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*Rules
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TITLE NINE - Taxation

Chap. 181. Income Tax Regulations.

Chap. 183. Income Tax Ordinance.

CHAPTER 181
Income Tax Regulations

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CROSS REFERENCES

Bond of City Income Tax Director - see ADM. 165.10

City Income Tax Director's duties - see ADM. 183.06

181.01 DEFINITIONS.

For the purpose of this chapter the following terms shall have the definitions hereafter given:

- (a) The definitions of "taxpayer", "association", "business", "corporation", "employee", "net profits", "employer", "nonresident", "person", "resident", "other entity", shall be the same as set forth in Section 183.01.
- (b) "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

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carrying on any business activity individually or through one or more of his regular employees regularly in attendance.

A taxpayer does not have a regular place of business outside the City solely by consigning goods to an independent factor or contractor outside the City for sale.

- (c) "Business allocation percentage", as used in this chapter, means the average percentage arrived at by applying the formula set forth in subsection 183.02 (h). The business allocation percentage is the percentage which may be applied to determine the portion of the entire net profits of a taxpayer to be allocated as having been made within the City within the meaning of the provisions of Section 183.02.
- (d) "The Ordinance" means Ordinance 1973-46 enacted by Council on September 4, 1973, and any amendments or supplements thereto codified as Chapter 183. The singular shall include the plural and the masculine shall include the feminine and the neuter.
(Res. 1973-47. Passed 9-4-73.)

181.02 COMMENCEMENT AND DURATION OF THE TAX.

The tax imposed by Chapter 183 is effective as to income and profits earned or accruing on and after October 1, 1973, and payroll deductions must be made against all salaries, wages, commissions, bonuses and other compensation earned or accruing on and after that date. Chapter 183 continues effective insofar as the levy of taxes is concerned indefinitely.
(Res. 1973-47. Passed 9-4-73; Ord. 1978-67. Passed 11-9-78.)

181.03 IMPOSITION OF TAX.

(a) Residents. In the case of the residents of the City an annual tax of one percent is imposed on all salaries, wages, commissions and other compensation earned or accrued on and after October 1, 1973. For the purpose of determining the tax on the earnings of the resident taxpayers taxed under subsection 183.02(a), the source of the earnings and the place or places in or at which the services were rendered are immaterial. All such earnings, wherever earned or paid, are taxable.

The following are items subject to tax:

- (1) Salaries, wages, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered on and after October 1, 1973:
 - A. As an officer, director or employee of a corporation, including charitable and other nonprofit corporations, joint stock association or joint stock company;
 - B. As an employee, as distinguished from a partner or member, of a partnership, limited partnership, or any other form of unincorporated enterprise owned by one or more persons;
 - C. As an employee, as distinguished from the proprietor, of a business, trade or profession conducted by an individual owner;
 - D. As an officer or employee, whether elected, appointed or commissioned, of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, subdivision, section or unit of the State or any of the political subdivisions thereof;

- E. As an officer or employee, whether elected, appointed or commissioned, of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, subdivision, section or unit of the United States Government or of a corporation created and owned or controlled by the United States Government or any of its agencies;
- F. As an employee of any other entity or person.
- (2) Wages, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered on and after October 1, 1973:
- A. Whether based upon hourly, daily, weekly, semimonthly, monthly, annual, unit of production or piece-work rates; and
- B. Whether paid by an individual, limited partnership, partnership, association, corporation, including charitable and other nonprofit corporations, governmental administration, agency, arm, authority, board, body, branch, department, division, subdivision, section or unit, or any other entity.
- (3) Commissions received by a taxpayer whether directly or through an agent and whether in cash or in property, for services rendered on and after October 1, 1973, regardless of how computed, by whom or wheresoever paid. If amounts received as drawing account exceed the commissions earned, the tax is payable on the gross amounts received. Amounts received from an employer by way of expenses and not by way of compensation, and used as such by the individual receiving them, are not deemed to be compensation if the employer deducts such expense advances as such from his gross income for the purpose of determining his net profits taxable under Chapter 183. If such commissions are included in the net earnings of a trade, business, profession, enterprise or activity regularly carried on by such individual and therefore subject to tax under subsection 183.02(c), they shall not again be separately taxed. In such case, such net earnings shall be taxed as provided in Section 181.07.
- (4) The receipt of fees and other compensation for personal services rendered shall be subject to taxation under Chapter 183.
- (5) Domestic servants are subject to City tax under Chapter 183 but are not subject to withholding provisions. That is the domestic will report earnings and pay the tax directly to the City Income Tax Department.

(b) Nonresidents. In the case of individuals who are nonresidents of the City there is imposed under Chapter 183 an annual tax of one percent on all salaries, wages, commissions and other compensation, earned or accruing on and after October 1, 1973, for work done or services performed or rendered within the City whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property.

The items subject to tax under this section are the same as those listed and defined in subsection (a) hereof. For methods of computing the extent of such work or services performed within the City, and cases involving compensation for personal services partly within and partly outside the City, see Section 181.10.

(c) Net Business Profits; Residents.

- (1) In the case of trades, businesses, professions, other activities, enterprises or undertakings conducted, operated, engaged in, prosecuted or carried on by residents there is imposed an annual tax of one percent on the net profits earned or accruing on and after October 1, 1973.
- (2) For the purpose of construing subsections 183.02(c) and (d), "residents" in the phrase "conducted by residents" will ordinarily be construed to have reference to the business entity itself, as distinguished from the partners, proprietors or other participants in its profits.
- (3) Generally, a partnership, association or other unincorporated enterprise owned by two or more persons will be taxed as an entity. However, in the case of a nonresident partnership, association or unincorporated enterprise which cannot be reached or taxed directly by the City, or if only part of its earnings may be directly taxed, then in either case, resident partners, co-owners, proprietors or other participants in the profits thereof must include in their declaration and tax return or returns their distributive shares of such profits or portion thereof not taxed to the business enterprise as an entity, and must pay the tax thereon.
- (4) The tax imposed under subsection 183.02(c) is levied upon the entire net profits of the resident trade, business, profession, other activity, enterprise or undertaking, wherever earned, paid or accrued and regardless of the fact that any part of such business or professional activity may have been conducted at or through a place or places of business located outside the City.

(d) Net Business Profits; Nonresidents.

- (1) In the case of a nonresident individual, partnership, association, fiduciary or other entity, other than a corporation, engaged in the conduct, operation or prosecution of any trade, business, profession, enterprise, undertaking or other activity, there is imposed an annual tax of one percent on the net profits earned or accruing on and after October 1, 1973 of such trade, business, profession, enterprise, undertaking or other activity if, and to the extent, conducted in or derived from activity in the City.
- (2) A nonresident entity within the meaning of subsection 183.02(e) which has a branch or branches, office or offices and/or store or stores, warehouse, or other place or places in which the entity's business is transacted, located in the City shall be considered to be conducting, operating, prosecuting or carrying on a trade, business, profession, enterprise, undertaking or other activity to the full extent of the sum total of all transactions originating or consummated in, by or through such City branch, office, store, warehouse or other place of business, including:
 - A. Billings made on such transactions;
 - B. Services rendered;
 - C. Shipments made;
 - D. Goods, chattels, merchandise, etc., sold; or
 - E. Commissions, fees or other remuneration or payments earned.

- (3) In the case of the partnership, association or other unincorporated business owned by one or more persons the tax, generally, shall be upon such partnership, association or business enterprise as an entity and not ordinarily upon the partners or members thereof. However, the provisions of subsection (c) hereof are applicable to render taxable against such resident partners or members their distributive share of any profits of such nonresident entity not taxable under this chapter.
- (4) In determining the proportion or amount of the taxable net profits of a non-resident business entity having a place or places of business within and outside the City, such business entity may at its option use and apply the business allocation percentage formula set forth in subsection 183.02(h). For explanation of formula, see Section 181.04.
- (e) Net Business Profits; Corporations.
- (1) In the case of a corporation doing business in the City whether domestic or foreign, and whether domiciled in the City or elsewhere, there is imposed an annual tax of one percent on that part of the net profits earned or accruing on and after October 1, 1973 of such corporations, which is earned by such corporations as a result of work done or services performed or rendered and business or other activities conducted in the City.
- (2) The provisions of subsection 181.03(a)(2) are applicable to such corporations.
- (3) A corporation doing business both within and outside the City may, in determining the part of the net profits which are taxable under Chapter 183 at its option:
- A. Use the usual accounting system of the taxpayer corporation, so long as such usual accounting system shall be one acceptable to the Federal Internal Revenue Department as evidenced by acceptance and approval of income tax returns filed therein; or
- B. Use the business allocation percentage formula set forth in subsection 183.02(h). (Res. 1973-47. Passed 9-4-73.)

181.04 BUSINESS ALLOCATION PERCENTAGE.

(a) Determination of Percentage. At the option of a corporate taxpayer or of a non-resident business entity, such taxpayers may, but are not obliged to, use the formula set forth in Section 183.02 to compute the percentage of their entire net profits derived from activities both within and outside the City which is taxable under Chapter 183, and to determine the tax payable to the City thereunder.

If the taxpayer did not have a place of business outside the City during the period covered by any declaration and/or return required under Chapter 183, its business allocation percentage is one hundred percent; in other words the taxpayer is required to pay a tax of one percent on the entire net profit of the business.

If the taxpayer had a place or places of business outside the City and was doing business in the City during such period, the business allocation percentage shall be computed on the basis as set forth in subsection 183.02(h).

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The business allocation percentage is computed by determining the percentages:

- (1) Which the City real and tangible personal property bears to all real and tangible personal property, including that situated in the City of taxpayer wheresoever situated;
 - (2) Which the City business sales bear to taxpayer's entire business sales wheresoever derived, including those derived from the City; and
 - (3) Which payrolls paid by taxpayer within the City bear to taxpayer's entire payroll wheresoever paid, including City payrolls, adding together the three percentages so arrived at, and dividing the total by three.
- However, if one of the factors, property, sales or payrolls, is missing, the other two percentages are added and the sum is divided by two, and if two of the factors are missing, the remaining percentage is the business allocation percentage.

EXAMPLE 1:

Corporation having places of business in Mingo Junction, Detroit and Cleveland.

Mingo Junction real and tangible personal property \$10,000. All real and tangible personal property (Mingo Junction, Detroit and Cleveland) \$100,000. Percentage: 10%

Mingo Junction sales \$15,000. All sales \$75,000. Percentage: 20%

Mingo Junction payroll \$6,000. All payroll \$20,000. Percentage: 30%

Business Allocation Percentage:

$$\frac{10\% \text{ plus } 20\% \text{ plus } 30\%}{3}$$

Equals 20%

EXAMPLE 2:

Same corporation owning no real or tangible personal property anywhere.

Mingo Junction sales \$15,000. All sales \$75,000. Percentage: 20%

Mingo Junction payroll \$6,000. All payroll \$20,000. Percentage: 30%

Business Allocation Percentage:

$$\frac{20\% \text{ plus } 30\%}{2}$$

Equals 25%

EXAMPLE 3:

Same corporation owning real and tangible personal property in Mingo Junction valued at \$10,000 and owning no real or tangible personal property outside Mingo Junction. Other factors same as in Examples 1 and 2.

Business Allocation Percentage:

$$\frac{100\% \text{ plus } 20\% \text{ plus } 30\%}{3}$$

Equals 50%

After determining such business allocation percentage, the tax shall be determined by applying that percentage to the entire net profits of the taxpayer, wherever derived, thus arriving at the taxable net profit, and computing one percent of the resultant taxable net profit.

In case it shall appear to the City Income Tax Director that any income or capital of the taxpayer is improperly or inaccurately reflected, the City Income Tax Director may adjust items of income, expense, deductions and capital, and disregard assets in computing any allocation percentage provided any income directly traceable thereto is also excluded from entire net income, so as equitably to determine the tax.

(b) Property Factor. The percentage of the taxpayer's real and tangible personal property within the City is determined by dividing the net book value, during the period covered by the report, of such property within the City, without deduction of any encumbrances, by the average net book value similarly computed, of all such property within and without the City. Only property owned by the taxpayer is considered in determining such percentage.

(c) Sales Factor. Receipts from the following are allocable to the City:

- (1) Work done and performed or services rendered in the City.
- (2) Rentals from property situated in the City, where the rental of such property is a usual or normal part of the taxpayer's business activity.
- (3) For the purpose of determining business allocation percentage, no account shall be given to receipts, within or without the City, of income derived from intangibles (including stocks, bonds, royalties and the like) the income of which is taxable under the statutes of the State.
- (4) Compensation and other receipts for work done or services performed within the City are allocable to the City and taxable under Chapter 183. All amounts so received, credited or charged by taxpayer in payment for such work or services are so allocable, irrespective of whether done or performed by employees or agents of taxpayer or by any other person. It is immaterial where such amounts were payable or where they were received. Commissions or fees received by the taxpayer are allocated to the City if the services for which the commissions were paid were performed in the City. If the taxpayer's services for which commissions or fees were paid were performed for the taxpayer by salesmen or other agents or employees attached to or working out of a City place of business of the taxpayer, the taxpayer's services will be deemed to have been performed in the City. Where a lump sum is received by the taxpayer in payment for services within and without the City the amount attributable to services within the City is to be determined on the basis of the relative values of, or amounts of time spent in the performance of, such services within and without the City.
- (5) Receipts from sale of capital assets (property not held by the taxpayer for sale to customers in the regular course of business) are not business receipts. Receipts from the sale of real property held by the taxpayer as a dealer for sale to customers in the regular course of business are business receipts and are allocable to the City if the real property was situated in the City. Receipts from sale of intangibles included in business capital, held by the taxpayer as a dealer for sale to customers in the regular course of business are business receipts and are allocable to the City if the sales were made in the City or through a regular place of business of the taxpayer in the City.

(d) Payroll Factor. The percentage of the taxpayer's payroll allocable to the City is determined by dividing the wages, salaries and other personal service compensation of the taxpayer's employees within the City during the period covered by the report, by the total amount of compensation of all taxpayer's employees during such period.

Wages, salaries and other compensation are computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.

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Employees within the City usually includes all employees regularly connected with or working out of a place of business maintained by the taxpayer in the City.

However, where an employee performed services both within and without the City the amount treated as compensation for services performed within the City shall be deemed to be:

- (1) In the case of an employee whose compensation depends directly on the volume of business secured by him, such as salesman on a commission basis, the amount received by him for the business attributable to his efforts within the City;
- (2) In the case of an employee whose compensation depends on other results achieved the proportion of the total compensation which the value of his services within the City bears to the value of all his services; and
- (3) In the case of an employee compensated on a time basis, the proportion of the total amount received by him which the working time employed in the City bears to the total working time.

(e) Adjustment of Business Allocation Percentage Formula. Generally, the business allocation percentage formula will result in a fair apportionment of the taxpayer's net profits within and without the City. However, due to the peculiar circumstances of certain businesses, the formula may work a hardship in some cases or result in a tax evasion in others, and thus not do justice to the taxpayer or the City. Accordingly, in such cases, the City Income Tax Director may substitute factors calculated to bring about a fair and proper allocation in any case where the taxpayer has adopted the optional use of the business allocation percentage formula.

(Res. 1973-47. Passed 9-4-73.)

181.05 ON WHAT EARNINGS OR NET PROFITS TAX FIRST LEVIED.

The tax referred to in subsections 181.03(a) and (b) shall first be levied, collected and paid with respect to the salaries, wages, bonuses, incentive payments, commissions, fees and/or other compensation earned on and after October 1, 1973.

The tax referred to in subsections 181.03(c) to (e) with respect to net profits of trades, businesses, professions, enterprises, undertakings and other activities shall first be levied, collected and paid with respect to such net profits earned or accrued, in accordance with the regular accounting system of taxpayer as approved by the Director of Internal Revenue, from and after October 1, 1973. See Section 181.06 for fiscal year returns.

(Res. 1973-47. Passed 9-4-73.)

181.06 FISCAL YEARS.

Where the fiscal year of a trade, business, profession, enterprise, undertaking and/or other activity differs from the calendar year, the tax shall be applicable to the net profits of the fiscal year, but for the first fiscal year with respect only to such portion thereof as was earned on and after October 1, 1973.

A fiscal year will be recognized only if it has been or may be recognized as such by the Director of Internal Revenue for the purpose of Federal income tax.

(Res. 1973-47. Passed 9-4-73.)

181.07 NET BUSINESS PROFITS.

In amplification of the definition of "net profits" as set forth in 183.01(g) but not in limitation thereof, the following additional information and requirements respecting net business profits are furnished:

- (a) Where necessary to properly reflect income, inventories must be used. The basis of pricing used for the purpose of the Federal income tax must in each instance be used.
- (b) Where the books and records are kept on an accrual basis, long-term contract basis, or installment basis, and such basis is used in the filing of Federal income tax returns, the same basis must be used for the purpose of this tax.
- (c) If the return is made on a cash basis, the gross profit shall include:
 - (1) Commissions, fees and interest earned; plus
 - (2) The gross profit or loss from sales of merchandise, chattels, goods, wares, securities, notes, choses-in-action and services, except as hereinafter provided.
- (d) If the return is made on an accrual basis, gross profit shall include:
 - (1) Commissions, fees and interest earned; plus
 - (2) The gross profit or loss from sales of merchandise, chattels, goods, wares, securities, notes, choses-in-action and services, except as hereinafter provided.
- (e) From gross profits there shall be subtracted allowable expense to arrive at the net profits subject to tax.
- (f) All ordinary and necessary expense of doing business, including reasonable compensation paid employees, shall be allowed, but no deduction may be claimed for salary or withdrawals of a proprietor or of the partners, members or other co-owners of an unincorporated business or enterprise.
- (g) If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty not compensated for by insurance or otherwise, of property used in the trade or business, but the amount may not exceed that recognized for the purpose of the Federal income tax.
- (h) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off but in no event shall the amount allowed exceed the amount recognized as a deduction for the purpose of the Federal income tax.
- (i) Only taxes directly connected with the taxpayer's business may be claimed as a deduction. If for any reason the income from property is not subject to tax, then the tax on and other expenses of such property are not deductible. In any event, the following taxes are not deductible from income:
 - (1) The tax under Chapter 183;
 - (2) Any Federal taxes based upon income;
 - (3) Gifts, estate or inheritance taxes; and
 - (4) Taxes and/or special assessments for local benefits or improvements to property which tend to appreciate the value thereof.

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- (j) Capital gains and losses including gains or losses from the sale, exchange, or other disposition of depreciable business property, and real property used in the taxpayer's trade or business, shall not be taken into consideration in arriving at net profits earned.
- (k) If the taxpayer is a nonresident, only the amount of net profits applicable to the activities of the business in the City shall be subjected to tax. If the nonresident taxpayer's records do not disclose the actual net profits for the City branch, office, store, or activity, separately, then the basis of allocation shall be disclosed in the return. If such basis of allocation is not deemed correct, in view of all the known circumstances, the City Income Tax Director will make a reallocation based upon gross receipts or any other basis which shall, under the circumstances of the case, more accurately reflect the net profits.
- (l) In general, all business expense recognized and to the extent allowed as such for the purpose of determining Federal income tax will be recognized and allowed for, determining the City income tax under the provisions of this chapter. However, all expense connected with the acquisition or carrying of securities, the income from which is not recognized as taxable under this chapter, may not be deducted in determining taxable net profits hereunder.
- (m) In general unearned income is not to be included in computing the tax levied hereunder. Income from intangibles by way of dividends, interest and the like, should not be included if the property from which such income is derived is subject to taxation under the Intangible Personal Property Tax Laws of the State or is specifically exempted from taxation under such laws.
- (n) Rentals received by the taxpayer are to be included 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 taxpayer individually or through agents or other representatives, constitutes a business activity of the taxpayer in whole or in part.
- Following are the circumstances under which, in any instance, the rental of any real property shall or shall not be deemed to be a "business activity":
- (1) Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates in excess of one hundred dollars (\$100.00) 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. In 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 one hundred dollars (\$100.00) per month. In the case of farm property, the owner shall be considered engaged in a business activity when he shares in the 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 one hundred dollars (\$100.00) per month. The person who operates a rooming house shall be considered in business whether or not the gross income exceeds one hundred dollars (\$100.00) per month.

- (2) In determining the amount of gross monthly rental of any real property, periods during which by reason of vacancy or any other cause, rentals are not received shall not be taken into consideration by the taxpayer.
- (3) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
- (4) Real property, as the term is used in this chapter shall include commercial property, residential property, farm property and any and all other types of real estate.
- (5) In determining the taxable net income from rentals, the deductible expense shall be of the same nature, extent and amount as are allowed by the Internal Revenue Department for Federal income tax purposes.
- (6) Residents of the City are subject to taxation upon net income from rentals, to the extent above specified, on all properties located in the City, and on all properties located outside the City, the net income of which is not subject to City income tax in such other community. In the case of residents of the City, if the net income of properties located outside the City is subject to City income tax in another community, then such net income tax will not be subject to City income tax in the City.
Nonresidents are subject to such taxation only if the real property is situated within the City. Nonresidents, in determining whether gross monthly rentals exceed one hundred dollars (\$100.00) shall take into consideration only real estate situated within the City.

(o) Income from royalties or copyrights is not to be included.
(Res. 1973-47. Passed 9-4-73.)

181.08 RECONCILIATION WITH FEDERAL RETURN.

In a form satisfactory to the City Income Tax Director, there shall be submitted with each return filed by a taxpayer subject to the Federal income tax, a reconciliation between the amount shown in the return filed with the City Income Tax Director and the business income reported to the Federal Internal Revenue Department.

If as a result of a change made in business income by the Federal Internal Revenue Department, or by a judicial decision an additional amount will result as owing to the City, a report of such change shall be filed by the taxpayer within thirty days after receipt of the final notice of such change from the Federal authorities or after final decision of a court adjudicating any such Federal income tax liability.

(Res. 1973-47. Passed 9-4-73.)

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181.09 RETURN AND PAYMENT OF TAX.

(a) On or before April 15, 1974, every taxpayer engaged in any business, the net profits of which are subject in whole or in part to the tax imposed by Chapter 183, shall make and file with the City Income Tax Director a final return on a form furnished by or obtainable from the Director. Thereafter, each such taxpayer shall, on or before April 15 of each subsequent year, make and file a return with the City Income Tax Director. Like returns shall be filed at the same time and in the same manner by all persons whose wages, salaries, bonuses, incentive payments, commissions, fees and other compensation received during the preceding taxable year are subject to the tax imposed by Chapter 183. Where an employee's entire earnings for the year are paid by an employer and the City tax thereon has in each instance been withheld and deducted by the employer from the gross amount of the entire earnings of such employee-taxpayer, and where the employer of such employee has filed a report or return in which such employee's entire and only earnings are reported to the City Income Tax Director, and where such employee has no taxable income other than such earnings, it shall not be necessary for such employee to file a return for any taxable year in which such conditions have prevailed.

Any person who receives both compensation for services performed for an employer, in whatsoever form, and in addition receives income from any business activity or occupation not subject to withholding under Chapter 183 must file a declaration and a final return.

(b) In all returns filed hereunder there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation received and/or net profits earned (all as hereinbefore defined) by and during the preceding year and subject to such tax, together with such pertinent information as the City Income Tax Director may require.

(c) If the return is made for a fiscal year or for any period other than a calendar year, the return shall be made within three and one-half months from the end of such fiscal year.

(d) The return shall also show the amount of the tax imposed by Chapter 183 on such earnings, or net profits or both.

(e) The taxpayer making the return shall at the time of filing thereof, pay to the City Treasurer the amount of tax shown to be due and unpaid by the return. If, pursuant to the provisions of Section 181.15, the taxpayer has at the time of making such final return overpaid his tax, such taxpayer shall show the amount of overpayment and may in such return either:

- (1) Request a refund thereof, or
- (2) Request that the amount thereof be credited against the amount which will be required to be paid by taxpayer on the next succeeding installment of tax which may become due.

(f) Where any portion of the tax otherwise due shall have been paid by the taxpayer pursuant to the provisions of Sections 181.10 and 181.14 or where an income tax has been

paid to another municipality, pursuant to Section 183.05, credit for the amount so 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 such final return.

(g) Upon written request of the taxpayer, the City Income Tax Director may extend the time for filing the annual return for a period of not more than six months or not more than thirty days beyond any extension requested of and granted by the Federal Internal Revenue Department for the filing of the Federal income tax return.

For payments in installments, see Section 181.15.
(Res. 1973-47. Passed 9-4-73.)

181.10 COLLECTION AT SOURCE.

(a) It is the duty of each employer as hereinbefore defined who employs one or more persons on a salary, wage, commission, or other compensation basis, to deduct from compensation paid to any employee subject to Chapter 183, the tax of one percent of such salary, wage, bonus, incentive payment, commission or other compensation due by such employer to such employee. The tax shall be deducted by the employer from:

- (1) All compensation paid to employees who are nonresidents for services rendered, work performed or other activities engaged in to earn such compensation within the City; and
- (2) The gross amount of all salaries, wages, bonuses, incentive payments, commissions or other form of compensation paid to employees who are residents regardless of the place where the services are rendered.

(b) All employers who or which maintain an office or other place of business in the City are required to make the collections and deductions in this section specified, regardless of the fact that the services on account of which any particular deduction is required as to residents were performed at a place of business of any such employer situated outside the City.

(c) 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.

(d) 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 183.02. See subsections 181.03 (c) and (d).

(e) In the case of employees who are nonresidents, the amount to be deducted is one percent of the compensation paid with respect to personal services rendered in the City.

Where a nonresident receives compensation for personal services rendered or performed partly within and partly outside the City the withholding employer shall deduct, withhold and remit that portion of the compensation which is earned within the City in accordance with the following rules of apportionment.

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- (1) If the nonresident is a salesman, agent or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the City bears to the volume of business transacted by him within and outside the City.
- (2) 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 City bears to the total number of working days employed within and outside the City.
- (3) 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.
- (4) The occasional entry into the City of a nonresident employee who performs the duties for which he is employed entirely outside the City, but enters the City for the purpose of reporting, receiving instructions, accounting, etc., incidental to his duties outside the City, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the City.

(f) An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions, whether by way of drawing account or otherwise, (see subsection (g) below) where such advances are in excess of commissions earned.

(g) 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 performances of his services, provided that such expense must be of the kind and in the amount recognized and allowed deductible expense for Federal income tax purposes.

(Res. 1973-47. Passed 9-4-73.)

181.11 RETURNS OF TAX WITHHELD; PAYMENT.

The deduction from salaries, wages and other compensation required to be made by employers are to begin with compensation earned on and after October 1, 1973. The first return and payment required to be made on account of such deductions shall be made, filed and paid to the City Treasurer between January 1, 1974, and January 31, 1974.

Each employer within the City who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct monthly, or more often than monthly, and at the time of the payment of such salary, wage, commission or other compensation, the tax of one percent of salaries, wages, commissions or other compensation due by the employer to the employee and shall make a return and pay to the City Treasurer the amount of taxes so deducted as follows:

For the three months ending March 31, on or before April 30;
For the three months ending June 30, on or before July 31;
For the three months ending September 30, on or before October 31;
For the three months ending December 31, on or before the following
January 31.

The reporting periods referred to in the preceding paragraphs are elastic to this extent: The employer will use the same quarterly accounting period for reporting taxes withheld under Chapter 183 as he uses in reporting quarterly taxes withheld to the Federal government.

Such return shall be on a form prescribed by and obtainable from the City Income Tax Director and shall be subject to the rules and regulations prescribed therefor by the City Income Tax Director.

For adjustment of errors in returns of tax withheld by employers see Section 181.17. (Res. 1973-47. Passed 9-4-73.)

181.12 LIMITATION ON CREDIT FOR TAX PAID AT SOURCE.

The failure of any employer residing either within or outside the City 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. (Res. 1973-47. Passed 9-4-73.)

181.13 STATUS AND LIABILITY OF EMPLOYERS.

Every employer is deemed to be a trustee of the City in collecting and holding the tax required under Chapter 183 to be withheld, and the funds so collected by such withholding are deemed to be trust funds until the same is paid to the City.

Every such employer required to deduct and withhold the tax at the source is liable directly to the City for the payment of such tax, whether actually collected by such employer or not. (Res. 1973-47. Passed 9-4-73.)

181.14 DECLARATIONS.

(a) An employee whose entire wages, salaries or other compensation for any taxable year will be subject to the withholding provisions under Section 181.10 whose tax will accordingly be withheld as to his entire earnings for such year by his employer, and who during such taxable year expects to derive no other compensation or other income which is subject to tax under Chapter 183 need not file a declaration as provided in this section.

(b) All other taxpayers as defined in this chapter and Chapter 183 subject to the taxes imposed in Section 183.02 and every taxpayer who anticipates any income or net profits not subject to total withholding as provided in subsection (a) hereof shall file with the City Income Tax Director a declaration of his estimated tax as follows:

- (1) On or before April 15, 1974, every such calendar year taxpayer shall file a declaration of his estimated tax for the taxable period beginning January 1, 1974, and ending December 31, 1974.
- (2) A similar declaration shall be filed by each such calendar year taxpayer on or before April 15 of each subsequent year during the life of Chapter 183 and each such declaration shall contain a statement of the taxpayer's estimated tax for the full taxable year in which such declaration is filed.

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(c) Taxpayers who or which are permitted, pursuant to the provisions of Section 181.06 to return and pay their tax upon a fiscal year basis, shall file their first declaration within three and one-half months after the beginning of the first fiscal year beginning on and after October 1, 1973, and the subsequent declaration for each year thereafter on or before the 15th day of the fourth month following the beginning of each such fiscal year. Those taxpayers on a fiscal year basis shall make quarterly payments on or before the 15th day of the fourth month and on or before the last day of the sixth, ninth and twelfth month following the beginning of such fiscal year. The first installment, equal to at least one-fourth of the estimated tax, must accompany the declaration.

(d) The estimated tax for a calendar year taxpayer may be paid in full with the filing of the declaration or in equal installments on or before April 15, June 30, September 30 and December 31.

(e) The declarations so required shall be filed upon a form furnished by or obtainable from the City Income Tax Director. Any taxpayer who has filed an estimate for Federal income tax purposes may, in making the declaration, required hereunder, simply state therein that the figures therein contained are the same figures used by the taxpayer in making the declaration of his estimate for the Federal income tax. In addition to such statement, any such taxpayer may, in such declaration, modify and adjust such declared income so as to exclude therefrom income which is not subject to tax under Chapter 183.

(f) Any estimate filed hereunder may be amended by the filing of an amended estimate at the time prescribed for the payment of any installment of tax paid in accordance with Section 181.15. (Res. 1973-47. Passed 9-4-73.)

181.15 PAYMENT OF TAX INSTALLMENTS.

(a) At the time of filing each declaration required by Section 181.14 each taxpayer shall pay to the City Treasurer one-fourth of the amount of his estimated annual tax. Thereafter on or before June 30, September 30 and December 31 of each year during the life of Chapter 183 such taxpayer shall pay at least a similar amount. If any such taxpayer shall, on or before any such payment date, file an amended declaration showing an increase or decrease of the estimated tax, the installments then and thereafter due shall be increased or diminished, as the case may be, in such manner that the balance of the estimated tax shall be fully paid on or before December 31 of the taxable year involved through the payment of quarterly installments in equal amounts during the quarterly periods remaining from and after the filing of any such amended declaration.

(b) Taxpayers who or which are permitted to make returns and pay their tax on a fiscal year basis (see Section 181.06) may make the quarterly payments on their declaration of estimated tax pursuant to subsection 181.14(e).

(c) For final returns and final adjustment of tax due, see Section 181.09.
(Res. 1973-47. Passed 9-4-73.)

181.16 RECORDS TO BE KEPT BY EMPLOYERS AND TAXPAYERS.

Employers and others subject to the tax under Chapter 183 are required to keep such records as will enable the filing of true and accurate returns, whether of taxes withheld at source or of taxes payable upon earnings or net profits, or both, and such records are to be preserved to enable the City Income Tax Director, or any agent or employee of the City Income Tax Director, to verify the correctness of the returns filed. (Res. 1973-47. Passed 9-4-73.)

181.17 COLLECTION OF DEFICIENCIES; ALLOWANCE OF CREDIT FOR OVERPAYMENT.

If, as a result of investigation conducted by the City Income Tax Director, a return is found to be incorrect, the City Income Tax Director is authorized to assess and collect any underpayment of tax withheld at source or any underpayment of tax owing by any taxpayer with respect to earnings or net profits, or both. If no return has been filed and a tax is found to be owing, the tax actually owing may be assessed and collected with or without the formality of obtaining a delinquent return from the employer or taxpayer.

Should it be disclosed, either as a result of an investigation by the City Income Tax Director or through the medium of the filing of a claim or petition for refund or credit, that an overpayment has been made, the City Treasurer will refund such overpayment.

The employer will in every instance be required to pay the full tax which should have been withheld, even though he may fail to withhold from the employee. If too much has been withheld the excess shall be refunded by the employer to the employee. While the withholding agent (employer) will be expected to maintain complete records of such adjustments with the employees, any such adjustment made during any month will not need to be reflected in the withholding return or disclosed by schedules or statements thereto attached.

In those cases in which too much has been withheld by an employer from an employee and remitted to the City Treasurer and there has been a termination of the employee-employer relationship, the taxpayer (employee) may obtain an adjustment by application to the City Treasurer. (Res. 1973-47. Passed 9-4-73.)

181.18 COLLECTION OF UNPAID TAXES.

All taxes imposed by Chapter 183 remaining unpaid when the same have become due, together with all interest and penalties thereon, become a debt due the City from the taxpayer, and are recoverable as other debts by suit instituted by the City Director of Law.

Employers who or which, although obliged under Chapter 183 to withhold and remit to the City Treasurer the taxes required to be withheld at the source (Section 181.10) shall fail to so withhold and/or remit, become liable to the City in a civil action to enforce the payment of the debt created by such failure.

When a final return is filed as prescribed in Section 181.09 hereof and a deficiency is determined to be due to the City action to collect the same must be brought within three years after the tax was due or the return was filed, whichever is later. In the case of fraud, failure to file a return, or the omission of twenty-five percent or more of income required to be reported, prosecution may be commenced within six years after the commission of the offense. (Res. 1973-47. Passed 9-4-73.)

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181.19 IDENTIFICATION REQUIRED.

Agents and employees charged with the duty of inspection or auditing of reports of employers and taxpayers will carry proper identification, which shall be subject to examination by any person whose records are sought to be examined.
(Res. 1973-47. Passed 9-4-73.)

181.20 APPLICABILITY.

This chapter is inapplicable to any person or corporation upon whom or which it is beyond the legal power of Council to impose the tax; it is likewise inapplicable as to any property, income or profits, or part thereof, as to which it is beyond the legal power of Council to levy the tax. (Res. 1973-47. Passed 9-4-73.)

181.21 SPLIT-PAYROLLS.

In the case of hourly employees, where a payroll continues past September 30, 1973, and such payroll does not end until a period in October, 1973 the payroll shall be considered a split-payroll and as such the payroll will not be subject to withholding tax under Chapter 183 effective October 1, 1973. That is only the first full pay for hourly employees earned after October 1, 1973, and all payrolls thereafter, will become subject to withholding under Chapter 183.

All salaried employees paid on a calendar month will be subject to withholding under Chapter 183 as of October 1, 1973.
(Res. 1973-47. Passed 9-4-73.)

181.22 WITHHOLDING STATEMENTS.

The City Income Tax Department will require the filing of employee earning reports resembling Federal Form W-2, as of the effective date of the Ordinance, or at any subsequent date. (Res. 1973-47. Passed 9-4-73; Ord. 1978-67. Passed 11-9-78.)

181.23 VACATION PAY.

Vacation pay paid in 1973 will not be subject to withholding deductions under Chapter 183. Vacation pay paid in 1974, and in all subsequent years, will be subject to withholding deductions under Chapter 183. (Res. 1973-47. Passed 9-4-73.)

181.24 OFF-SETTING INCOME WITH BUSINESS LOSSES.

(a) In the case of an individual having salary or wages subject to withholding under the City income tax, if such individual has a business, including farm and rental property, which reflects a loss for same accounting period, such individual may not off-set the business loss against income earned on salary or wages.

(b) If an individual operated more than one business, the profits of which were subject to City income tax such individual may off-set profits from one business with the net loss from another business, and report the resulting net profit or loss for City Income Tax purposes.

(c) In any event, the net loss on a business used to off-set net income from another business must exactly agree with the net loss as reported on Federal Income Tax Return Form 1040, as filed with the Federal Government. In no event shall losses incurred in any fiscal year be used to offset income earned in any other fiscal year.
(Ord. 1990-43. Passed 6-28-90.)