

IN THE CITY OF MAYFIELD HEIGHTS

ORDINANCE NO. 2014-25

INTRODUCED BY: MAYOR ANTHONY DICICCO

AN ORDINANCE AMENDING SECTION 793.02, "DEFINITIONS",  
OF CHAPTER 793 OF THE CODIFIED ORDINANCES OF THE  
CITY OF MAYFIELD HEIGHTS ENTITLED "EARNED INCOME  
TAX"

WHEREAS, it is Council's determination, upon recommendation by the Mayor, to update Chapter 793 of the Codified Ordinances of the City to include a definition of pension.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MAYFIELD HEIGHTS, CUYAHOGA COUNTY, STATE OF OHIO, THAT:

SECTION 1. Section 793.02 entitled "DEFINITIONS" is hereby amended to read as follows (new material appears like THIS and deleted material appears like ~~this~~):

CHAPTER 793  
Earned Income Tax

\* \* \*

**793.02 DEFINITIONS.**

As used in this chapter:

- (a) "Administrator" means the individual appointed by the Mayor to administer and enforce 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 793.34.
- (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 reorganizations 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" 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 and 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.
- (m) "Nonresident" means an individual 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 OR FORMER 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 an individual 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 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.

(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.

\* \* \*

**SECTION 2.** 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 3.** Any and all provisions of Chapter 793 of the Codified Ordinances of the City inconsistent herewith are hereby repealed, and all other sections of Chapter 793 shall remain in full force and effect.

**SECTION 4.** 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 5.** This Ordinance shall take effect at the earliest time allowed by law.

First Reading: November 10, 2014  
Second Reading: Suspended  
Third Reading: Suspended  
Passed: November 10, 2014

Attest:  
Robert G. Tribby  
Robert G. Tribby, Clerk

Gayle M. Ferese  
Gayle M. Ferese  
President of Council

Presented  
To Mayor: November 10, 2014

Approved: November 10, 2014

Anthony DiCicco  
Anthony DiCicco, Mayor

TRUE COPY  
TRUE AND ACCURATE  
COPY OF RECORD.

Lisa A. Boudette, Dep. Clerk  
November 13, 2014 (DATE)

CHAPTER 793  
Earned Income Tax

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- 793.02 Definitions.
- 793.03 Rate and income taxable.
- 793.04 Effective period.
- 793.05 Determination of tax.
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CROSS REFERENCES

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

Art. II

Payroll deductions - see Ohio R.C. 9.42

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

Establishment and appointment of Tax Administrator -  
see ADM. 135.01

793.01 PURPOSE; LEVY OF TAX.

To provide funds for the purposes of general Municipal functions of the City, there is hereby levied a tax on all salaries, wages, commissions and other compensation, and on net profits, as hereinafter provided. (Ord. 1966-64. Passed 12-29-66.)

793.02 DEFINITIONS.

As used in this chapter:

- (a) "Administrator" means the individual appointed by the Mayor to administer and enforce 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 793.34.
- (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, the 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.  
(Ord. 1966-64. Passed 12-29-66.)
- (i) "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. 1985-34. Passed 10-28-85.)
- (j) "Gross receipts" means the total income from any source.  
(Ord. 1966-64. Passed 12-29-66.)
- (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. 1985-34. Passed 10-28-85.)
- (l) "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 and 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.
- (m) "Nonresident" means an individual 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 an individual domiciled in the City.
  - (r) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business in the City.
  - (s) "Taxable income" means 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.
  - (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. 1966-64. Passed 12-29-66.)

#### 793.03 RATE AND INCOME TAXABLE.

An annual tax for the purposes specified in Section 793.01 shall be imposed on and after December 31, 1971, at the rate of one percent per year upon the following:

- On all salaries, wages, commissions and other compensation earned after December 31, 1971, by residents of the City;
- On all salaries, wages, commissions and other compensation earned after December 31, 1971, by nonresidents of the City for work done or services performed or rendered in the City;
- On the portion attributable to the City of the net profits earned after December 31, 1971, 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;
- On the portion of the distributive share of the net profits earned after December 31, 1971, 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;
- On the portion attributable to the City of the net profits earned after December 31, 1971, 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;
- On the portion of the distributive share of the net profits earned after December 31, 1971, 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;
- On the portion attributable to the City of the net profits earned after December 31, 1971, 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;
- On the portion attributable to the City pursuant to this chapter and including:  
Income earned by a taxpayer from a royalty interest in the production of an oil or gas well, whether managed, extracted or operated by the taxpayer individually or through an agent or other representative, shall be included in the computation of net profits from a business activity to the extent that such royalty interest constitutes a business activity of the taxpayer. Where the gross income received by a taxpayer from a royalty interest in the production of an oil or gas well in a taxable year exceeds three thousand dollars (\$3,000), it shall

be prima-facie evidence that the income was derived from a business activity of such taxpayer, and the net income from such royalty interest shall be subject to tax.

An employer's income derived from finance and carrying charges associated with his or her consumers' accounts receivable shall be subject to tax.  
(Ord. 1985-34. Passed 10-28-85.)

#### 793.04 EFFECTIVE PERIOD.

The tax levied by this chapter shall be levied, collected and paid with respect to all salaries, wages, commissions and other compensation, and with respect to all net profits of businesses, professions or other activities, earned on and after December 31, 1971.  
(Ord. 1971-33. Passed 12-13-71.)

#### 793.05 DETERMINATION OF TAX.

If the books and records of a taxpayer conducting a business or profession both within and outside of the boundaries of the City disclose with reasonable accuracy what portion of the net profit of such business or profession is attributable to that part of the business or profession conducted in the City, then only such portion shall be considered as having a taxable situs in the City for the purposes of the tax levied by this chapter. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the City, in the absence of actual records thereof, shall be determined by multiplying 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 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 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; and

(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.

If the formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such result. (Ord. 1966-64. Passed 12-29-66.)

#### 793.06 SALES IN CITY DEFINED.

As used in Section 793.05(c), "sales made in the City" means:

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;

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

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. 1966-64. Passed 12-29-66.)

#### 793.07 BUSINESS ALLOCATION PERCENTAGE.

The business allocation percentage referred to in Section 793.05 shall be determined by adding together the percentages determined in accordance with subsections (a) through (c) of Section 793.05 or such of these percentages as are applicable to the particular taxpayer and dividing 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 of the City. (Ord. 1966-64. Passed 12-29-66.)

#### 793.08 RENTAL INCOME.

(a) Rental income received by a taxpayer shall be included in the computation of net profits from business activities as set forth in subsections (c) through (h) of Section 793.03 only if, and to the extent that, the rental ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by a taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.

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:

(1) 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 net sales, receipts or profits of the lessee, whether or not such rental exceeds two hundred fifty dollars (\$250.00) per month;

(2) 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

(b) The person who operates a licensed rooming house shall be considered to be in business whether or not the gross income exceeds two hundred fifty dollars (\$250.00) per month.

(Ord. 1971-33. Passed 12-13-71.)

#### 793.09 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. 1966-64. Passed 12-29-66.)

#### 793.10 EXCEPTIONS.

The tax levied by 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, 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, sport events and health and welfare activities when conducted by bona fide charitable, religious or educational organizations and associations;
  - (e) Alimony received;
  - (f) Personal earnings of a natural person under eighteen years of age;
  - (g) Compensation for personal injuries or for damage 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. 1966-64. Passed 12-29-66.)

**793.11 DATE OF FILING RETURN; PERSONS REQUIRED TO FILE RETURNS.**

Each taxpayer shall, whether or not a tax is due thereon, make and file a return before May 1 of the year following the effective date of this section (Ordinance 1985-34, passed October 28, 1985) and before May 1 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. 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 Administrator. (Ord. 1985-34. Passed 10-28-85.)

**793.12 FORM AND CONTENT OF RETURN.**

The return for the tax levied by this chapter shall be filed with the Administrator on a form furnished by, or obtainable upon request from, the Administrator, setting forth:  
 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;  
 The amount of the tax levied by this chapter on such earnings and profits; and  
 Such other pertinent statements, information returns or other information as the Administrator may require.  
 (Ord. 1966-64. Passed 12-29-66.)

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

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.  
 (Ord. 1966-64. Passed 12-29-66.)

**793.14 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. 1966-64. Passed 12-29-66.)

#### 793.15 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, limitations, or both, contained in Sections 793.24 through 793.27. 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. 1966-64. Passed 12-29-66.)

#### 793.16 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 793.17, or where any portion of such tax has been paid by the taxpayer pursuant to Section 793.18, or where an income tax has been paid to another municipality, credit for the

amount so paid in accordance with Section 793.27 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 any 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. 1985-34. Passed 10-28-85.)

#### 793.17 COLLECTION AT SOURCE.

(a) In accordance with rules and regulations prescribed by the Administrator, each employer within or doing business within the City shall deduct, at the time of the payment of such salary, wages, commissions or other compensation, the tax of one percent (unless a different tax rate is imposed in Section 793.03) per year of the gross salaries, wages, commissions or other compensation due by the employer to the employee, and shall, on or before the last day of each month, make a return and pay to the 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 prescribed by or acceptable to the Administrator and shall be subject to the rules and regulations prescribed 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) 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 or her employees shall, until the tax is paid to the City, be deemed a trust fund in the hands of such employer.

(d) No person shall be required to withhold the tax on wages or other compensation paid to 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.

(e) Every manager is deemed to be a trustee of the City in collecting and holding the tax required under this chapter to be withheld, and the funds so collected by such withholding are deemed to be trust funds. Every manager is liable directly to the City for payment of such trust, whether actually collected by such employer or not. Any tax deducted and withheld is to be considered paid to the City, whether or not the employer actually remits the tax to the City, for purposes of determining employee payments or credits.

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 by this chapter.

(Ord. 1985-34. Passed 10-28-85.)

#### 793.18 DECLARATION OF INCOME.

Except as 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 by the taxpayer during the current tax year, together with the estimated tax due thereon, less tax withheld within the City, less the tax credit allowed in Section 793.27, 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 a 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 fifty dollars (\$50.00), no declaration or payment of estimated tax is required.

(Ord. 1995-35. Passed 8-8-95.)

#### 793.19 FILING OF DECLARATION.

(a) The declaration required by Section 793.18 shall be filed before May 1 of each year, during the effective period set forth in Section 793.04, 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. 1966-64. Passed 12-29-66.)

#### 793.20 FORM OF DECLARATION.

(a) The declaration of income not collected at the source, as required by Section 793.18, 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 793.27, 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 in this chapter. (Ord. 1971-33. Passed 12-13-71.)

#### 793.21 PAYMENT UPON 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. 1973-30. Passed 11-12-73.)

#### 793.22 ANNUAL RETURNS.

On or before the last day of the fourth month of the year following that for which a declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City shall be paid therewith in accordance with Section 793.16. 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 a declaration or an amended declaration and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax. (Ord. 1971-33. Passed 12-13-71.)

#### 793.23 EXTENSIONS.

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

(Ord. 1966-64. Passed 12-29-66.)

#### 793.24 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. 1966-64. Passed 12-29-66.)

#### 793.25 TAXES ERRONEOUSLY PAID.

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

(Ord. 1972-12. Passed 5-8-72.)

#### 793.26 AMOUNTS LESS THAN ONE DOLLAR.

Amounts of less than one dollar (\$1.00) shall not be collected or refunded.

(Ord. 1966-64. Passed 12-29-66.)

#### 793.27 TAX CREDIT.

(a) When the taxable income of a resident of the City is subject to a municipal income tax in another municipality, or in a joint economic development district established pursuant to Ohio R.C. 715.70, as amended, 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, but, in any event, such credit shall not be applied to a rate in excess of one percent of the taxable income earned in or attributable to the municipality of employment or business activity. For the purpose of this section, taxable income shall include the distributive share of net profits of a resident partner or owner of an unincorporated business entity.

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

(Ord. 1995-17. Passed 4-10-95.)

#### 793.28 DISBURSEMENT OF FUNDS.

The funds collected under this chapter shall be disbursed as follows:

(a) 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 such payment shall be deposited in the General Fund for the Municipal purposes.

(Ord. 1966-64. Passed 12-29-66.)

#### 793.29 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.

(Ord. 1966-64. Passed 12-29-66.)

(b) Payment; Records. The Administrator shall enforce payment of all taxes owing to the City and keep accurate records for a minimum of six years showing the amount due from each taxpayer required to file a declaration and make any return, or both, including taxes withheld, and showing the dates and amounts of payments thereof.

(Ord. 1972-12. Passed 5-8-72.)

(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 793.24 and 793.43 shall apply.

(Ord. 1966-64. Passed 12-29-66.)

(e) Authority to Determine Amount of Tax Due.

(1) 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.

(2) Execution of return by Administrator. 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 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.

(3) 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 of the assessment to the last known address of the taxpayer. This summary shall include the identification of the taxpayer, the character of the liability assessed, the taxation period and the amount of the assessment.

(4) 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.

(5) Limitation of prosecutions. Neither the Administrator's execution of a return nor the Administrator's assessment of a taxpayer shall start the running of the period of limitations on prosecutions set forth elsewhere in this chapter.

(Ord. 1985-34. Passed 10-28-85.)

(f) 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.

(g) Examination; Production of Records. The Administrator may order any person presumed to have knowledge of, or information applicable to, income which was or should have been returned for taxation or any transaction tending to affect such income. The Administrator may examine such person under oath, concerning such income, and for this purpose may compel the production of books, papers, records and Federal Income Tax Returns and the attendance of all persons before him or her, whether as parties or witnesses, whenever he or she believes such persons have knowledge of such income or information pertinent to such inquiry.

(Ord. 1966-64. Passed 12-29-66.)

### 793.30 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 793.99.

(Ord. 1966-64. Passed 12-29-66.)

#### 793.31 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. 1972-12. Passed 5-8-72.)

#### 793.32 AUTHORITY TO CONTRACT FOR CENTRAL COLLECTION FACILITIES.

Pursuant to the agreement entered into by the City for the establishment of a Regional Council of Governments, which Council has organized a municipal tax collection agency known as the "Regional Income Tax Agency," the Board of Trustees of the Regional Income Tax Agency is hereby authorized to administer and enforce 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 the Agency through the Administrator of the Agency. Additionally, the Administrator of the agency shall have the authority to abate penalties or interest provided for in Sections 793.39 and 793.40.  
(Ord. 1995-35. Passed 8-8-95.)

#### 793.33 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 or except in accordance with proper judicial order. No person shall divulge such information.  
(Ord. 1966-64. Passed 12-29-66.)

#### 793.34 BOARD OF REVIEW ESTABLISHED.

A Board of Review, consisting of the Director of Law or his or her designee, the Mayor or his or her designee, and a member of Council to be elected by that body, is hereby established. 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 the provisions of Section 793.33, 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. 1995-40. Passed 8-28-95.)

#### 793.35 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 before the same become effective.

At the request of a taxpayer or the Administrator, the Board may substitute alternate methods of allocation.  
(Ord. 1966-64. Passed 12-29-66.)

#### 793.36 APPEALS.

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, have jurisdiction to affirm, reverse or modify any such ruling or decision or any part thereof.  
(Ord. 1966-64. Passed 12-29-66.)

#### 793.37 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. 1966-64. Passed 12-29-66.)

#### 793.38 CONTINUATION OF TAX; COLLECTION AFTER TERMINATION.

(a) This chapter shall continue effective, insofar as the levy of taxes is concerned, until repealed, and insofar as the collection of taxes levied under this chapter and the actions and proceedings for collecting any tax so levied or enforcing this chapter are concerned, this chapter shall continue effective until all taxes levied in such period are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in Sections 793.24 through 793.26 and 793.43 through 793.45.

(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 793.11 and 793.17 as though the tax levied in this chapter was continuing. (Ord. 1966-64. Passed 12-29-66.)

#### 793.39 INTEREST ON UNPAID TAXES.

All taxes imposed and all moneys withheld or required to be withheld by employers under this chapter and remaining unpaid after they become due shall bear interest at the rate of eight percent per year. (Ord. 1980-12. Passed 4-14-80.)

#### 793.40 PENALTIES ON UNPAID TAX.

In addition to the interest provided in Section 793.39, penalties based on the unpaid tax or installments of estimated tax are hereby imposed as follows:

For failure to pay taxes or estimated taxes due, other than taxes withheld: ten percent per year, but not less than twenty-five dollars (\$25.00); and

For failure to remit taxes withheld from employees: ten percent per month or fraction thereof, but the accumulated penalty shall not exceed fifty percent of any unpaid amount and shall not be less than twenty-five dollars (\$25.00).

(Ord. 1980-12. Passed 4-14-80.)

#### 793.41 EXCEPTIONS TO INTEREST AND PENALTY ASSESSMENTS.

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

(Ord. 1966-64. Passed 12-29-66.)

#### 793.42 ABATEMENT OF INTEREST AND PENALTIES.

Either the Administrator or the Board of Review may abate penalties or interest or both, for good cause shown.

(Ord. 1971-33. Passed 12-13-71.)

#### 793.43 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. 1985-34. Passed 10-28-85.)

#### 793.44 LIMITATION ON PROSECUTION.

All prosecutions under this chapter must be commenced within the periods set forth in Ohio R.C. 718.06.

(Ord. 1972-12. Passed 5-8-72.)

#### 793.45 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. 1966-64. Passed 12-29-66.)

#### 793.99 PENALTY.

(a) Whoever violates or fails to comply with any of the provisions of this chapter, for which no penalty is otherwise provided, 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.

(b) In addition to the penalty provided in subsection (a) hereof, any employee of the City who violates Section 793.33 shall be immediately dismissed.

(Ord. 1966-64. Passed 12-29-66.)