

CHAPTER 183**Income Tax**

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CROSS REFERENCES

Taxation - see CHTR. Art. VIII

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

183.01 PURPOSE, EFFECTIVE TAXATION PERIODS AND ALLOCATIONS.

The following taxes are hereby levied as permanent or temporary taxes.

(a) 1 % Permanent Tax. There is hereby levied a tax of one percent (1%) on salaries, qualifying wages, commissions and other compensation and on net profits as hereinafter provided for the purpose of providing funds for general municipal operations. (Ord. 01-109 approved 10-22-2001; Ord. 2003-116. Passed 12-16-03.)

(b) (1) In addition to the permanent one per-cent (1%) municipal income tax established by subsection (a) hereof, there is hereby submitted to the voters of the City of Fostoria, Wood, Hancock and Seneca Counties, Ohio a proposal to levy a temporary one per-cent (1%) income tax on salaries, wages, commissions and other compensation as hereinafter provided for the purpose of providing funds to be allocated for, Street Repair, Capital Improvement, Infrastructure, the Kaubisch Memorial Public Library, Parks and Recreation, Development, Beautification, and Citywide Cleanup, and remainder to the general fund.

(2) The funds collected under the provisions of subsection (b)(1) hereof establishing the renewal of the additional income tax shall be as follows:

- A. Street Repair: \$200,000.00
- B. Capital Improvement: \$200,000.00
- C. Infrastructure: \$100,000.00
- D. Kaubisch Memorial Public Library: \$30,000.00
- E. Development: \$30,000.00
- F. Parks and Recreation: \$30,000.00
- G. Citywide Cleanup and Beautification: \$10,000.00.

The balance of funds available from this tax shall be placed in the General Fund. This income tax levy shall be a new tax.

(3) The additional municipal income tax shall be levied, collected, and paid with respect to the wages, salaries, commissions, sheltered annuities, bonuses, other compensation, net profits of businesses and professions or other activities earned or paid on or after January 1, 2011. Subsection (b) hereof shall continue to be in effect until December 31, 2016.

(Ord. 2010-58. Passed 7-20-10.)

183.02 DEFINITIONS.

As used in this chapter, the following words shall have the meaning ascribed to them in this section, except 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 adjusted 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 a 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 this section 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.

Nothing in this chapter shall be construed as limiting or removing the ability of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.

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

(c) "Board of Review" means the Board created by and constituted as provided in Section 183.11.

(d) "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.

- (e) "City" means the City of Fostoria.
- (f) "City of Fostoria" means the lands within the corporate limits of the City.
- (g) "Commissioner of Taxation" means the person so designated and appointed by the Mayor and approved by Council or the person executing the duties of the aforesaid Commissioner.
- (h) "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.
- (i) "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 has only one domicile even though he may have more than one residence.
- (j) "Employer" means an individual, partnership, limited liability company, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a wage, salary, commission, sheltered annuity, bonus or other compensation basis.
- (k) "Employee" means one who works for wages, salary, commissions or other type of compensation in the servicing and/or under the contract of the employer.
- (l) "Fiscal year" means an accounting period of twelve months ending on any day other than December 31.
- (m) "Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.
- (n) "Generic form" means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability or for filing a refund claim that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income. Any municipality that requires taxpayers to file income tax returns, reports, or other documents shall accept for filing a generic form of such a return, report, or document if the generic form, once completed and filed, contains all of the information required to be submitted with the municipality's prescribed returns, reports, or documents.
- (o) "Gross receipts" means total income of taxpayers from whatever source derived.
- (p) "Income from a pass-through entity" means partnership income of partners, distributive shares of shareholders of an S corporation, membership interests of members of a limited liability company, or other distributive or proportionate ownership shares of other pass-through entities.
- (q) "Intangible income" means income of any of the following types: income yield, interest, capital gains, dividends, or other 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.
- (r) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
- (s) "Internet" means the international computer network of both Federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the World Wide Web.
- (t) "Joint Economic Development District" means districts created under the Ohio R.C. 715.70 through 715.83, as amended from time to time.
- (u) "Limited liability company" means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.
- (v) "Municipality" means the City of Fostoria.
- (w) "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 Section 183.03(f), required to be reported on schedule C, schedule E, or schedule F.

(x) "Nonqualified deferred compensation plan" means a compensation plan, described in section 3121(v)(2)(C) of the Internal Revenue Code.

(y) "Nonresident" means an individual domiciled outside the City of Fostoria.

(z) "Nonresident incorporated business entity" means an incorporated business entity not having an office or place of business within the Municipality.

(aa) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the City of Fostoria.

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

(cc) "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.

(dd) "Owner's proportionate share," with respect to each owner of a pass through entity, means the ratio of :

(1) The owner's income from the pass-through entity that is subject to taxation by the municipal corporation, to

(2) The total income from that entity of all owners whose income from the entity is subject to taxation by that municipal corporation.

(ee) "Pass-through entity" means a partnership, S corporation, limited liability company, or any other class of entity the income or profits from which are given pass through treatment under the Internal Revenue Code.

(ff) "Person" includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity.

(gg) "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.

(hh) "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 headquarters is situated. In the case of any employer not having its headquarters' activities at a place of business within the taxing municipality, the term means the largest place of business located in a taxing municipality.

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

(jj) "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.

(kk) "Resident" means an individual domiciled in the City of Fostoria.

(ll) "Resident incorporated business entity" means an incorporated business entity whose office, place of operation or business situs is within the City of Fostoria.

(mm) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City of Fostoria.

(nn) "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.

(oo) "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.

(pp) "Schedule C" means Internal Revenue Service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

(qq) "Schedule E" means Internal Revenue Service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.

(rr) "Schedule F" means Internal Revenue Service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.

(ss) "Tax Administrator" means the individual charged with direct responsibility for administration of a tax levied by a municipal corporation on income.

(tt) "Taxable income" means qualifying wages paid by an employer or employers, compensation for personal services, other income defined by statute as taxable, and/or adjusted federal taxable income from the operation of a business, profession, or other enterprise or activity adjusted in accordance with the provisions of this chapter.

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

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

(ww) "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.

(xx) 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. 2003-116. Passed 12-16-03.)

183.03 IMPOSITION OF TAX.

(a) Subject to the provisions of Section 183.13, an annual tax for the purposes specified in Section 183.01 shall be imposed on and after January 1, 1997, at the rate specified in Section 183.01 upon the following:

(1) On all qualifying wages, commissions, other compensation, and other taxable income earned or received by residents of the City of Fostoria.

(2) On all qualifying wages, commissions, other compensation, and other taxable income earned or received by nonresidents for work done, or services performed or rendered in the City of Fostoria.

(3) On the portion attributable to the City of Fostoria of the net profits earned by all resident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services conducted in the City of Fostoria. 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 City of Fostoria and not levied against such unincorporated business entity or pass-through entity.

(4) On the portion attributable to the City of Fostoria of the net profits by all nonresident 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 City of Fostoria whether or not such unincorporated business entity has an office or place of business in the City of Fostoria. On the portion of the distributive share of the net profits earned by a resident owner of a nonresident unincorporated business entity or pass-through entity not attributable to the City of Fostoria and not levied against such unincorporated business entity or pass-through entity.

(5) On the portion attributable to the City of Fostoria 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 City of Fostoria whether or not such corporations have an office or place of business in the City of Fostoria.

(6) On all income received as gambling winnings as reported on IRS Form W-2G, Form 5754 and or any other Form required by the Internal Revenue Service that reports winnings from gambling, prizes and lottery winnings.

(b) This section does not apply to taxpayers that are subject to and required to file reports under Chapter 5745 of the Ohio Revised Code. Except as otherwise provided in subsection (d) hereof, net

profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation in the same proportion as the average ratio of the following:

Multiply the entire net profits of the business by a business apportionment percentage to be determined by:

(1) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in such municipal corporation 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 such municipal corporation to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the municipal corporation under section 718.011 of the Ohio Revised Code.

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

(4) Adding together the percentages determined in accordance with subsections hereof, or such of the aforesaid percentages as are applicable to the particular taxpayer and dividing the total so obtained by the number of percentages used in deriving such total.

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

B. Provided however, that in the event a just and equitable result cannot be obtained under the formula provided for herein, the Tax Commissioner, upon application of the taxpayer, shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

(c) As used in subsection (b) hereof, "sales made in a municipal corporation" means:

(1) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes if shipped or delivered from a stock of goods within such municipal corporation;

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

(3) All sales of tangible personal property shipped from a place within such municipal corporation regardless of where title passes even though transported from a point outside such municipal corporation if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion.

(d) Operation Losses. Net losses incurred during any taxable period, in a business or other activity subject to this chapter, are deductible from all taxable net profits and earnings for the same period included in the taxpayer's return. Losses are deductible only in the taxable period in which they are incurred.

(e) Exceptions. The provisions of this chapter shall not be construed as levying a tax upon the following:

(1) Proceeds from welfare benefits, unemployment insurance benefits, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service.

(2) Proceeds of insurance, annuities, workers' compensation insurance, permanent disability benefits, compensation for damages for personal injury and like reimbursements, not including damages for loss of profits and wages.

(3) Dues, contributions and similar payments received by charitable, religious, educational organizations, or labor unions, trade or professional associations, lodges and similar organizations.

(4) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations and income of a decedent's estate during the period of administration (except such income from the operation of a business).

(5) Alimony.

(6) Compensation for damage to property by way of insurance or otherwise.

(7) Interest and dividends from intangible property.

(8) Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard (ORC 718.01).

(9) Income of any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio Revised Code 718.01 to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

(10) Any association or organization falling in the category listed in the preceding paragraph receiving income from non-exempt real estate, tangible or intangible personal property, or business activities of a type ordinarily conducted for profit by taxpayers operating for profit shall not be excluded hereunder.

(11) In the event any association or organization receives taxable income as provided in the preceding paragraph from real or personal property ownership or income producing business located both within and without the corporate limits of the Municipality, it shall calculate its income apportioned to the Municipality under the method or methods provided above.

(12) If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from municipal income tax.

(13) The rental value of a home furnished to a minister of the gospel as part of his compensation, or the rental allowance paid to a minister of the gospel as part of his compensation to the extent used by him to rent or provide a home pursuant to section 107 of the Internal Revenue Code.

(14) Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually. Such compensation in excess of one thousand dollars may be subjected to taxation. The payer of such compensation is not required to withhold municipal tax from that compensation.

(15) Compensation paid to an employee of a transit authority, regional transit authority, or a regional transit commission created under Chapter 306 of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the Municipality, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such tax by reason or residence or domicile in the Municipality, or the headquarters of the authority or commission is located within the Municipality.

(16) The Municipality shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the Municipality on twelve (12) or fewer days in a calendar year unless one of the following applies:

A. The individual is an employee of another person, the principal place of business of the individual's employer is located in another municipality in Ohio that imposes a tax applying to compensation paid to the individual for services paid on those days; and the individual is not liable to that other municipality for tax on the compensation paid for such services.

B. The individual is a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such promoter, all as may be reasonably defined by the Municipality.

(17) 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, except a municipal corporation may tax the following, subject to Chapter 5745 of the Ohio Revised Code:

- A. The income of an electric company or combined company;
- B. The income of a telephone company.

As used in this section, "combined company", "electric company", and "telephone company" have the same meanings as in section 5727.01 of the Ohio Revised Code.

(18) An S corporation shareholder's distributive share of net profits of the S Corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code, to the extent such distributive share would not be allocated or apportioned to this State under division (B)(1) and (2) of section 5733.05 of the Ohio Revised Code if the S corporation were a corporation subject to the taxes imposed under Chapter 5733 of the Ohio Revised Code.

(19) Generally the above noted items in this section are the only forms of income not subject to the tax. Any other income, benefits, or other forms of compensation shall be taxable.

(f) Payment made on pension plans such as "sheltered annuities" and other similar plans are not exempt.

(g) If excess depreciation results in a capital gain, the capital gain shall be considered as ordinary income.

(Approved by voters May 2, 1995; Ord. 2003-116. Passed 12-16-03.)

183.04 RETURN AND PAYMENT OF TAX.

(a) On or before April 15th of each year every resident subject to the provisions of this chapter shall, except hereinafter provided, make and file with the Tax Commissioner a municipal tax return on a form prescribed by and acceptable to the Tax Commissioner, whether or not a tax is due. Where the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the fifteenth (15th) day of the fourth month following the end of such fiscal year or period. The Tax Commissioner is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of municipal tax deducted by said employer or employers from the qualifying wages, commissions, other compensation, and other taxable income of a nonresident employee, and paid by him or them to the Tax Commissioner may be accepted as the return required of a nonresident employee whose sole income, subject to tax under this tax code, is such qualifying wages, commissions, other compensation, and any other taxable income.

(b) A husband and wife may file either separate returns or a joint return for municipal purposes, even though one of the spouses has neither taxable income or deductions included on the municipal return regardless of whether their federal and state returns were filed separately or jointly. If a joint City return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.

(c) The return shall be filed with the Tax Commissioner on a form or forms furnished by or obtainable upon request from the Tax Commissioner; or on a generic form, if the generic form, when completed and filed, contains all of the information required to be submitted with the Municipality's prescribed return and, if the taxpayer or return preparer filing the generic form otherwise complies with the tax code governing the filing of returns.

(d) The return shall set forth:

(1) The aggregate amounts of qualifying wages, commissions, other compensation received, allocated, apportioned or set aside, other income defined by statute as taxable, and gross income from any business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to said tax; and

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

(3) Such other pertinent statements, information returns, copies of federal or state tax returns and/or schedules, or other information as the Tax Commissioner may require, including a statement that the figures used in the return are the figures used for federal income tax adjusted to set forth only such income as is taxable under the provisions of this chapter.

(e) (1) Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of a municipal tax return by filing a copy of the taxpayer's federal extension request with the municipal tax division. Any taxpayer not required to file a federal income tax return may request an extension for filing in writing. The request for extension must be filed on or before the original due date for the annual return. If the request is granted, 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.

(2) The Tax Commissioner may deny a taxpayer's request for extension if the taxpayer:

A. Fails to timely file the request; or

B. Fails to file a copy of the federal extension request, (if applicable); or

C. Owes the Municipality any delinquent income tax, penalty, interest or other charge for the late payment or nonpayment of income tax; or

D. Has failed to file any required income tax return, report, or other related document for a prior tax period.

(3) The granting of an extension for filing a municipal tax return does not extend the due date as provided in this section for payment of the tax; hence, penalty and interest may apply to any unpaid tax during the period of the extension.

(f) The return shall also show the amount of the tax imposed by this chapter on such earnings and profits. The taxpayer making such return shall, at the time of the filing thereof, pay to the Tax Commissioner the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due has been deducted at the source pursuant to the provisions of Section 183.05, or where any portion of the tax shall have been paid by the taxpayer pursuant to the provisions of Section 183.06, 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 the return.

Within three months from the final determination of any federal tax liability affecting the taxpayer's City of Fostoria tax liability, such taxpayer shall make and file an amended City of Fostoria return showing income subject to the City of Fostoria tax based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.

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

(Ord. 2003-116. Passed 12-16-03.)

183.05 COLLECTION AT SOURCE.

(a) Each employer within or doing business within the City of Fostoria who employs one or more persons on a wage, salary, commission, sheltered annuity, bonus or other compensation basis shall deduct at the time of the payment of such wages, salary, commission, sheltered annuity, bonus or other compensation, the tax prescribed by Section 183.01 of the qualifying wages, salary, commission, sheltered annuity, bonus or other compensation due by the employer to such employee and shall, on or before the last day of the month following the close of each calendar quarter, make a return and pay to the Commissioner of Taxation the amount of taxes so deducted. If, however, the amount of money so withheld by an employer exceeds \$500.00 in any single month, then the return and payment for that month shall be made on or before the fifteenth day of the following month. Such return shall be on a form or forms prescribed by or acceptable to the Commissioner of Taxation and

shall be subject to the rules and regulations prescribed therefor by the Commissioner of Taxation.

(b) If any corporation, association, limited liability company or any other business entity required to file a form and to remit tax withheld or required to be withheld and remitted to the City of Fostoria under the provisions of this chapter fails for any reason to make the filing or payment, any of its employees having control or supervision of or charged with the responsibility for filing returns and making tax payments, or any officers, partners or proprietors who are responsible for carrying out the corporation's or business entity's, fiscal responsibilities, shall be jointly and severally personally liable for the failure, and subject to criminal prosecution under Section 183.99.

(c) The dissolution, termination, or bankruptcy of any corporation, association, limited liability company or any other business entity does not discharge a responsible officer's, employee's or trustee's liability for a prior failure to file a return or pay taxes, penalty and interest.

(d) Provided, however, that no person shall be required to withhold the tax on the qualifying wages or other compensation paid domestic servants employed exclusively in or about such person's residence.

(e) Each employer shall file a withholding tax reconciliation showing the sum total of all compensation paid all employees, the portion of which, (if any) was not subject to withholding along with an explanation for same, and the portion of which was subject to withholding, together with the amount of such withholdings remitted. Such return shall include information concerning each employee from whom municipal tax was withheld, showing the name, address, zip code and social security number of each such employee, the total amount of compensation paid during the year and the amount of municipal tax withheld. If the total tax withheld from any employee included tax withheld and remitted to another municipality, the amount of same shall be separately shown on the return of information to the municipality concerning each employee. The withholding tax reconciliation shall be filed by each employer on or before February 28 following the end of such calendar year.

(f) In addition to the wage reporting requirements of this section, any person required by the Internal Revenue Service to report on Form 1099-MISC payments to individuals not treated as employees for services performed shall also report such payments to the Municipality when the services were performed in the Municipality. The information may be submitted on a listing, and shall include the name, address and social security number (or federal identification number), and the amount of the payments made. Federal form(s) 1099 may be submitted in lieu of such listing. The information shall be filed annually on or before February 28 following the end of such calendar year. (Ord. 2003-116. Passed 12-16-03.)

183.06 DECLARATIONS.

(a) Every taxpayer or person who anticipates any taxable income which is not subject to Section 183.05 or who engages in any business, profession, enterprise or activity shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any.

(b) Such declaration shall be filed on or before April 15 of each year during the life of this chapter, or on or before the fifteenth (15th) day of the fourth (4th) month following the date the taxpayer becomes subject to tax for the first time.

Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration, on or before the fifteenth day of the fourth month following the start of each fiscal year or period.

(c) Such declaration shall be filed upon a form or forms furnished by, or obtainable from, the Commissioner of Taxation, which form or forms may require a statement that the figures used in making such declaration are the figures used in making the declaration of the estimate for the federal income tax adjusted to set forth only such income as is taxable under the provisions of this chapter.

(d) For taxpayers who are individuals, such declaration of estimated tax to be paid the

Municipality shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated annual tax and at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year.

For taxpayers that are not individuals, such declaration of estimated tax to be paid the Municipality shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated annual tax and at least a similar amount shall be paid on or before the fifteenth (15th) day of the sixth, ninth and twelfth months after the beginning of the calendar year.

(e) A declaration may be amended at any time. In the event an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(f) On or before the fifteenth day of the fourth month of the calendar or fiscal year, an annual return shall be filed and any balance which may be due the Municipality shall be paid therewith.

(g) Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration within 105 days from the end of the fiscal year or on or before the due date mandated for Federal Income Tax returns, whichever date is later, accompanied by a payment of at least one-fourth of the estimated annual tax shown due thereon, and shall make quarterly payments each three months thereafter.

(h) Within 105 days from the end of the fiscal year or on or before the due date mandated for Federal Income Tax returns, whichever date is later, of the year following that for which such declaration or intended declaration was filed, an annual return shall be filed and any balance which may be due the City of Fostoria shall be paid therewith in accordance with the provisions of Section 183.04.

(Ord. 2003-116. Passed 12-16-03.)

183.07 DUTIES OF THE COMMISSIONER OF TAXATION.

(a) The Commissioner of Taxation shall collect and receive the tax imposed by this chapter in the manner prescribed by this chapter from the taxpayers. The Commissioner of Taxation shall also keep an accurate record for a minimum of five years showing the amount received by him from each taxpayer required to file a declaration and/or make a return and the date of such receipt.

(b) The Commissioner is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns and payments.

(c) In any case where a taxpayer has failed to file a return or had filed a return which does not show the proper amount of tax due, the Tax Commissioner shall fix the amount of tax due the City from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so fixed, together with interest and penalties thereon, if any, and informing such taxpayer that such taxpayer has thirty days to appeal the decision of the Tax Commissioner to the Board of Review.

(d) Upon demonstration and documentation of good cause, the Tax Commissioner shall have the power to compromise penalty and interest liabilities imposed by this chapter.

(Ord. 2003-116. Passed 12-16-03.)

183.08 INVESTIGATIVE POWERS OF COMMISSIONER; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

(a) The Commissioner of Taxation, or any authorized employee, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or of any taxpayer or person subject to the tax for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Commissioner of Taxation, or his duly authorized agent or employee, the means, facilities and

opportunity for making such examinations and investigations as are hereby authorized.

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

(c) The refusal to produce books, papers, records and federal income tax returns, or the refusal of such examination by an employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this section or with an order of subpoena of the Commissioner of Taxation authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 183.99.

(d) Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential and no person shall disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the municipal corporation as authorized by this chapter. The Tax Commissioner of the municipal corporation may furnish copies of returns filed under this chapter to the Internal Revenue Service and to the State Tax Commissioner.

(e) Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00) or imprisonment for not more than six (6) months, or both.

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

(Ord. 2003-116. Passed 12-16-03.)

183.09 INTEREST AND PENALTIES.

(a) Interest. All taxes imposed and moneys withheld by employers under the provisions of this chapter and remaining unpaid after they have become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of one and one-half percent (1-1/2%) per month or fraction thereof.

(b) Penalties. In addition to interest as provided in subsection (a) hereof, penalties based on the unpaid tax are hereby imposed as follows:

(1) For failure to pay taxes due, other than taxes withheld: one percent (1%) per month or fraction thereof.

(2) For failure to remit taxes withheld from employees: one percent (1%) per month or fraction thereof.

(3) Minimum penalty twenty-five dollars (\$25.00).

(c) Exceptions.

(1) No penalty shall be assessed on additional taxes found on audit to be due when a return was timely filed in good faith and the tax paid thereon within the prescribed time.

(2) In the absence of fraud, neither penalty nor interest shall be assessed on any additional taxes resulting from a federal audit for federal income tax purposes provided an amended return is filed and the additional tax paid within three months after final determination of the federal tax liability.

(3) A taxpayer or employer shall have thirty days after receipt of notice of any proposed imposition of interest and penalties within which to file a written protest or explanation with the Commissioner. If no protest or explanation is filed within the prescribed time, the proposed imposition of interest and penalties shall become and be the final assessment. Upon filing of the written protest or explanation the Commissioner shall determine the assessment which may or may not be the same as the proposed assessment.

(d) Appeal from Assessment. Upon recommendation of the Tax Commissioner, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Tax Commissioner to recommend abatement of penalty and interest concerning an item of income or expense, the Board may nevertheless abate penalty or interest, or both.

(Ord. 2003-116. Passed 12-16-03.)

183.10 COLLECTION OF UNPAID TAXES.

All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of a substantial portion of income subject to this tax, or failure to file a return, an additional assessment shall not be made after five years from the time of payment of any tax due hereunder, provided, however, in those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitation, the period within which an additional assessment may be made by the Commissioner of Taxation shall be three years from the time of final determination of the federal tax liability. Taxes erroneously paid shall not be refunded unless a claim for refund is made within five years from the time of payment thereof, or within three years after final determination of the federal tax liability.

(Ord. 2003-116. Passed 12-16-03.)

183.11 BOARD OF REVIEW.

(a) A Board of Review, consisting of the City Law Director, the Mayor and the City Treasurer is hereby created. All rules and regulations and amendments or changes thereto, which are adopted by the Commissioner of Taxation under the authority conferred by this chapter, shall be approved by the Board before the same become effective. After such approval, such rules, regulations, amendments and changes shall be filed with the Clerk of Council and shall be open to public inspection.

(b) The City Law Director shall be chairman of the Board of Review, and the City Treasurer shall serve as secretary thereof. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions.

(c) Whenever the Tax Commissioner issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the Municipality, the Tax Commissioner shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

(d) Any person who is aggrieved by a decision of the Tax Commissioner and who has filed with the Municipality the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Review by filing a request with the Board. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Tax Commissioner issued the decision.

(e) The imposition of penalty and interest as prescribed in this chapter is not a sole basis for an appeal.

(f) The Board of Review shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant or other representative.

(g) The Board may affirm, reverse, or modify the Tax Commissioner's decision or any part of that decision. The Board shall issue a decision on the appeal within ninety (90) days after the Board's final hearing on the appeal, and send notice of its final decision by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the decision. The taxpayer or the Tax Commissioner may appeal the Board's decision as provided in section 5717.011 of the Ohio Revised Code.

(Ord. 2003-116. Passed 12-16-03.)

183.12 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

(a) Where a resident of the City of Fostoria is subject to a municipal income tax in another

municipality, he shall not pay a total municipal income tax on the same income greater than the tax imposed at the highest rate to which he is subject.

(b) Every individual taxpayer who resides in the City of Fostoria who receives net profits, wages, salaries, commissions, sheltered annuities, bonuses or other personal service compensation for work done or services performed or rendered outside of the City of Fostoria, if it is made to appear that he has paid a municipal income tax on the same income taxable under this chapter to another municipality, shall be allowed a credit against the tax imposed by this chapter of the amount so paid by him or in his behalf to such other municipality. The credit shall not exceed the tax assessed by this chapter on such income earned in such other municipality or municipalities where such tax is paid.

(c) A claim for refund or credit under this section shall be made in such manner as the Tax Commissioner may by regulation provide.

(Ord. 2003-116. Passed 12-16-03.)

183.13 SAVING CLAUSE.

If any sentence, clause, section or part of this chapter, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section or part thereof not been included herein.

(Ord. 2003-116. Passed 12-16-03.)

183.14 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(a) This chapter shall continue to be effective insofar as the levy of taxes as defined by Section 183.01.

(b) Annual returns for the last year in which this chapter shall be effective shall be filed on or before 105 days from any termination date of this chapter and any tax shown due thereon for such year which is not paid and collectible under the provisions of Sections 183.06 and/or 183.07 shall be paid within such 105 day period, except in those cases in which the time for filing returns and/or payment of the tax due has been extended in accordance with Section 183.05.

(Approved by voters May 2, 1995; Ord. 2003-116. Passed 12-16-03.)

185.15 ADOPTION OF OHIO REVISED CODE.

The City of Fostoria hereby adopts in its entirety Ohio Revised Code Chapter 718; Ohio Revised Code Section 733.85; and Ohio Revised Code Section 5703.49.

(Ord. 2003-116. Passed 12-16-03.)

183.99 VIOLATIONS AND PENALTY.

(a) Any taxpayer or person who:

- (1) Fails, neglects or refuses to make any return or declaration required by this chapter; or
- (2) Makes any incomplete, false or fraudulent return; or
- (3) Fails, neglects or refuses to pay the tax, penalties or interest imposed by this chapter; or
- (4) Fails, neglects or refuses to withhold the tax from his employees or remit such withholding to the Commissioner of Taxation; or

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

(6) Fails to appear before the Commissioner of Taxation and to produce his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Commissioner of Taxation; or

(7) Refuses to disclose to the Commissioner of Taxation any information with respect to the income or net profits of a taxpayer; or

(8) Fails to comply with the provisions of this chapter or any order or subpoena of the

Commissioner of Taxation authorized hereby; or

(9) Attempts to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more the six months, or both, for each offense.

(b) All prosecutions under this section shall be commenced within the time specified in Ohio R.C. Chapter 718.

(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, return or declaration, from filing such form, or from paying the tax.

(Ord. 2003-116. Passed 12-16-03.)