

CHAPTER 185

Income Tax

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CROSS REFERENCES

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

185.01 PURPOSE.

To provide funds for the purposes of general municipal functions of the Village of Plain City, Ohio, there shall be and is hereby levied a tax on all salaries, wages, commissions and other compensations, and on net profits as hereinafter provided.

(Ord. 42-92. Passed 12-28-92.)

185.02 DEFINITIONS.

(a) Definitions Generally. For the purposes of this Chapter, the terms, phrases, words and their derivatives shall have the meanings given in the next succeeding subsections. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

(1) "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) Section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.

(2) "Administrator" means the individual designated by the Mayor to administer and enforce the provisions of the municipal income tax along with the Administrator of the Regional Income Tax Agency.

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

(4) "Board of Review" means the Board created by and constituted as provided in this Chapter.

(5) "Business" means any enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit; whether by an individual, partnership, association, corporation or any other entity; excluding, however, all nonprofit corporations which are

exempt from the payment of federal income tax.

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

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

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

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

(10) "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.

(11) "Generic form" means an electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or requests for refunds, which contain all the information required on the Village's regular tax return, estimated payment forms, and request for refund forms, and are in a similar format that will allow processing of the generic forms without altering the Village's procedures for processing forms.

(12) "Gross Receipts" means the total income from any source whatsoever.

(13) "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.

(14) "Municipality" means the Village of Plain City, Ohio.

(15) For taxable years prior to 2004, "Net Profit" means a net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes without deduction of taxes imposed by this Chapter; federal, state and other taxes based on income; and in the case of an association, without deduction of salaries paid to partners and other owners. (For taxable years 2004 and later, see "adjusted federal taxable income.")

(16) "Nonresident" means an individual domiciled outside the Municipality.

(17) "Nonresident Unincorporated Business Entity" means an unincorporated business entity not having an office or place of business within the Municipality.

(18) "Person" means every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person," as applied to any unincorporated entity, means the partners or members thereof, and as applied to corporations, the officers thereof.

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

(20) "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 employee's 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 Village. This definition is effective January 1, 2004, for taxable years 2004 and later.

(21) "Resident" means an individual domiciled in the Municipality.

(22) "Resident Unincorporated Business Entity" means an unincorporated business entity

having an office or place of business within the Municipality.

(23) "Taxable Income" means qualifying wages, salaries and other compensation paid by an employer or employers before any deductions; and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of the chapter. "Taxable Income" shall also include income from gaming, wagering, schemes of chance and lotteries, including the Ohio lottery and all of its offerings.

(24) "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.

(25) "Taxpayer" means a person, whether an individual, partnership, association or any corporation or other entity, required hereunder to file a return or pay a tax.

(26) "Village" means the Village of Plain City, Ohio.

(Ord. 11-09. Passed 9-14-09.)

185.03 IMPOSITION OF INCOME TAX.

(a) Rate and Income Taxable. An annual tax for the purposes specified in this Chapter shall be imposed on and after January 1, 1993, at the rate of one percent (1%) per annum upon the following:

(1) On all salaries, qualifying wages, commissions and other compensation earned on and after January 1, 1993, by residents of the Village;

(2) On all salaries, qualifying wages, commissions and other compensation earned on and after January 1, 1993, by nonresidents of the Village for work done or services performed or rendered within the Village;

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

B. Beginning with the thirteenth day, the employer of said individual shall begin withholding the Village's income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to the Village in accordance with the requirements of this chapter. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in the Village by the individual for the first twelve (12) days;

C. If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the Village;

D. The twelve (12) day occasional entry 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;

(3) A. On the portion attributable to the Village of the net profits earned on and after January 1, 1993, of all resident unincorporated business entities or professions or other activities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the Village;

B. On the portion of the distributive share of the net profits earned on and after January 1, 1993, of a resident partner or owner of a resident unincorporated business entity not attributable to the Village and not levied against such unincorporated business entity by the Village;

(4) A. On the portion attributable to the Village of the net profits earned on or after January 1, 1993, of all nonresident unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered and business and other activities conducted in

the Village, whether or not such unincorporated business entity has an office or place of business in the Village;

B. On the portion of the distributive share of the net profits earned on or after January 1, 1993, of a resident partner or owner of a nonresident unincorporated business entity not attributable to the Village and not levied against such unincorporated business entity by the Village;

(5) On the portion attributable to the Village of the net profits earned on and after January 1, 1993, of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the Village, whether or not such corporations have an office or place of business in the Village.

(6) On all proceeds from gaming, wagering, schemes of chance and lotteries, including the Ohio lottery and all of its offerings, received by residents of the Village or received by nonresidents of the Village within the Village or on the basis of activity conducted within the Village.

(b) Effective Period. Such tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of businesses, professions or other activities earned on and after January 1, 1993.

(Ord. 11-09. Passed 9-24-09.)

185.04 DETERMINATION OF ALLOCATION OF TAX.

(a) Method of Determination. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the Municipality, shall be as determined as follows:

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

(1) The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in the Municipality 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 the preceding paragraph, "real property" includes property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.

(2) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the Municipality to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed.

(3) Gross receipts of the business or profession from sales made and services performed during the taxable period in the Municipality to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

In the event that the foregoing allocation 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:

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

B. 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 Village are apportioned with reasonable accuracy.

C. In determining the income allocable to the Village 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 Village.

(b) Sales Made in Municipality. As used in subsection (a)(3) above, "sales made in the Municipality" means:

(1) All sales of tangible personal property which is delivered within the Village regardless of where title passes if shipped or delivered from a stock of goods within the Village;

(2) All sales of tangible personal property which is delivered within the Village, regardless of where title passes even though transported from a point outside the Village, if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village and the sales result from such solicitation or promotion;

(3) All sales of tangible personal property which is shipped from a place within the Village, to purchasers outside of the Village, regardless of where title passes, if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

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

A factor is applicable even though it may be allocable entirely in or outside the Municipality.

(d) Rentals. Rental income received by a taxpayer shall be included in the computation of net profits from business activities under Section 185.03(a)(3) to (5) hereof pertaining to "Rate and Income Taxable," 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, aggregate in excess of two hundred fifty dollars (\$250.00) per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental property shall be subject to tax; provided that in the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds two hundred fifty dollars (\$250.00) per month; provided, further, that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds said two hundred fifty dollars (\$250.00) per month.

(e) Operating Loss Carry-forward.

(1) The portion of a net operating loss sustained in any taxable year subsequent to January 1, 1993, allocable to the Municipality may be applied against the portion of the profit of succeeding tax years allocable to the Municipality, until exhausted, but in no event for more than five (5) 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.

(2) The portion of net operating loss sustained shall be allocated to the Municipality in the same manner as provided herein for allocating net profits to the Municipality.

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

(Ord. 02-05. Passed 3-28-05.)

185.05 EXEMPTIONS.

(a) Sources of Income Not Taxed. The tax provided for herein shall not be levied on the following:

(1) Pay or allowances of active members of the Armed Forces of the United States or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property or tax-exempt activities.

(2) Poor relief, unemployment insurance benefits, old age pensions or similar payments including disability benefits received from local, state or federal governments or charitable, religious or educational organizations.

(3) 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.

(4) Receipts from seasonal or casual entertainment, amusements, sport events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations.

(5) Alimony received.

(6) Personal earnings of any natural person under eighteen (18) years of age.

(7) Compensation for personal injuries or for damages to property by way of insurance or otherwise.

(8) Interest, dividends and other revenue from intangible property.

(9) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as 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.

(10) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, items of income already taxed by the State of Ohio from which the municipality 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).

(11) 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.

(12) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution for the State of Ohio or any act of the Ohio General Assembly limiting the power of the Municipality to impose net income taxes.

(Ord. 02-05. Passed 3-28-05.)

185.06 RETURNS.

(a) When Return Required to Be Made. Each taxpayer shall, whether or not a tax be due thereon,

make and file a return on or before April 15th 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 (4) months from the end of such fiscal year or period.

(b) Form and Contents of Return. The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from such Administrator, or an acceptable generic form, setting forth:

(1) The aggregate amounts of salaries, wages, commissions and other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to such tax;

(2) The amount of the tax imposed by this Chapter on such earnings and profits; and

(3) Such other pertinent statements, information returns, or other information as the Administrator may require.

(c) Extension of Time for Filing Returns. The Administrator may extend the time for filing of the annual return upon the request of the taxpayer for a period of not to exceed six (6) months, or one (1) 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 with the period as extended.

(d) Consolidated Returns.

(1) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Administrator. Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the Village. However, once the affiliated group has elected to file a consolidated return or a separate return with the Village, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the Village.

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

(e) Amended Returns.

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

(2) Within three (3) months from the final determination of any federal tax liability affecting

the taxpayer's municipal tax liability, such taxpayer shall make and file an amended municipal return showing income subject to the municipal 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. 02-05. Passed 3-28-05.)

185.07 PAYMENT OF TAX.

(a) Payment of Tax on Filing of Returns.

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

A. Where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of this Chapter; or

B. Where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of this Chapter;

credit for the amount so deducted or paid, 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 said return.

(2) A taxpayer who has overpaid the amount of tax to which the Village is entitled under the provisions of this Chapter may have such overpayment applied against any subsequent liability hereunder, or at his election, indicated on the return, such overpayment (or 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.

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

(b) Collection at Source.

(1) In accordance with rules and regulations prescribed by the Administrator, each employer within or doing business within the Village shall deduct, at the time of the payment of such salary, wages, commission or other compensation, the tax of one percent (1%) per annum of the gross salaries, wages, commissions or other compensation due by the said employer to said 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; provided, however, that 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.

(2) Said returns shall be on a form or forms prescribed or acceptable to the Administrator, or an acceptable generic form, and shall be subject to the rules and regulations pre-scribed 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.

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

(4) Manager's obligation.

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

B. 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.

C. No change in structure by an employer, including a fundamental change, discharges its managers from liability for the employee's or manager's failure to remit funds held in trust, to file a tax return or pay taxes.

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

(c) Declarations of Income Not Collected at Source. Any person whose income tax is not fully withheld in the Village shall file a declaration setting forth estimated 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 the tax withheld for the Village.

(d) Filing of Declaration.

(1) The declaration required by this Chapter shall be filed on or before April 15th of each year during the effective period set forth in this Chapter or within four (4) months of the date the taxpayer becomes subject to tax for the first time.

(2) Those taxpayers reporting on a fiscal year basis shall file a declaration within four (4) months after the beginning of each fiscal year or period.

(e) Form of Declaration.

(1) The declaration required by this Chapter shall be filed upon a form furnished by or obtainable from the Administrator, or an acceptable generic form. As provided for in this Chapter, credit shall be taken for the income tax of the Village to be withheld from any portion of such income in accordance with the provisions of this Chapter.

(2) 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.

(f) Payment to Accompany Declaration.

(1) Effective January 1, 2005, the declaration of estimated tax to be paid the Village by taxpayers who are individuals shall be accompanied by a payment of at least one fourth (1/4) 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.

(2) Effective January 1, 2005, such declaration of estimated tax to be paid to the Village by taxpayers who are not individuals shall be accompanied by a payment of at least one-fourth (1/4) 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 taxpayer the second, third, and fourth quarterly estimated payments shall be due on the fifteenth day of the sixth, ninth, and twelfth months of the

taxable year, respectively.

(3) In case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment date or dates.

(g) If the estimated tax for the current year amounts to not more than one hundred dollars (\$100.00), no declaration or payment of estimated tax is required.

(h) Annual Return. On or before the last day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the Village shall be paid therewith in accordance with the provisions of this Chapter. Provided, however, that any taxpayer may file, on or before the last day of the first month of the year following that for which such declaration or amended declaration was filed, an annual return and pay any balance due at such time in lieu of filing such declaration or any amended declaration, and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax.

(i) Extensions. The Administrator may extend the time of filing any return required, of making any payment or performing any other act required by this Chapter for a period not to exceed six (6) months beyond the original required date. The extension request may be made by filing a copy of the taxpayer's request for a federal filing extension, or by filing a written request. the Administrator may deny the extension if the taxpayer's income tax account with the Village is delinquent in any way. (Ord. 11-09. Passed 9-24-09.)

185.08 INTEREST AND PENALTIES.

(a) Interest on Unpaid Tax. All taxes imposed and all monies withheld or required to be withheld by employers and all installments of estimated taxes required to be paid under the provisions of this Chapter and remaining unpaid after they become due, shall bear interest at the rate of six percent (6%) per annum.

(b) Penalties on Unpaid Tax. In addition to interest as provided in this Chapter, penalties based on the unpaid tax or installments of estimated tax are hereby imposed as follows:

(1) For failure to pay taxes or estimated taxes due, other than taxes withheld: ten percent (10%) per annum, but not less than five dollars (\$5.00).

(2) For failure to remit taxes withheld from employees: ten percent (10%) per month or fraction thereof, but accumulated penalty shall not exceed fifty percent (50%) upon any unpaid amount and shall not be less than five dollars (\$5.00).

(c) Exceptions.

(1) No penalties or interest shall be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent (100%) of the previous year's tax liability, provided that the previous year reflected a twelve (12) month period, or if ninety percent (90%) of the actual liability has been received.

(2) A penalty shall not be assessed on any additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator; and provided further that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment against a taxpayer by the Administrator resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three (3) months after a final determination of the federal tax liability.

(d) Abatement of Interest and Penalty. Either the Administrator hereunder or the Board of Review may abate penalty or interest, or both, for good cause shown.

(e) Violations. Any person who shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this Chapter; or
 - (2) Make any incomplete, false or fraudulent return; or
 - (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this Chapter; or
 - (4) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
 - (5) Refuse to permit the Administrator, or any duly authorized agent or employee to examine his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or
 - (6) Fail to appear before the Administrator and to produce his books, records, papers or federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or
 - (7) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
 - (8) Fail to comply with the provisions of this Chapter or any order or subpoena of the Administrator authorized hereby; or
 - (9) Give to any employer false information as to his true name, correct social security number and resident address, or fail to promptly notify an employer of any change in resident address and date thereof; or
 - (10) Fail to use ordinary diligence in maintaining proper records of employees' resident addresses, total wages paid and municipal tax withheld or knowingly give the Administrator false information; or
 - (11) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Chapter;
- shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six (6) months or both, for each offense.

(f) Limitation on Prosecution. All prosecutions under this section must be commenced within three (3) years from the time of the offense complained of, except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which event the limitation of time within which prosecution must be commenced shall be six (6) years from the date the return was due or the date the false or fraudulent return was filed.

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

(Ord. 02-05. Passed 3-28-05.)

185.09 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.

(a) Unpaid Taxes Recoverable as Other Debts. All taxes imposed by this Chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of the like amount are recoverable. Except in the case of fraud, of omission of a substantial portion of income subject to this tax, or of failure to file a return, an additional assessment shall not be made after three (3) years from the time the return was due or filed, whichever is later, provided, however, in those cases in which a

Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal Statute of Limitations, the period within which an additional assessment may be made by the Administrator shall be one (1) year from the time of the final determination of the federal tax liability.

(b) Refunds of Taxes Erroneously Paid. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date upon which such payment was made or the return was due, or within three (3) months after the final determination of the federal tax liability, whichever is later.

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

(Ord. 42-92. Passed 12-28-92.)

185.10 TAXPAYER RELIEF.

(a) Claim for Refund. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made or the return was due.

(b) Duty to Receive Tax Imposed. It shall be the duty of the Administrator to receive the tax imposed by this Chapter in the manner prescribed herein from the taxpayers, to keep an accurate record thereof, and to report all monies so received.

(c) Duty to Enforce Collection. It shall be the duty of the Administrator to enforce payment of all taxes owing to the municipality, to keep accurate records for a minimum of five (5) years showing the amount due from each taxpayer required to file a declaration and make any return, or both, including taxes withheld, and to show the dates and amount of payment thereof.

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

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

Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand.

(f) Authority to Determine Amount of Tax Due. In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due the municipality from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined together with interest and penalties thereon, if any.

(g) Authority to Make Investigation. The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or of

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

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

(i) Refusal to Produce Records. The refusal to produce books, papers, records and federal income tax returns, or the refusal to submit to such examination by any employer or persons subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this Chapter or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of this Chapter punishable as provided in this Chapter.

(j) Confidential Nature of Information. Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this Chapter shall be confidential except for official purposes, or except in accordance with proper judicial order. Any person divulging such information in violation of this section shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than one thousand dollars (\$1,000) or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the municipality who violates the provisions of this section relative to the disclosures of confidential information shall be guilty of an offense punishable by immediate dismissal.

(k) Taxpayer Required to Retain Records. Every taxpayer shall retain all records necessary to compute his tax liability for a period of five (5) years from the date his return is filed, or the withholding taxes are paid.

(l) Authority to Contract from Central Collection Facilities. The Village having already entered into an agreement for the establishment of a Regional Council of Governments, which Council has organized a municipal tax collection agency known as "Regional Income Tax Agency," the Board of Trustees of said Regional Income Tax Agency is authorized to administer and enforce the provisions of this Chapter as the agent of the Village, and the duties and authority of the Administrator hereunder may be performed by the Board of Trustees of said agency through the Administrator of said agency. Provided, however, the Administrator of said agency shall have no authority to abate penalties or interest provided for in this Chapter.

(Ord. 42-92. Passed 12-28-92.)

185.11 BOARD OF REVIEW.

(a) Board of Review Established. A Board of Review, consisting of the Village Solicitor and a member of Council to be elected by that body, and a member appointed by the Mayor of the Village, is

hereby created. The Board shall select, each year for a one-year term, one of its members to serve as Chairman and one to serve as Secretary. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of this Chapter 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.

(b) Duty to Approve Regulations and to Hear Appeals. All rules and regulations and amendments or changes thereto which are adopted by the Administrator under the authority conferred by this Chapter must be approved by the Board of Review before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the Administrator, and at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.

(c) Right of Appeal. 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 (30) days from the announcement of such ruling or decision by the Administrator, provided the taxpayer making the appeal has filed with the Village the required return or other documents concerning the obligation at issue. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. Such hearing shall be scheduled within forty-five (45) days from the date of appeal. The Board's ruling must be made within thirty (30) days from the date of the closing of the record, shall be in writing and filed with the Administrator, and within fifteen (15) 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 may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

(Ord. 02-05. Passed 3-28-05.)

185.12 DECLARATION OF LEGISLATIVE INTENT.

If any sentence, clause, section or part of this Chapter, or any tax against any individual or any of the several groups specified herein is found to be 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 hereof not been included herein. (Ord. 42-92. Passed 12-28-92.)