

CHAPTER 181  
Income Tax

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181.01 DEFINITIONS.

As used in this Chapter the following words shall have the meanings ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning.

(a) “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, adjusted as follows:

(1) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income;

(2) Add an amount equal to five percent (5%) of intangible income deducted under subsection (a)(1) hereof, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;

(3) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(4) A. Except as provided in subsection (a)(4)B. hereof, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

B. Subsection (a)(4)A. hereof does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

(5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

(6) In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

(7) If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute federal taxable income as if the taxpayer were a C corporation, except:

A. Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as deductible expense; and

B. Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

Nothing in subsection (a) hereof shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

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

(c) “Business” means an 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, including but not limited to the renting or leasing of property, real, personal or mixed.

(d) “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.

(e) “Domicile” means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he is absent he intends to return. A taxpayer had only one domicile even though he may have more than one residence.

(f) “Employee” means one who works for wages, salary, or commission or other types of compensation in the services 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 profits, who or that employs one or more persons on a salary, wage, commission or other compensation basis.

(h) “Fiscal year” means an accounting period of twelve (12) months or less ending on any day other than December 31.

(i) “Form 2106” means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Service.

(j) “Gross receipts” means total income of taxpayers from whatever source derived.

(k) “Income from a pass-through entity” means partnership income of partners, membership interests of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership shares of income from other pass-through entities.

(l) “Intangible income” means income of any of the following types: income yield, interest, capital gains, dividends, or to the income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. “Intangible income” does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.

(m) “Internal Revenue Code” means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.

(n) “Limited liability company” means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the law of another state.

(o) “Municipality” means the Village of Wellington.

(p) “Net profit” for a taxpayer other than an individual means adjusted federal taxable income and “net profit” for a taxpayer who is an individual means the individual’s profit, other than amounts described in division (F) of section 718.03, required to be reported on schedule C, schedule E or schedule F.

(q) “Nonqualified deferred compensation plan” means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.

(r) “Nonresident” means an individual, partnership, limited partnership, corporation, fiduciary, association or other entity domiciled outside the Municipality.

(s) “Non resident incorporated business entity” means an incorporated business entity not having an office or place of business withing the Municipality.

(t) “Nonresident unincorporated business entity” means an unincorporated business entity not having an office or place of business within the Municipality.

(u) “Other payer” means any person, other than an individual’s employer or the employer’s agent that pays an individual any amount included in the federal gross income of the individual.

(v) “Owner” means a partner of a partnership, a member of a limited liability company, a shareholder of an S corporation, or other person with an ownership interest in a pass-through entity.

(w) “Owner’s proportionate share”, with respect to each owner of a pass-through entity, means the ratio of (a) the owner’s income from the pass-through entity that is subject to taxation by the municipal corporation, to (b) the total income from that entity of all owners whose income from the entity is subject to taxation by that municipal corporation.

(x) “Pass-through entity” means a partnership, Limited Liability Company, S Corporation, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.

(y) “Person” means every natural person, includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity. Whenever used in any clause prescribing and imposing a penalty, “person,” as applied to any association, means the partners or members thereof, and as applied to corporation, the officers thereof.

(z) “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.

(aa) “Principal place of business” means in the case of an employer having headquarters’ activities at a place of business within a taxing municipality, the place of business at which the headquarters is situated. In the case of any employer not having its headquarters’ activities at a place of business within a taxing municipality, the term means the largest place of business located in a taxing municipality.

(bb) “Qualified plan” means a retirement plan satisfying the requirements under section 401 of the Internal Revenue Code as amended.

(cc) “Qualifying wages” means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with section 718.03(A) of the Ohio Revised Code.

(dd) “Resident” means an individual, partnership, limited partnership, corporation, association or other entity domiciled in the Municipality.

(ee) “Resident incorporated business entity” means an incorporated business entity whose office; place or operations or business situs in within the Municipality.

(ff) “Resident unincorporated business entity” means an unincorporated business entity having an office or place of business within the Municipality.

(gg) “Return preparer” means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.

(hh) “Schedule C” means Internal Revenue Service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

(ii) “Schedule E” means Internal Revenue Service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.

(jj) “Schedule F” means Internal Revenue Service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.

(kk) "S corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

(ll) "Taxable year" means the corresponding tax-reporting period as prescribed for the taxpayer under the Internal Revenue Code.

(mm) "Taxing municipality" means a municipality levying a tax on income earned by nonresidents working within such municipality or on income earned by its residents.

(nn) "Taxpayer" means a person subject to a tax on income levied by a municipal corporation. "Taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.

The singular shall include the plural, the masculine shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates. (Ord. 2004-64. Passed 12-20-04.)

#### 181.02 IMPOSITION OF TAX.

To provide funds for the purpose of general Municipal operations, maintenance of equipment, new equipment, extension, enlargement, and improvements of Municipal services and facilities and capital improvements of the Municipality, there is levied a tax upon the earnings at the rate of one percent (1%) upon the following:

(a) On all qualifying wages, commissions, other compensation, and other taxable income earned or received by residents of the Municipality;

(b) On all qualifying wages, commissions, other compensations, and other taxable income earned or received by nonresidents for work done, or services performed or rendered, in the Municipality;

(c) On the portion attributable to the Municipality of the net profits earned by all resident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered, and business or other activities conducted in the Municipality.

(d) On the portion of the distributive share of the net profits earned by a resident owner of a resident unincorporated business entity or pass-through entity not attributable to the Municipality and not levied against such unincorporated business entity or pass-through entity.

(e) On the portion attributable to the Municipality on the net profits by all non resident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered and business or other activities conducted in the Municipality, whether or not such unincorporated business entity has an office or place of business in the Municipality.

(f) On the portion of the distributive share of the net profits earned by a resident owner of nonresident unincorporated business entity or pass-through entity no attributable to the Municipality and levied against such unincorporated business entity or pass-through entity.

(g) On the portion attributable to the Municipality of the net profits earned by all corporations that are not pass-through entities from work done or services performed or rendered and business or other activities conducted in the Municipality, whether or not such corporations have an office or place of business in the Municipality.

(h) The portion of the net profits attributable to the Municipality of a taxpayer conducting a business, profession, or other activity both within and without the boundaries of the Municipality shall be determined as provided in Ohio Revised Code Section 718.02 and in accordance with the rules and regulations adopted by Council. (Ord. 2004-64. Passed 12-20-04.)

### 181.03 DETERMINATION OF INCOME SUBJECT TO TAX.

(a) Net profit from a business or profession conducted both within and without the boundaries of the Village of Wellington shall be considered as having a taxable situs in the Village of Wellington for purposes of income taxation in the same proportion as the average ratio of:

(1) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the Village of Wellington during the taxable period to the average original cost 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 shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.

(2) Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the Village of Wellington 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 Village of Wellington 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 apportionment formula does not produce an equitable result, another basis may, under uniform regulations be substituted so as to produce such result.

(b) As used in this subsection, "Sales made in the Village of Wellington" mean:

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

(2) All sales of tangible personal property which is delivered within the Village of Wellington regard less of where title passes even though transported from a point outside such Village if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village of Wellington 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 of Wellington to purchasers outside such 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 were delivery is made.

(c) The portion of a net operating loss sustained in any taxable year, beginning with the year 2005, apportioned to the Municipality may be applied against the portion of the profit of succeeding tax years apportioned to the Municipality, until exhausted, but in no event for more than the three (3) 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. The portion of a net operating loss sustained shall be apportioned to the Municipality in the same manner as provided here in for apportioning net profits to the Municipality. The net operating loss of a taxpayer that loses its legal identity, by any means such as a merger or consolidation, shall not be allowed as a carryforward loss deduction to the surviving or new taxpayer. The net operating loss sustained by a business or profession is not deductible from employee earnings. However, if a taxpayer is engaged in two or more taxable business activities to be included in the same return, the net loss of one unincorporated business activity (except any portion of a loss reportable for municipal income tax purposes to another municipality) may be used to offset the profits of another for purposes of arriving at overall net profits.

(Ord. 2004-64. Passed 12-20-04.)



#### 181.04 EFFECTIVE DATE.

Such tax shall be levied, collected and paid with respect to salaries, wages, commissions and other compensation earned on and after January 1, 1973, and with respect to net profits of businesses, professions and other activities earned on and after January 1, 1973. Provided however, that where the fiscal year of the business, profession or other activity differs from the calendar year, the tax shall be applied to that part of the net profit for the fiscal year as shall be earned on and after January 1, 1973, to the close of the taxpayer's fiscal year; thereafter the taxpayer shall report on its fiscal year basis. (Ord. 1972-53. Passed 12-4-72.)

#### 181.05 FILING REQUIREMENTS.

(a) All persons subject to Wellington income tax who are over the age of eighteen years shall be required to complete and file an annual income tax return with the Municipality. (Ord. 1987-53. Passed 1-4-87.)

(b) All residents of the Municipality who are eighteen years of age or older who are required to file federal income tax returns shall be required to file an annual Municipal income tax return beginning with the return due April 15, 1989 for earnings received in 1988.

(c) All nonresidents of the Municipality who are eighteen years of age or older who are required to file federal income tax returns and whose earnings, in part or of the whole, are derived from employment, business operation or property within the Municipality shall be required to file an annual Municipal income tax return beginning with the return due April 15, 1989 for earnings received in 1988. (Ord. 1988-36. Passed 11-7-88.)

(d) Notwithstanding any other provisions of this chapter to the contrary, for any individual who works within the Village of Wellington and who lives outside the Village of Wellington, if the individual's sole source of income which is taxable by Wellington consists of earned income from one or more Wellington employers, and if all applicable Wellington income tax has already been withheld and remitted to the Village on said income, then such individual shall not be required to file a return with the Village unless the individual is applying for a refund, and the Village shall not ordinarily mail a return to such individual unless the same is requested. (Ord. 2004-07. Passed 3-15-04.)

(e) When the final return is made for a fiscal year or other period different from the calendar year, the return shall be made within 105 days from the end of such fiscal year or other period whether or not a tax is due thereon. The tax due shall be computed on the return and the taxpayer shall pay the tax due at the time of filing. Such return shall be deemed filed when postmarked by the United States Post Office or delivered during normal business hours to the Tax office. Notwithstanding any filing deadlines prescribed

by this section, an annual income tax return or report due to the Village may be filed within the time prescribed in the federal income tax code for the corresponding tax reporting period if such period is later than the time allowed in this section. (Ord. 2004-64. Passed 12-20-04.)

(f) Extension of Time for Filing Returns. Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of a Village income tax return by filing a copy of the taxpayer's request for a federal filing extension with the Director of Finance no later than the last day for filing the Village income tax return. The extension with the Village will be granted for the same time period as the Federal extension unless the request is not timely filed with the Village, or the taxpayer already owes the Village delinquent income tax, penalty, interest, assessments, or other charges for late payments or nonpayment of income tax, or the taxpayer has failed to file a required income tax return, report, or other related documents for a prior tax period. Interest as allowed by law will be charged from the original due date of the return until the date of actual payment. The extended due date of the municipal income tax return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended.

(g) "Pass-through entities" (partnerships, limited liability companies, and Sub-S corporations) as that term is defined in Ohio R.C. 718.14, must file an annual return and shall pay the applicable tax on the income of the pass-through entity in the hands of that entity, and the same income shall not be taxed, nor a return filed, for said income in the hands of the owners of the entity. (Ord. 2004-64. Passed 12-20-04.)

(h) In lieu of the forms adopted by the Director of Finance as provided in paragraph (a) above, a taxpayer may file a generic form of any return, report, or other document if the generic form, once completed and filed, contains all of the information required to be submitted in the standard form prescribed by the Director of Finance, so long as the taxpayer complies with the rules or ordinances of the Village governing the filing of returns, reports, or other documents.  
(Ord. 2012-13. Passed 5-7-12.)

(i) The Village of Wellington shall accept for filing a consolidated income tax return from any affiliated group of corporations subject to the Village's tax if that affiliated group filed for the same tax reporting period a consolidation return for Federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code.

(j) On and after January 1, 2005, the Village will accept a return, an estimated return, and payments of tax, which have been properly submitted in accordance with the Ohio Business Gateway project of the State of Ohio.

(k) A refundable credit shall be allowed against the income tax imposed by this chapter for each "qualifying loss," as the same is defined and limited by section 718.021 of the Ohio Revised Code, in connection with a nonqualified deferred compensation plan, which qualifying loss is sustained by a taxpayer during the taxable year.

(1) (1) Except as provided in subsection (1)(2) of this section, if tax or withholding is paid to a municipal corporation on income or wages, and if Wellington imposes a tax on that income or wages after the time period allowed for a refund of the tax or withholding paid to the first municipal corporation, Wellington shall allow a nonrefundable credit, against the tax or withholding Wellington claims is due with respect to such income or wages, equal to the tax or withholding paid to the first municipal corporation with respect to such income or wages.

(2) If the tax rate in Wellington is less than the tax rate in the first municipal corporation, then the credit described in subsection (1)(1) hereof shall be calculated using the tax rate in effect in Wellington.

(3) Nothing in this section permits any credit carryforward.  
(Ord. 2004-64. Passed 12-20-04.)

#### 181.06 DUTIES OF THE FINANCE DIRECTOR.

(a) The Director of Finance shall receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; shall keep an accurate record thereof; and shall report all moneys so received. All cashiers handling tax moneys shall be subject directly to the Director of Finance and shall give daily accountings to the Director of Finance.

(b) The Director of Finance shall enforce payment of all taxes owing the Municipality, keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and make any return, including taxes withheld and shall show the dates and amounts of payments thereof.

(c) The Director of Finance is hereby charged with the enforcement of the provisions of this chapter and shall enforce the rules and regulations of Council relating to any matter or thing pertaining to the collection of the Municipal income taxes and the administration and enforcement of the provisions of this chapter, including provisions for the examination and correction of returns and payments.

(d) 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 Director of Finance 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 thereof if any.

(e) Subject to the consent of the Board of Review or pursuant to regulations approved by Council, the Director of Finance shall have the power to compromise any interest or penalty or both, imposed by this chapter.

(f) A Department of Taxation is hereby created within the office of the Director of Finance. Such Department shall have such deputies, clerks, and other employees as may be from time to time determined by Council and shall receive such salary as may be determined by Council. The Director of Finance shall recommend all appointments of personnel and purchase all equipment, supplies and materials for the Department subject to the approval of Council. The Department shall be charged with the administration and operation of this chapter under the direction of the Director of Finance. The Director of Finance shall prescribe the form and method of accounts and reports for the Department as well as the forms for taxpayer's returns and declarations and shall be charged with the internal examination and audit of all such accounts, and shall exhibit accurate records showing the amount received from each taxpayer and the date of such receipt. The Director of Finance shall also make a written report to Council annually of all moneys collected hereunder during the preceding year. (Ord. 2012-13. Passed 5-7-12.)

#### 181.07 INVESTIGATIVE POWERS OF THE FINANCE DIRECTOR; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

(a) The Director of Finance or his duly authorized agent or employee is hereby authorized to examine the books, papers and records of any employer, or of any taxpayer or person subject to the tax, or believed to be 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. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish to the Director of Finance or his duly authorized agent or employee, within thirty days following a written request by the Director of Finance or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(b) The Director of Finance or his duly authorized agent or employee, is hereby authorized to examine any person, employer or employee under oath, concerning any income which was or should have been returned for taxation, and for this purpose, may compel the production of books, federal income tax records, papers and records and the attendance of all persons before him whether as parties or witnesses whenever he believes such persons have knowledge of such income.

(c) The refusal to produce books, papers, records and federal income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax 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 section or with any order or subpoena of the Director of Finance authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 181.99. (Ord. 2012-13. Passed 5-7-12.)

(d) Tax returns, investigations, hearings and all audit papers and information connected therewith are confidential and shall be carefully preserved so that they shall not be available for inspection by anyone other than the proper agents of the Municipality for official purposes.

(e) Any information gained as the result of the filing of any tax returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposes and except in accordance with proper judicial order. Any person divulging such information shall be subject to a fine or penalty of not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both. Each disclosure shall constitute a separate offense. In addition to the above penalties, any employee of the Municipality who violates the provisions of this section relative to disclosure of confidential information shall be immediately dismissed from the service of the Municipality.

(Ord. 1972-53. Passed 12-4-72.)

#### 181.08 INTEREST AND PENALTIES.

(a) All taxes imposed by this chapter, including taxes withheld or required to be withheld from wages by any employer, and remaining unpaid after they have become due, shall bear interest on the amount of the unpaid tax at the rate of twelve percent (12%) per annum and the taxpayer upon whom such taxes are imposed, and the employers required by this chapter to deduct, withhold and pay taxes imposed by the chapter shall be liable, in addition thereto, to a penalty of one percent (1%) of the amount of the unpaid tax for each month or fraction of a month of nonpayment, or twenty-five dollars (\$25.00), whichever is greater. Upon recommendation of the Director of Finance, the Board of Review may abate interest or penalties or both, and upon appeal from the refusal of the Director of Finance to so recommend, the Board may nevertheless abate interest or penalty, or both. (Ord. 2012-13. Passed 5-7-12.)

(b) No penalty or interest shall be charged against a taxpayer for the late payment or nonpayment of estimated tax liability if the taxpayer is an individual who resides in the municipal corporation but was not domiciled there on the first day of January of the current calendar year, or if the taxpayer has remitted through estimated payments or otherwise a total amount which is at least equal to one hundred percent (100%) of the taxpayer's tax liability for the preceding year as shown on the return filed by the taxpayer for that preceding year, provided that the return for the preceding year reflected a twelve month period and the taxpayer filed a return for the preceding year. (Ord. 2004-64. Passed 12-20-04.)

(c) In the event that a taxpayer has failed to timely submit payment of any taxes imposed by this Chapter, necessitating the Director of Finance's instituting collection proceedings, an administrative fee consisting of the direct costs incurred in pursuing collection, shall also be assessed against the taxpayer. (Ord. 2012-13. Passed 5-7-12.)

#### 181.09 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be deposited in the General Fund and said funds collected shall be disbursed in the following order, to wit:

(a) Such part thereof as shall be necessary to defray all costs of collecting the taxes and the costs of administering and enforcing the provisions hereof.

(b) Not more than seventy-five percent (75%) of the net available income tax receipts received annually may be used to defray operating expenses of the Municipality.

(c) At least twenty-five percent (25%) of the net available income tax receipts received annually shall be set aside and used for capital improvements for the Municipality including, but not limited to development and construction of storm sewers and street improvements; for public buildings, park, and playgrounds; and for equipment necessary for Police, Fire, Street, Traffic and Safety Departments.

(Ord. 2003-21. Passed 8-4-03.)

#### 181.10 BOARD OF REVIEW.

(a) A Board of Review, consisting of three electors of the Municipality, appointed by the Mayor and confirmed by majority vote of Council, to serve four-year terms is created by this chapter. No member shall be appointed to the Board who holds other public office or appointment. The members of the Board shall serve without compensation.

(Ord. 2010-45. Passed 12-20-10.)

(b) A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and keep a record of its transactions.

(c) All hearings of the Board shall be conducted privately and the provisions of Section 181.07 with reference to the confidential character of the information required to be disclosed by the chapter shall apply to such matters as may be heard before the Board on appeal.

(Ord. 1972-53. Passed 12-4-72.)

(d) Any person dissatisfied with any ruling or decision of the Director of Finance which is made under the authority conferred by this chapter and the rules and regulations related thereto may appeal therefrom to the Board within thirty days from the announcement of such ruling or decision by the Director of Finance and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision or any part thereof.

(Ord. 2012-13. Passed 5-7-12.)

(e) Any person dissatisfied with any ruling or decision of the Board may appeal therefrom to a court of competent jurisdiction within thirty days from the announcement of such ruling or decision.

(f) The Board, as created, shall serve during the life of this chapter.  
(Ord. 1972-53. Passed 12-4-72.)

#### 181.11 APPLICABILITY.

This chapter shall not apply to any person, firm, corporation or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for.  
(Ord. 1972-53. Passed 12-4-72.)

#### 181.12 EXEMPTIONS.

The provisions of this chapter shall not be construed as levying a tax upon the following:

(a) Funds received from local, State or federal governments because of service in the Armed Forces of the United States by the person rendering such service, or as the result of another person rendering such service.

(b) Poor relief, pensions, social security, unemployment compensation and disability benefits received from private industry or local, State or federal governments or from charitable, religious or educational organizations.

(c) Dues, contributions and similar payments received by charitable, religious, educational or literary organizations or labor unions, lodges and similar organizations.

(d) Receipts from casual entertainment, amusements, sports events and health and welfare activities conducted by bona fide charitable, religious and educational organizations and associations.

(e) Any association, organization, corporation, club or trust, which is exempt from federal taxes on income by reason of its charitable, religious, educational, literary, scientific, etc. purposes.

(f) Gains from involuntary conversions, cancellation of indebtedness, interest on federal obligations, items of income already taxed by the State under the personal property tax laws and income of a decedent's estate during the period of administration (except such income from the operation of a business).

(g) Earnings and income of all persons under eighteen years of age, whether residents or nonresidents.  
(Ord. 1972-53. Passed 12-4-72.)

(h) Intangible income as set forth at Ohio R.C 718.01.

(i) Unreimbursed employee business expenses (2106 expenses) which the employee has deducted as an itemized deduction on the Federal tax return. Taxpayer must furnish a copy of the Form 2106 and Schedule "A" as filed with IRS.

(j) Medical insurance premiums deducted by self-employed taxpayers on their Federal tax return as an adjustment from gross income to arrive at adjusted gross income.

(k) Compensation paid to an individual for personal services performed within the Village, if the individual does not reside in the Village, performs such personal services in the municipal corporation on twelve or fewer days in the calendar year, and, if the individual is an employee, the principal place of business of the individual's employer is located outside the Village. This subsection does not apply to professional entertainers or professional athletes or to promoters of professional entertainment or sports events and their employees.

(l) Items excluded from Federal gross income pursuant to Section 107 of the Internal Revenue Code, commonly referred to as "parsonage allowances".

(m) The income of a public utility, when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code.  
(Ord. 2004-64. Passed 12-20-04.)

#### 181.13 REFUNDS.

(a) Should it appear that any taxpayer has paid more than the amount of the tax to which the Municipality is entitled under the provisions of this chapter, a refund of the amount so overpaid shall be made, provided a proper claim for refund of such overpayment of tax has been filed by the taxpayer, or the same may be applied toward the declaration of tax due for the ensuing year. Claims for refunds shall be made on forms prescribed by and obtainable from the Director of Finance.  
(Ord. 2012-13. Passed 5-7-12.)

(b) All applications for refunds shall be made within three years of the due date of the final return.  
(Ord. 1972-53. Passed 12-4-72.)

(c) No tax payment due, and no refund due, shall be paid in the event that the amount due is one dollar (\$1.00) or less.  
(Ord. 2004-64. Passed 12-20-04.)



#### 181.14 EFFECTIVE PERIOD.

This chapter shall continue effective insofar as the levy of taxes is concerned from January 1, 1973 until repealed or amended by action of Council. This chapter insofar as the collection of the taxes levied, in the aforesaid period and actions and proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, shall continue effective until all of such taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of the taxes or for the punishment of violations of this chapter are fully terminated.

(Ord. 1972-53. Passed 12-4-72.)

#### 181.15 COLLECTION AT SOURCE; WITHHOLDING BY EMPLOYER.

(a) It is required of each employer within the Village of Wellington who employs one or more persons on a salary, wage, commission or other compensation basis, to deduct from compensation paid to such employee subject to this chapter at the time of such payment, the tax imposed in Section 181.02 on such salary, wage, bonus, incentive payment, commission or other compensation due by said employer to said employee.

(b) Notwithstanding the provisions of subsection (a) hereof, when, an employer within the Village of Wellington employs a Village of Wellington resident in another taxing municipality which requires the employer to deduct the tax from such taxing municipality from the Wellington resident employed there, such employer shall withhold and remit to the Village of Wellington the difference, if any, between the tax imposed by such other taxing municipality and the tax imposed by this chapter or shall withhold Wellington tax on one hundred percent (100%) of the income subject to Wellington tax if the Wellington resident/employee is employed in a location which does not impose municipal tax. (Ord. 2004-64. Passed 12-20-04.)

(c) Each employer shall make and file a withholding tax return with the Director of Finance and pay to the Director of Finance the taxes deducted and withheld on the last day of the month following the end of each calendar quarter, i.e., April 30th, July 31st, October 31st and January 31st .

(d) Such return shall be on a form or forms prescribed by and obtainable from the Director of Finance and shall be deemed filed when postmarked by the United States Post Office or delivered to the Tax office during normal business hours. Such employer, in collecting the tax, shall be deemed to hold the same as Trustee for the benefit of the City until payment is made by such employer to the City and any such tax collected by such employer from his employees shall, until the same is paid to the City, be deemed a trust fund in the hands of such employer.

(Ord. 2012-13. Passed 5-7-12.)

(e) The officer or employee having control or supervision or charged with the responsibility of filing the return and making the payment, shall be personally liable for failure to file the return and making the payment, or pay the taxes, penalty and interest due as required herein. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to file a return or pay taxes and penalty and interest due. (Ord. 2004-64. Passed 12-20-04.)

(f) On or before January 31 following any calendar year such employer shall file with the Director of Finance an information return for each employee along with an annual reconciliation form from whom the income tax has been or should have been withheld, showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of the municipal income tax withheld from such employee. The information return shall include all of the information required to be reported to the Internal Revenue Service by the employer on a W-2 Form. At the time of filing this return, the employer shall pay over any amount deducted or which should have been deducted or withheld during the preceding year but which was not remitted.

(g) All individuals, businesses, employers, brokers or others who are required under the Internal Revenue Code to furnish forms 1099 to IRS for individuals or businesses to whom or which they have paid nonemployee compensation, shall furnish copies of the said form 1099s to the Director of Finance or in lieu thereof, a listing containing the same information as required by IRS on the 1099s on or before the due date for such forms 1099 as established by IRS. Failure to provide the foregoing information will result in any deduction for payment by the taxpayer taken on the taxpayer's tax return to be disallowed. (Ord. 2012-13. Passed 5-7-12.)

(1) The deducting and withholding of personal service compensation of all other employees (including officers of corporations) shall attach to the portion of the personal service compensation of such employee which the total number of working days employed within the Village bears to the total number of working days employed within and outside the Village.

(2) If it is impossible to apportion the earnings as provided above, because of the peculiar nature of the service of the employee, or the unusual basis of compensation, apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly.

(3) The occasional entry into the Village of a nonresident employee who performs the duties for which he is employed entirely outside the Village, but enters the Village for the purpose of reporting, receiving instructions, accounting, etc., incidental to his duties outside the Village, shall not be deemed to take such employee out of the class of those rendering their service entirely outside the Village.

(h) An employer shall withhold the tax on the full amount of any advance made to an employee on account of commissions where such advances are in excess of commissions earned.

(i) An employer, required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid by the employer to the employee for expense necessarily and actually incurred by the employee in the actual performance of his services, provided, that such expense must be of the kind and in the amount recognized and allowed as deductible expense for Federal income tax purposes.

(j) The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation received.

(k) Commissions and fees paid to professional men, brokers, and others who are independent contractors and not employees of the payor are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file returns and pay the tax pursuant to the provisions of Section 181.02.

(l) The failure of any employer, residing either within or outside the Village, to collect the tax and to make any return prescribed herein, shall not relieve the employee from the payment of such tax in compliance with this chapter respecting the making of returns and the payment of taxes.

(m) The requirements of this section shall apply to any nonresident employer, or to the agent of such a nonresident employer, or to any other nonresident payer, who pays an individual any item included in the taxable income of that individual employee or payee, if the total amount of tax required to be deducted and withheld for the Village on account of all of the employer's employees or payer's payees exceeds one hundred fifty dollars (\$150.00) for the calendar year. Once an employer or payee has begun withholding taxes pursuant to this subsection, it shall continue to do so unless, for a period of three consecutive calendar years, the total amount of taxes withheld by the employer or payee for the benefit of the Village has not exceeded one hundred fifty dollars (\$150.00) in each of those calendar years; notwithstanding the foregoing, an employer or payee will again be required to comply with this section is, in any subsequent year, the total amount of tax required to be deducted and withheld again exceeds one hundred fifty dollars (\$150.00). (Ord. 2004-64. Passed 12-20-04.)

#### 181.16 NO RECIPROCITY CREDIT.

From and after December 16, 2002, no credit against the taxes imposed on taxable income by this Chapter is allowed for any municipal income taxes on the same taxable income paid by a resident of Wellington to another municipality. (Ord. 2004-64. Passed 12-20-04.)

#### 181.17 SAVING CLAUSE.

This chapter shall be construed so as to maximize the amount of tax which is applicable and payable, consistent with the provisions of Chapter 718 of the Ohio Revised Code as it may, from time to time be amended. Nevertheless, this chapter shall not apply to any person, firm, corporation, or to any property as to whom or which, it is beyond the power of Council to impose the tax herein provided for. Any sentence, clause, section or part of this Chapter, or any tax against or exception granted any individual or any of the several groups of persons, or forms of income specified herein is found to be unconstitutional or 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 of the Municipality that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence or part thereof, not been included therein.

(Ord. 2004-64. Passed 12-20-04.)

#### 181.18 COLLECTION OF UNPAID TAXES.

All delinquent tax accounts outsourced by the Village to a law firm or collection agency shall be assessed a collection fee on the entire balance due equal to the fee charged by each law firm or collection agency as set forth in the collection contract with the Village. The balance due prior to the assessment of the collection fee shall be the principal balance due plus interest, penalties, late fees, and/or other permissible fines, penalties and charges. The collection fee shall be assessed against all payments made by the taxpayer whether or not the balance due is paid in full with one payment, or over time with more than one payment. The assessment of the collection fee shall be made by the law firm or collection agency after the delinquent account has been outsourced for collection. Additionally, court costs shall be added to the balance due as they are incurred but shall not be assessed a collection fee. (Ord. 2012-12. Passed 5-7-12.)

#### 181.99 VIOLATIONS; PENALTY.

(a) The following shall be considered violations of this chapter:

(1) Failing, neglecting or refusing to make any return or declaration required by this chapter; or

(2) Making any incomplete, false or fraudulent return; or

(3) Failing, neglecting or refusing to pay the tax, penalties or interest imposed by this chapter; or

(4) Failing, neglecting or refusing to withhold the tax from employees or to remit such withholding to the Director of Finance; or

(5) Refusing to permit the Director of Finance or any duly authorized agent or employee to examine books, records and papers and federal income tax returns relating to the income or net profits of a taxpayer; or

(6) Failing to appear before the Director of Finance and to produce books, records, federal income tax returns and papers relating to the income or net profits of a taxpayer under order or subpoena of the Director of Finance; or

(7) Refusing to disclose to the Director of Finance any information with respect to the income or net profits of a taxpayer; or

(8) Failing to comply with the provisions of this chapter or any order or subpoena of the Director of Finance authorized hereby; or

(b) Whoever violates any of the provisions of subsection (a) hereof shall be guilty of a misdemeanor of the third degree and shall be penalized with fine and/or imprisonment as set forth in Section 501.99 of these Codified Ordinances.

(c) The failure of any employer or taxpayer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return or declaration, from filing such form, or from paying the tax. (Ord. 2008-18. Passed 6-16-08; Ord. 2012-13. Passed 5-7-12.)