroneously paid.                            |
| 791.05 Determination of tax.                            | 791.25 Amounts less than one dollar.                      |
| 791.06 Sales in City defined.                           | 791.26 Nonresident taxpayers.                             |
| 791.07 Total allocation.                                | 791.27 Tax credit.  |
| 791.08 Rentals.   | 791.28 Claim for credit.                                  |
| 791.09 Operating loss carry-forward.                    | 791.29 Disbursement of funds collected.                   |
| 791.10 Sources of income not taxed.                     | 791.30 Powers and duties of Administrator.                |
| 791.11 Date of filing return.                           | 791.31 Refusal to produce records.                        |
| 791.12 Form and content of return.                      | 791.32 Retention of records by taxpayers.                 |
| 791.13 Extension of time for filing returns.            | 791.33 Confidentiality of information.                    |
| 791.14 Consolidated returns.                            | 791.34 Board of Review.                                   |
| 791.15 Amended returns.                                 | 791.35 Approval of rules and regulations by Board.        |
| 791.16 Payment of tax on filing of return; overpayment. | 791.36 Right of appeal.                                   |
| 791.17 Collection at source.                            | 791.37 Separability.                                      |
| 791.18 Declarations of income not collected at source.  | 791.38 Continuation of tax; collection after termination. |
| 791.19 Filing of declaration.                           |   |
| 791.20 Form of declaration.                             |   |



791.39	Interest on unpaid tax.	791.44	Failure to procure forms.
791.40	Penalties on unpaid tax; exceptions.	791.45	Authority to contract for central collection facilities.
791.41	Abatement of interest and penalty.	791.46	Assignment of duties and authority of Administrator.
791.42	Violations.	791.99	Penalty.
791.43	Limitation on prosecution.		

#### CROSS REFERENCES

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

Payroll deductions - see Ohio R.C. 9.42

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

Municipal tax collection agency - see ADM. 151.02

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#### 791.01 PURPOSE.

In order to provide funds for the purposes of general Municipal functions, there is hereby levied a tax on all salaries, wages, commissions and other compensation and on net profits as hereinafter provided.

(Ord. 84-43. Passed 6-18-84.)

#### 791.02 DEFINITIONS.

As used in this chapter:

- (a) "Administrator" means the individual designated to administer and enforce this chapter. The Mayor or his or her appointee shall serve as Administrator. The Mayor is hereby authorized and directed to appoint the Director of Finance, if he or she so deems necessary, to act in the capacity of Tax Commissioner, to assist him or her or his or her appointee as Administrator in the administration of this chapter.
- (b) "Association" means a partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
- (c) "Board of Review" means the Board established by and constituted as provided in Section 791.34.
- (d) "Business" means an enterprise, activity, profession or undertaking of any kind 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.



- (e) "Corporation" means a corporation or joint stock association organized under the laws of the United States, this State or any other state, territory, foreign country or dependency.
- (f) "Employee" means one who works for wages, salary, commission or another type of compensation in the service of an employer.
- (g) "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other basis of compensation.
- (h) "Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31.
- (i) "Fundamental change" means any substantial alteration by an employer, including liquidation, dissolution, bankruptcy and reorganization, such as merger, consolidation, acquisition, transfer or change in identity, form or organization.
- (j) "Gross receipts" means the total income from any source.
- (k) "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. 84-43. Passed 6-18-84.)
- (l) "Net profits" for taxable years prior to 2004 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 or of federal, state and other taxes based on income and, in the case of an association, without deduction of salaries paid to partners and other owners. For taxable years 2004 and later, net profits shall mean "adjusted federal taxable income". (See "adjusted federal taxable income"). (Ord. 2004-74. Passed 12-20-04.)
- (m) "Nonresident" means a person domiciled outside the City.
- (n) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business in the City.
- (o) "Person" means a natural person, partnership, fiduciary, association or corporation. When used in a clause prescribing and imposing a penalty, "person," as applied to an unincorporated entity, means the partners or members thereof and, as applied to a corporation, the officers thereof.
- (p) "Place of business" means any bona fide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his or her regular employees regularly in attendance.
- (q) "Resident" means a person domiciled in the City.
- (r) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business in the City.  
(Ord. 84-43. Passed 6-18-84.)

- (s) "Taxable income" means qualifying wages, salaries and other compensation paid by an employer before any deduction and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with this chapter. "Taxable income" shall also include, but not be limited to, lottery winnings and income derived from gaming, wagering, lotteries or schemes of chance in the amount of \$5,000,000 or more. In addition, other compensation shall include all such compensation set forth and defined as such in the rules and regulations of the City's municipal income collection agency, the Regional Income Tax Agency, as the same may be promulgated from time to time. (Ord. 2004-10. Passed 2-16-04; Ord. 2004-74. Passed 12-20-04.)
- (t) "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.
- (u) "Taxpayer" means a person, whether an individual, partnership, association, corporation or other entity, required by this chapter to file a return or pay a tax. (Ord. 84-43. Passed 6-18-84.)
- (v) "Adjusted federal taxable income" means a "C" Corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute "adjusted federal taxable income" as if the pass-through entity was a "C" corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on and after January 1, 2004.
- (w) "Intangible income" means intangible income as defined in Ohio R.C. 718.01(A)(5).
- (x) "Qualifying wage" means wages as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. "Qualifying wage" represents employees' income, including non-qualified deferred compensation and stock options, from which municipal tax shall be deducted by the employer, and any wages not considered a part of "qualifying wage" shall not be taxed by the City. This definition is effective as of January 1, 2004 for taxable years 2004 and later. (Ord. 2004-74. Passed 12-20-04.)

### **791.03 RATE AND INCOME TAXABLE.**

An annual tax for the purpose specified in Section 791.01 shall be imposed on and after July 1, 1986, at the rate of one and one-half percent per year upon the following:

- (a) On all salaries, wages, commissions and other compensation earned on and after July 1, 1986, by residents of the City. Other compensation shall include, but not be limited to, lottery winnings, and income derived from gaming, wagering, lotteries or schemes of chance in the amount of \$5,000,000 or more received on or after the effective date of this chapter. (Ord. 2004-10. Passed 2-16-04.)

- (b) On all salaries, wages, commissions and other compensation earned on and after July 1, 1986, by nonresidents of the City for work done or services performed or rendered in the City. A nonresident 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's municipal income tax for those twelve days. For purposes of the twelve-day calculation, any portion of a day worked in the City shall be counted as one day worked in the City. Beginning with the thirteenth day, the employer of said individual shall begin withholding the City's 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. Since the individual can no longer be considered to have an occasional entrant, the employer is further required to remit taxes on income earned in the City by the individual for the first twelve days. If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the City. The twelve-day occasional entrant rule does not apply to entertainers or professional athletes, their employees or individuals who perform services on their behalf, or to promoters and booking agents of such entertainment events and sporting events;  
(Ord. 2004-74. Passed 12-20-04.)
- (c) On the portion attributable to the City of the net profits earned on and after July 1, 1986, by all resident unincorporated business entities, professions or other activities, such net profits derived from sales made, work done, services performed or rendered and business or other activities conducted in the City;
- (d) On the portion of the distributive share of the net profits earned on and after July 1, 1986, by 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;
- (e) On the portion attributable to the City of the net profits earned on and after July 1, 1986, by all nonresident unincorporated business entities, professions or other activities, such net profits 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;
- (f) On the portion of the distributive share of the net profits earned on and after July 1, 1986, by 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; and
- (g) On the portion attributable to the City of the net profits earned on and after July 1, 1986, by all corporations, such net profits 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.

- (h) On the portion attributable to the City of the following:
- (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, which income 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) An employer's income derived from finance and carrying charges associated with his or her consumers' accounts receivable.  
(Ord. 84-43. Passed 6-18-84; Ord. 86-6. Passed 2-17-86; Ord. 86-39. Passed 6-16-86.)

#### **791.04 EFFECTIVE PERIOD.**

The tax provided for in this chapter shall be levied, collected and paid with respect to salaries, wages, commissions and other compensation and with respect to the net profits of businesses, professions or other activities earned on and after June 18, 1984.  
(Ord. 84-43. Passed 6-18-84.)

#### **791.05 DETERMINATION OF TAX.**

The portion of the entire net profits of a taxpayer conducting a business or profession both within and without the boundaries of the City 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:

- (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 this section, "real property" includes property rented or leased by the taxpayer, the value of such property to be determined by multiplying the annual rental price thereof 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; and
- (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 for sales made and services performed, wherever made or performed.

If the formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such result.

If the Administrator approves the use of books and records as a substitute method, the following shall apply:



- (1) 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 nonresident) 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.
- (2) 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.
- (3) 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.  
(Ord. 2004-74. Passed 12-20-04.)

#### **791.06 SALES IN CITY DEFINED.**

As used in Section 791.05(c), "sales made in the City" means:

- (a) All sales of tangible personal property which is delivered in the City, regardless of where title passes, if shipped or delivered from a stock of goods in the City;
- (b) All sales of tangible personal property which is delivered in the City, regardless of where title passes, even though transported from a point outside the City, if the taxpayer is regularly engaged through his or her own employees in the solicitation or promotion of sales in the City and the sales result from such solicitation or promotion; and
- (c) All sales of tangible personal property which is shipped from a place in the City to purchasers outside of the City, regardless of where title passes, if the taxpayer is not, through his or her own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.  
(Ord. 84-43. Passed 6-18-84.)

#### **791.07 TOTAL ALLOCATION.**

In order to obtain the business allocation percentage referred to in Section 791.05, add together the percentages determined in accordance with Section 791.05(a), (b) and (c) or such of the aforesaid percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving such total.

A factor is applicable even though it may be allocable entirely in or outside the City.  
(Ord. 84-43. Passed 6-18-84.)

#### **791.08 RENTALS.**

Rental income received by a taxpayer shall be included in the computation of net profits from business activities under Section 791.03(c) to (g) 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. However, 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; in the case of farm property, the owner shall be considered engaged in a business activity when he or she 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 two hundred fifty dollars (\$250.00) per month; and 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. 84-43. Passed 6-18-84.)

#### **791.09 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 in this chapter 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. 84-43. Passed 6-18-84.)

#### **791.10 SOURCES OF INCOME NOT TAXED.**

The tax provided for in this chapter shall not be levied on the following:

- (a) Pay or allowance of active members of the Armed Forces of the United States or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities;
- (b) Poor relief, unemployment insurance benefits, old age pensions or similar payments, including disability benefits received from local, State or Federal governments or charitable, religious or educational organizations;
- (c) Proceeds of insurance paid by reason of the death of the insured and 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 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; and
- (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 General Assembly limiting the power of the City to impose net income taxes.  
(Ord. 84-43. Passed 6-18-84.)
- (l) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation. The ordained minister must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination, and must have authority to perform all sacraments of the church.  
(Ord. 2004-74. Passed 12-20-04.)

#### **791.11 DATE OF FILING RETURN.**

(a) 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 chapter (Ordinance 84-43, passed June 18, 1984) and on or before April 30 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or period.

(b) 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 Administrator the nature of his or her exemption. Any person who has taxable income must file a tax return with the Tax Administrator.  
(Ord. 84-43. Passed 6-18-84.)

#### **791.12 FORM AND CONTENT OF RETURN.**

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

- (a) The aggregate amounts of salaries, wages, commissions and other compensation earned and gross income from a business, profession 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.

Generic forms as defined and allowed by the Ohio Revised Code shall be acceptable.  
(Ord. 2004-74. Passed 12-20-04.)

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

(a) The Administrator may extend the time for filing the annual return, upon the request of the taxpayer, for a period not to exceed six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal Income Tax Return. The Administrator may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon, by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

(b) The Administrator may extend the time for filing any return required, making any payment or performing any other act required by this chapter for a period not to exceed six months beyond the original required date.  
(Ord. 84-43. Passed 6-18-84.)

The extension request may be made by filing a copy of the taxpayer's request for a federal filing extension, or by filing a written request. The Administrator may deny the extension if the taxpayer's income tax account with City is delinquent in any way.  
(Ord. 2004-74. Passed 12-20-04.)

**791.14 CONSOLIDATED RETURNS.**

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

(b) In the case of a corporation that carries on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in the case of a person who operates a division, branch, factory, office, laboratory or activity in the City constituting only a portion of its total business, the Administrator shall require such additional information as he or she may deem necessary to ascertain whether or not net profits are properly allocated to the City. If the Administrator finds that such net profits are not properly allocated to the City by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he or she shall make such allocation as he or she deems appropriate to produce a fair and proper allocation of net profits to the City.  
(Ord. 84-43. Passed 6-18-84.)

(c) 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 City. However, once the affiliated group has elected to file a consolidated return or a separate return with City, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the City.  
(Ord. 2004-74. Passed 12-20-04.)

**791.15 AMENDED RETURNS.**

(a) Where necessary, an amended return shall be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements or limitations, or both, contained in Sections 791.23 through 791.28. Such amended return shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.



(b) Within three months from the final determination of any Federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City return showing income subject to the City tax based upon such final determination of Federal tax liability and pay any additional tax shown due thereon or make claim for refund of any overpayment. (Ord. 84-43. Passed 6-18-84.)

#### **791.16 PAYMENT OF TAX ON FILING OF RETURN; OVERPAYMENT.**

(a) A taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of tax shown to be due thereon, provided, however, that where any portion of the tax so due has been deducted at the source pursuant to Section 791.17, or where any portion of such tax has been paid by the taxpayer pursuant to Section 791.18, or 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 791.27, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing such return.

(b) A taxpayer who has overpaid the amount of tax to which the City is entitled under this chapter may have such overpayment applied against any subsequent liability hereunder, or, at his or her election indicated on the return, such overpayment, or a part thereof, shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded. (Ord. 84-43. Passed 6-18-84.)

#### **791.17 COLLECTION AT SOURCE.**

(a) In accordance with rules and regulations prescribed by the Administrator, each employer within or doing business in the City shall deduct, at the time of the payment of salaries, wages, commissions or other compensation, the amount of tax levied by Section 791.03 on the gross salaries, wages, commissions or other compensation due by such employer to such employees, and shall, on or before the last day of each month, make a 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) Such returns shall be on a form prescribed or acceptable to the Administrator and shall be subject to the rules and regulations prescribed therefor by the Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld whether or not such taxes have, in fact, been withheld.

(c) Such employer, in collecting such tax, shall be deemed to hold the same, until payment is made by such employer to the City, as a trustee for the benefit of the City, and any such tax collected by such employer from his or her employees shall, until the same is paid to the City, be deemed a trust fund in the hands of such employer.

(d) Every manager shall be 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 shall be deemed to be trust funds.

(1) Every manager shall be liable directly to the City for payment of such trust, whether actually collected by such employer or not. Any tax deducted and withheld shall 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) change in structure by an employer, including a fundamental change, shall discharge 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.

(e) No person shall be required to withhold the tax on wages or other compensation paid domestic servants employed by him or her 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.

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

(g) If any employer who or 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 tax returns shall be due immediately after the fundamental change. A 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. 84-43. Passed 6-18-84.)

#### **791.18 DECLARATIONS OF INCOME NOT COLLECTED AT SOURCE.**

Except as otherwise provided in this section, every person shall file a declaration setting forth taxable income, including distributive shares of net profits of unincorporated business entities, estimated to be earned during the current tax year, together with the estimated tax due thereon, less the amount withheld within the City and less the tax credit allowed in Section 791.27, 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. 84-43. Passed 6-18-84.)

#### **791.19 FILING OF DECLARATION.**

(a) Effective January 1, 2003, the declaration of estimated tax to be paid to the City by taxpayers who are individuals shall be accompanied by a payment of at least one-fourth of the declaration amount and at least a similar amount shall be paid on or before July 31st and October 31st of the taxable year and January 31st of the following year.

Effective January 1, 2003, such declaration of estimated tax to be paid to the City, by corporations and associations shall be accompanied by a payment of at least one-fourth of the declaration amount and at least a similar amount shall be paid on or before June 15th, September 15th, and December 15th. In the case of a fiscal year the second, third and fourth quarterly estimated payments shall be due on the fifteenth day of the sixth, ninth, and twelfth months of the taxable year, respectively.

(b) Taxpayers reporting on a fiscal year basis shall file a declaration within four months after the beginning of each fiscal year or period.  
(Ord. 2004-74. Passed 12-20-04.)

#### **791.20 FORM OF DECLARATION.**

(a) The declaration required by Section 791.18 shall be filed on a form furnished by or obtainable from the Administrator, provided, however, that credit shall be taken for the City tax to be withheld from any portion of such income. In accordance with Section 791.27, 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. 84-43. Passed 6-18-84.)

#### **791.21 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 dates. (Ord. 84-43. Passed 6-18-84.)

#### **791.22 ANNUAL RETURN.**

On or before April 15th of the year following that for which the declaration or an 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 Section 791.16. 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. 2004-74. Passed 12-20-04.)

#### **791.23 RECOVERY OF UNPAID TAXES.**

The tax 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 cases of fraud, omission of a substantial portion of income subject to the tax or failure to file a return, an additional assessment shall not be made after three years from the time the return was due or filed, whichever is later. 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. 84-43. Passed 6-18-84.)

**791.24 TAXES ERRONEOUSLY PAID.**

Tax erroneously paid under this chapter shall not be refunded unless a claim for refund is made within three years from the date on 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. 84-43. Passed 6-18-84.)

**791.25 AMOUNTS LESS THAN ONE DOLLAR.**

Amounts of one dollar (\$1.00) or less shall not be collected or refunded. (Ord. 84-43. Passed 6-18-84.)

**791.26 NONRESIDENT TAXPAYERS.**

Notwithstanding any other provisions of this chapter, when a taxpayer who is a nonresident of Lyndhurst, 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 or her residence, a credit of twenty-five percent of the tax due under this chapter or an 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 or her residence for any tax due after such reciprocal credit is allowed, and the municipality of his or her residence furnishes evidence of payment of tax therein or evidence of assignment by the taxpayer of his or her claim for reciprocal credit to such other municipality.

The credit allowed under this section to a taxpayer who is a nonresident of Lyndhurst, but who is domiciled in Cuyahoga County or in any county immediately contiguous to Cuyahoga County, may be assigned to the municipality of his or her residence and the amount of such credit paid to such other municipality in such manner as the Administrator designated by the City of Lyndhurst may prescribe. (Ord. 84-43. Passed 6-18-84.)

**791.27 TAX CREDIT.**

(a) When the taxable income of a resident of the City is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall be allowed a credit of the amount of income tax paid on such taxable income to such other municipality equal to fifty percent of the amount obtained by multiplying the lower of the tax rate of such other municipality or of the City by the taxable income earned in or attributable to the municipality of employment or business activity. For the purposes of this section, taxable income shall include the distributive share of net profits of a resident partner or owner of an unincorporated business entity. The fifty percent credit heretofore discontinued March 1, 1984 (Ordinance 84-13) is hereby reinstated for the period beginning on and after July 1, 1986. (Ord. 86-40. Passed 6-2-86.)

(b) A claim for credit or refund under this section shall be made in such manner as the Administrator may by regulation provide. If a resident fails, neglects or refuses to file a return or declaration on the form prescribed by the Administrator, such resident shall not be entitled to such credit or refund and shall be considered in violation of this chapter for failure to file a return and payment of taxes due hereunder.



(c) In the event a City resident is entitled to a reciprocity credit under the ordinance of another municipality, or is entitled to credit for taxes paid another municipality, such City resident is required to file a return or form in such manner as the Administrator designated by the City may prescribe.

(d) Assignment of any claim for refund to which a City resident may be entitled from another municipality shall be tentatively accepted as payment of that portion of City income tax represented by such assignment, provided, however, that if satisfactory evidence is offered that the taxpayer is entitled to the claim covered by the assignment, such taxpayer shall not be deprived of credit therefor because of fault or neglect on the part of either municipality. (Ord. 84-43. Passed 6-18-84.)

#### **791.28 CLAIM FOR CREDIT.**

Any claim for credit 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 if 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. 84-43. Passed 6-18-84.)

#### **791.29 DISBURSEMENT OF FUNDS COLLECTED.**

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

- (a) First, such part thereof as is necessary to defray all expenses of collecting the tax and of administering and enforcing this chapter shall be paid.
- (b) The balance remaining after payment of expenses referred to in subsection (a) hereof shall be deposited in the General Fund for Municipal purposes. (Ord. 84-43. Passed 6-18-84.)

#### **791.30 POWERS AND DUTIES OF ADMINISTRATOR.**

The powers and duties of the Administrator are as follows:

- (a) Receipt of Tax. The Administrator shall receive the tax levied by this chapter from the taxpayers in the manner prescribed herein, keep an accurate record thereof and report all moneys so received.
- (b) Payment; Records. The Administrator shall enforce payment of all taxes owing to the City and keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration or make any return, or both, including taxes withheld, and showing the dates and amounts of payments thereof.

- (c) Enforcement; Rules and Regulations. The Administrator shall enforce this chapter and, subject to the approval of the Board of Review, may adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the collection of taxes levied under this chapter and the administration and enforcement of this chapter, including the re-examination and correction of returns.
- (d) Installment Payments. The Administrator may arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he or she is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him or her under this chapter. Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand, and Sections 791.23 and 791.99 shall apply.
- (e) Preparation of Returns. 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.
- (f) Execution of Return. If any taxpayer fails to file a tax return which is required by this chapter within the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, then the Administrator shall prepare such return in a reasonable manner from his or her own knowledge and from such information as he or she can obtain through testimony or otherwise.
- (g) Assessment of Taxpayers. 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 issuance of summary records by the Administrator to the last known address of the taxpayer of the assessment. The summary shall include the identification of the taxpayer, the character of the liability assessed, the taxation period and the amount of the assessment.
- (h) 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 he or she 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.

- (i) Limitation of Prosecutions. Neither the Administrator's execution of a return nor his or her assessment of a taxpayer shall start the running of the period of limitations on prosecutions set forth in these Codified Ordinances.
- (j) Investigations. The Administrator or any authorized employee may examine the books, papers, records and Federal Income Tax Returns of any employer, taxpayer or person subject to, or whom the Administrator believes is subject to, this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request by the Administrator or his or her duly authorized agent or employee, the means, facilities and opportunity for making the examinations and investigations authorized in this subsection.
- (k) Examination; Production of Records. The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before the Administrator and to examine such person, under oath, concerning any income which was or should have been returned for taxation, or concerning any transaction tending to affect such income. For this purpose, the Administrator may compel the production of books, papers, records and Federal Income Tax Returns and the attendance of all persons before him or her, whether as parties or witnesses, whenever he or she believes such persons have knowledge of such income or information pertinent to such inquiry.  
(Ord. 84-43. Passed 6-18-84.)

#### **791.31 REFUSAL TO PRODUCE RECORDS.**

The refusal to produce books, papers, records and Federal Income Tax Returns, or the refusal to submit to an examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with 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 791.99.  
(Ord. 84-43. Passed 6-18-84.)

#### **791.32 RETENTION OF RECORDS BY TAXPAYERS.**

Every taxpayer shall retain all records necessary to compute his or her tax liability for a period of five years from the date his or her return is filed or the date withholding taxes are paid. (Ord. 84-43. Passed 6-18-84.)

#### **791.33 CONFIDENTIALITY OF INFORMATION.**

Any information gained as the result of returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential except for official purposes and except in accordance with proper judicial order. No person shall otherwise divulge such information. (Ord. 84-43. Passed 6-18-84.)

**791.34 BOARD OF REVIEW.**

There is hereby established a Board of Review, consisting of the Director of Finance, or a person designated by him or her, the Director of Law, or an Assistant Director of Law designated by him or her, and a person appointed by Council. The Board shall select each year, for a one-year term, one of its members to serve as Chairperson 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 Section 791.33, 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. 84-43. Passed 6-18-84.)

**791.35 APPROVAL OF RULES AND REGULATIONS BY BOARD.**

All rules and regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this chapter, shall be approved by the Board of Review, subject to confirmation of Council, before the same become effective.

(Ord. 84-43. Passed 6-18-84.)

**791.36 RIGHT OF APPEAL.**

(a) The Board of Review shall hear and pass on appeals from any ruling or decision of the Administrator, and, at the request of a taxpayer or the Administrator, is authorized to substitute alternative methods of allocation.

(Ord. 84-43. Passed 6-18-84.)

(b) 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. The Board shall, on hearing, within forty-five days, have jurisdiction to affirm, reverse or modify any such ruling or decision or part thereof. Any person filing an appeal pursuant to this section must have 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. Such hearing shall be scheduled within forty-five days from the date of appeal. The Board ruling must be made within thirty days from the date of the closing of the record, shall be in writing and filed with the Administrator, and within fifteen days of its decision shall send notice of its decision by ordinary mail to the taxpayer making the appeal. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Review/Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

(Ord. 2004-74. Passed 12-20-04.)

**791.37 SEPARABILITY.**

If a sentence, clause, section or part of this chapter, or any tax against a person specified in this chapter, 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. 84-43. Passed 6-18-84.)



**791.38 CONTINUATION OF TAX; COLLECTION AFTER TERMINATION.**

(a) This chapter shall continue effective, insofar as the levy of taxes is concerned, until repealed. Insofar as the collection of any tax levied under this chapter and any action or proceeding for collecting such tax or enforcing any of the provisions of this chapter are concerned, this chapter shall continue effective until any tax levied during such period is fully paid and any suit or prosecution for the collection of such tax or for the punishment of any violation of this chapter has been fully terminated, subject to the limitations contained in Sections 791.23 through 791.25 and 791.42 through 791.44.

(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 791.11 and 791.17 as though the same were continuing. (Ord. 84-43. Passed 6-18-84.)

**791.39 INTEREST ON UNPAID TAX.**

All taxes imposed and all moneys withheld or required to be withheld by employers under the provisions of this chapter, and remaining unpaid after they become due, shall bear interest at the rate of twenty percent per annum or fraction thereof. (Ord. 84-43. Passed 6-18-84.)

**791.40 PENALTIES ON UNPAID TAX; EXCEPTIONS.**

(a) In addition to interest as provided in Section 791.39, penalties based on the unpaid tax are hereby imposed as follows:

- (1) For failure to pay taxes due, other than taxes withheld, ten percent per annum or fraction thereof, with a minimum penalty as provided in paragraph (a)(4) hereof;
- (2) For failure to remit taxes withheld from employees, ten percent per month or fraction thereof, with a minimum penalty as provided in paragraph (a)(4) hereof;
- (3) For failure to pay estimated taxes due, other than taxes withheld, ten percent per annum or fraction thereof; and
- (4) For failure of any person, corporation, employer or employee who is delinquent in the payment of taxes or taxes withheld from employees, the following minimum penalties shall be assessed when assessing penalties pursuant to paragraphs (a)(1) and (2) hereof:
  - A. For taxes other than estimated taxes:
    1. Delinquent - first offense, twenty-five dollars (\$25.00).
    2. Delinquent - second offense, fifty dollars (\$50.00).
    3. Delinquent - third offense, one hundred dollars (\$100.00).

- B. For purposes of this section, taxes are delinquent if they are not paid by the due dates established by this chapter. A tax payment that is delinquent is deemed to be a single offense for purposes of this section regardless of the number of years that payment is delinquent. Each subsequent payment that is delinquent shall be a separate offense.

(b) A penalty shall not be assessed on any additional tax assessment against a taxpayer by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator. In the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, provided an amended return is filed and the additional tax is paid within three months after a final determination of the Federal tax liability.  
(Ord. 84-43. Passed 6-18-84.)

(c) 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. (Ord. 2004-74. Passed 12-20-04.)

#### **791.41 ABATEMENT OF INTEREST AND PENALTY.**

Either the Administrator or the Board of Review may abate penalty or interest, or both, for good cause shown.  
(Ord. 84-43. Passed 6-18-84.)

#### **791.42 VIOLATIONS.**

No person 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 or her employees or remit such withholding to the Administrator;
- (e) Refuse to permit the Administrator or any duly authorized agent or employee to examine his or her books, records, papers and Federal Income Tax Returns relating to the income or net profits of a taxpayer;
- (f) Fail to appear before the Administrator and to produce his or her books, records, papers or Federal Income Tax Returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator;
- (g) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer;
- (h) Fail to comply with this chapter or any order or subpoena of the Administrator authorized hereby;

- (i) Give to an employer false information as to his or her true name, correct Social Security number and residence address, or fail to promptly notify an employer of any change in his or her residence address and the 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 give the Administrator false information ; or
- (k) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.  
(Ord. 84-43. Passed 6-18-84.)

#### **791.43 LIMITATION ON PROSECUTION.**

All prosecutions under this chapter must be commenced within the periods stipulated in Ohio R.C. 718.12.  
(Ord. 84-43. Passed 6-18-84.)

#### **791.44 FAILURE TO PROCURE FORMS.**

The failure of a person to receive or procure a return, declaration or other required form shall not excuse him or her from making any information return, return or declaration, from filing such form or from paying the tax.  
(Ord. 84-43. Passed 6-18-84.)

#### **791.45 AUTHORITY TO CONTRACT FOR CENTRAL COLLECTION FACILITIES.**

Having entered into an agreement for the establishment of a Regional Council of Governments pursuant to Ordinance 71-31, under which Council has organized a Municipal tax collection agency known as the Regional Income Tax Agency, the City hereby authorizes the Board of Trustees of such Agency to administer and enforce this chapter as the agent of the City. The duties and authority of the Administrator 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 791.39 and 791.40.  
(Ord. 84-43. Passed 6-18-84.)

#### **791.46 ASSIGNMENT OF DUTIES AND AUTHORITY OF ADMINISTRATOR.**

In the event the Mayor, on behalf of the City, enters into an agreement with any other municipal corporation to act as agent of the City for the purpose of administering the income tax laws of the City and of providing a central facility for the collection of the income tax, as provided in Section 791.45, then all or a part of the duties and authority of the Administrator may be assigned by such agreement to such other municipal corporation. Such agreement shall be approved by Council.  
(Ord. 84-43. Passed 6-18-84.)

**791.99 PENALTY.**

(a) Whoever violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than six months, or both, for each offense. Each disclosure of confidential information, as provided for in Section 791.33, shall constitute a separate offense.

(b) In addition to the penalty provided in subsection (a) hereof, an employee of the City who violates Section 791.33 is guilty of an offense punishable by immediate dismissal. (Ord. 84-43. Passed 6-18-84.)