

A REGULATION TO EXPLAIN THE GROSS RECEIPTS FACTOR IN SECTIONS 183.02 AND 181.01 OF THE CODIFIED ORDINANCES OF THE CITY OF NEW ALBANY IN THE CASE OF SALES TRANSACTED BY MEANS OF DIRECT TO CONSUMER ECOMMERCE IN ORDER TO OBTAIN A JUST AND REASONABLE RESULT AND TO IMPROVE THE ECONOMIC DEVELOPMENT AND WELLBEING OF THE CITY OF NEW ALBANY

Pursuant to Sections 183.09 and 181.13 of the Codified Ordinances of the City of New Albany (the "Ordinances"), the Finance Director (hereinafter referred to as the "Tax Administrator") is charged with various responsibilities and duties relating to the administration and enforcement of Chapters 183 and 181 of the Ordinances. Division (c) of Section 183.09 of the Ordinances grants to the Tax Administrator, or to the Tax Administrator's designee, the authority to adopt, promulgate and enforce such rules and regulations relating to any matter or thing pertaining to the administration and enforcement of Chapters 183 and 181 of the Ordinances. Pursuant to division (b) of Section 183.21 of the Ordinances, the Board of Review must approve all rules and regulations adopted by the Tax Administrator under Chapter 183 of the Ordinances, and, Pursuant to Section 181.20, the Tax Administrator or designee may adopt and enforce rules and regulations pertaining to Chapter 181.

The Tax Administrator of the City of New Albany finds that advances in the use of electronic media have changed the manner in which businesses may promote and transact sales with consumers. The Tax Administrator finds that the use of electronic media to solicit sales represents a shift away from the traditional sales model; wherein, virtual solicitation occurs at the ecommerce point of sale commensurate with placing a live salesperson at the same physical location.

Furthermore, the Tax Administrator recognizes that targeted electronic solicitation of sales in many cases may replace the use of individuals to solicit sales directly from consumers. As a result, the Tax Administrator finds and determines that it is necessary to provide guidance with respect to the impact of electronic solicitation in sourcing sales for purposes of the three-factor formula for determining the net profits of a taxpayer doing business both within and without the City.

The Tax Administrator also recognizes that the City of New Albany seeks to promote the economic development of the City, and that the City of New Albany has determined that the location and expansion of businesses engaged in Direct to Consumer ecommerce (as subsequently defined in this Resolution) within the City is beneficial to the economic development and well-being of the City.

The Tax Administrator believes that modification of the Gross Receipts Factor provided by division (b)(3) of Sections 183.02 and Chapter 181.06 of the Ordinances is necessary with respect to certain sales transacted by means of Direct to Consumer ecommerce in order to obtain a just and reasonable result and to encourage businesses engaged in Direct to Consumer ecommerce to locate and expand operations within the City.

Therefore, the Tax Administrator promulgates and updates the following regulation to be applicable to tax years beginning on or after January 1, 2014.

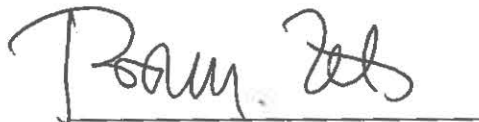
Dated this 9th day of July 2014, and updated effective January 1, 2016



Tax Administrator/Finance Director, City of New Albany

- A. For purposes of this regulation:
"City" means the City of New Albany.
1. "Direct to Consumer ecommerce" means soliciting sales directly from consumers using targeted electronic solicitation. Targeted electronic solicitation includes, but is not limited to, the following:
 - a. Paid search marketing, which displays an advertisement with a link to the seller's on-line or electronic store when a consumer performs a search involving topics related to the products offered for sale at the on-line store;
 - b. Programs that allow consumers to elect to receive electronic messages of upcoming sales or products at an on-line store operated by the seller;
 - c. Applications for smart phones and similar personal electronic devices that send text, email, or other electronic messages to a consumer regarding upcoming sales or new products at the seller's on-line store;
 - d. Programs pursuant to which the seller tracks on-line trends of its customers so that it can tailor promotions of interest to specific consumers; and
 - e. Such other activities as establish the use of electronic advertising that is directed towards, and tailored to, a specific consumer or group of consumers.
 2. "Finance Director" or "Tax Administrator" of the City of New Albany as defined in divisions (10) of Section 183.01 and 181.03(44), respectively of the Codified Ordinances of the City of New Albany, or that official's designee.
 3. "Gross Receipts Factor" means the percentage provided by application of division (b)(3) of Sections 183.02 and 181.06 of the Codified Ordinances of the City of New Albany.
 4. "Ordinances" means the Codified Ordinances of the City of New Albany as amended from time to time.
- B. Taxpayers doing business within and without the City must allocate and apportion their net profits within and without the City as provided by divisions (b) of Section 183.02 and 181.06 of the Ordinances.
- C. Sales made by a taxpayer that is engaged in Direct to Consumer ecommerce within and without the City shall not be considered to be sales within the City and the gross receipts from such sales may be excluded from the numerator of the Gross Receipts Factor if all of the following conditions are met:
1. The taxpayer is doing business within and without the City;
 2. The taxpayer maintains a place of business within the City from which it fulfills orders solicited by means of Direct to Consumer ecommerce;
 3. Sales are shipped from the location of the taxpayer within the City to a consumer's address located outside the City; and
 4. The consumer placing the order has been the recipient of targeted electronic solicitation by or on behalf of the taxpayer.
- D. This regulation does not authorize a taxpayer to exclude from either the numerator or the denominator of the Gross Receipts Factor, receipts from transactions involving Direct to Consumer ecommerce, where any of the following conditions exists:

1. The goods are shipped to an address located within the City; or
 2. The goods are billed to an address located within the City.
- E. A taxpayer calculating its Gross Receipts Factor pursuant to this regulation shall do so in a timely filed original tax return. This regulation does not apply with respect to the following:
1. As a basis for an amended return;
 2. As the basis for a refund claim relating to a tax return previously filed and with respect to which this regulation was not used; or
 3. In response to an inquiry, audit, or other determination by the Tax Administrator in order to reduce any other liability for the tax imposed by Chapters 183 and 181 of the Ordinances.
- F. A taxpayer calculating its Gross Receipts Factor pursuant to this regulation shall include with its return, a statement advising the Tax Administrator of its reliance upon this regulation and shall maintain records sufficient to establish that it is entitled to rely upon this regulation.
- G. This regulation shall not preclude a taxpayer, or the Tax Administrator, from otherwise resorting to division (b)(4)(B) of Section 183.02 and division (B) of Section (B) of section 181.062 of the Ordinances where necessary in order to achieve a just and equitable result.


David Wallace
Brian Zets

Date: 2/28/17

Clerk's Certification

I, Jennifer Mason, Clerk of Council of the City of New Albany, Counties of Franklin and Licking, State of Ohio, certify the foregoing is a true and correct copy of

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passed by the Income Tax Board of Review on **February 28, 2017.**



Jennifer H. Mason, Clerk

2/28/17

Date

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Pursuant to Section 183.09 of the Codified Ordinances of the City of New Albany (the "Ordinances"), the Finance Director is charged with various responsibilities and duties relating to the administration and enforcement of Chapter 183 of the Ordinances. Division (c) of Section 183.09 of the Ordinances grants to the Finance Director, or to the Finance Director's designee, the authority to adopt, promulgate and enforce such rules and regulations relating to any matter or thing pertaining to the administration and enforcement of Chapter 183 of the Ordinances. Pursuant to division (b) of Section 183.21 of the Ordinances, the Board of Review must approve all rules and regulations adopted by the Finance Director under Chapter 183 of the Ordinances.

The Finance Director of the City of New Albany finds that advances in the use of electronic media have changed the manner in which businesses may promote and transact sales with consumers. The Finance Director finds that the use of electronic media to solicit sales represents a shift away from the traditional sales model; wherein, virtual solicitation occurs at the ecommerce point of sale commensurate with placing a live salesperson at the same physical location.

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The Finance Director believes that modification of the Gross Receipts Factor provided by division (b)(3) of Section 183.02 of the Ordinances is necessary with respect to certain sales transacted by means of Direct to Consumer ecommerce in order to obtain a just and reasonable result and to encourage businesses engaged in Direct to Consumer ecommerce to locate and expand operations within the City.

Therefore, the Finance Director promulgates the following regulation to be applicable to tax years beginning on or after January 1, 2014.

Dated this 9th day of July 2014.



Finance Director, City of New Albany

- A. For purposes of this regulation:
- 1 "City" means the City of New Albany.
 - 2 "Direct to Consumer ecommerce" means soliciting sales directly from consumers using targeted electronic solicitation. Targeted electronic solicitation includes, but is not limited to, the following:
 - a. Paid search marketing, which displays an advertisement with a link to the seller's on-line or electronic store when a consumer performs a search involving topics related to the products offered for sale at the on-line store;
 - b. Programs that allow consumers to elect to receive electronic messages of upcoming sales or products at an on-line store operated by the seller;
 - c. Applications for smart phones and similar personal electronic devices that send text, email, or other electronic messages to a consumer regarding upcoming sales or new products at the seller's on-line store;
 - d. Programs pursuant to which the seller tracks on-line trends of its customers so that it can tailor promotions of interest to specific consumers; and
 - e. Such other activities as establish the use of electronic advertising that is directed towards, and tailored to, a specific consumer or group of consumers.
 - 3 "Finance Director" means the Finance Director of the City of New Albany as defined in division (10) of Section 183.01 of the Codified Ordinances of the City of New Albany, or that official's designee.
 - 4 "Gross Receipts Factor" means the percentage provided by application of division (b)(3) of Section 183.02 of the Codified Ordinances of the City of New Albany.
 - 5 "Ordinances" means the Codified Ordinances of the City of New Albany as amended from time to time.
- B. Taxpayers doing business within and without the City must allocate and apportion their net profits within and without the City as provided by division (b) of Section 183.02 of the Ordinances.
- C. Sales made by a taxpayer that is engaged in Direct to Consumer ecommerce within and without the City shall not be considered to be sales within the City and the gross receipts from such sales may be excluded from the numerator of the Gross Receipts Factor if all of the following conditions are met:
- 1 The taxpayer is doing business within and without the City;
 - 2 The taxpayer maintains a place of business within the City from which it fulfills orders solicited by means of Direct to Consumer ecommerce;
 - 3 Sales are shipped from the location of the taxpayer within the City to a consumer's address located outside the City; and
 - 4 The consumer placing the order has been the recipient of targeted electronic solicitation by or on behalf of the taxpayer.

- D. This regulation does not authorize a taxpayer to exclude from either the numerator or the denominator of the Gross Receipts Factor, receipts from transactions involving Direct to Consumer ecommerce, where any of the following conditions exists:
- 1 The goods are shipped to an address located within the City; or
 - 2 The goods are billed to an address located within the City.
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- 1 As a basis for an amended return;
 - 2 As the basis for a refund claim relating to a tax return previously filed and with respect to which this regulation was not used; or
 - 3 In response to an inquiry, audit, or other determination by the Finance Director in order to reduce any other liability for the tax imposed by Chapter 183 of the Ordinances.
- F. A taxpayer calculating its Gross Receipts Factor pursuant to this regulation shall include with its return, a statement advising the Finance Director of its reliance upon this regulation and shall maintain records sufficient to establish that it is entitled to rely upon this regulation.
- G. This regulation shall not preclude a taxpayer, or the Finance Director, from otherwise resorting to division (b)(4)(B). of Section 183.02 of the Ordinances where necessary in order to achieve a just and equitable result.



David Wallace



Brian Zets



Harry Ryan

CHAPTER 183

Income Tax

- 183.01 Definitions.
- 183.02 Imposition of tax.
- 183.03 Allocation of net profits.
- 183.04 Levy of tax.
- 183.05 Return and payment of tax.
- 183.06 Reserved.
- 183.07 Collection at source.
- 183.08 Declarations.
- 183.09 Powers and duties.
- 183.10 Investigative powers of the Chief Fiscal Officer.
- 183.11 Tax information confidential.
- 183.12 Collection of unpaid taxes.
- 183.13 Credits.
- 183.14 Exemptions.
- 183.15 Contract provisions.
- 183.16 Interest and penalties.
- 183.17 Allocation of funds.
- 183.18 Severability.
- 183.19 Exercise of powers.
- 183.20 Effective date.
- 183.21 Board of Review.
- 183.99 Violations; general penalties.

CROSS REFERENCES

Debt and tax limitations - see CHTR. 7.01

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

183.01 DEFINITIONS.

(a) For the purpose of this chapter, the following words shall have the meanings ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning.

(1) "Adjusted federal taxable income" means a C corporation's federal taxable income before net operating losses and special deductions as determined under Internal Revenue Code, adjusted as follows:

A. 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;

B. Add an amount equal to five percent (5%) of intangible income deducted under subsection (a)(1)A. 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;

C. Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly related to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code;

D. 1. Except as provided in subsection (a)(1)D.2. hereof, deduct income and gain included in federal taxable income to the extent the income and gain directly related to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code;

2. Subsection (a)(1)D.1. hereof does not apply to the extent the income or gain is described in Section 1245 or 1250 of the Internal Revenue Code;

E. Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

F. 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;

G. 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:

1. 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

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

Nothing in subsection (a)(1) hereof shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid 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.

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

(3) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions.

(4) "Board of Review" means the Board of Review created and constituted as provided in Section 183.21.

(5) "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, fiduciary, trust, association, corporation or any other entity including but not limited to the renting or leasing of property, real, personal or mixed.

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

(7) "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.

(8) "Employee" means one who works for wages, salary, commissions, or other types of compensation in the service of an employer.

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

(10) "Finance Director" means the individual charged with the responsibility of managing the fiscal affairs of the Municipality.

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

(12) "Form 5754, Statement by Person(s) Receiving Gambling Winnings" means Internal Revenue Service Form 5754 filed by a taxpayer pursuant to the Internal Revenue Code.

(13) "Form 1099-MISC, Miscellaneous Income" means Internal Revenue Service Form 1099-MISC filed by a taxpayer pursuant to the Internal Revenue Code.

(14) "Form W-2, Wage and Tax Statement" means Internal Revenue Service Form W-2 filed by a taxpayer pursuant to the Internal Revenue Code.

(15) "Form W-2G, Certain Gambling Winnings" means Internal Revenue Service Form W-2G filed by a taxpayer pursuant to the Internal Revenue Code.

(16) "Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(17) "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 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.

(18) "Gross receipts" means total income of taxpayers from whatever source derived.

(19) "Income from a pass-through entity" means partnership income of partners, membership interests of members of a limited liability company, or other distributive or proportionate ownership shares of income from other pass-through entities.

(20) "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 defined in Chapter 5701 of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, investments in real estate 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.

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

(22) "Internet" means the international computer network of both Federal and nonfederal interoperable packet switched data networks, including the graphical sub network known as the World Wide Web.

(23) "Joint Economic Development District" means districts created under the Ohio Revised Code sections 715.70 through 715.83, as amended from time to time.

(24) "Limited liability company" means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.

(25) "Municipality" means the Village of New Albany, Ohio.

(26) "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 183.02, required to be reported on federal schedules C, E or F.

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

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

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

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

A. "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.

B. "Owner" means a partner of a partnership, a member of a limited liability company, or other person with an ownership interest in a pass-through entity.

C. "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.

D. "Pass-through entity" means a partnership, 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.

(31) "Person" includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity shall mean the parties or members thereof, and as applied to corporations, the officers thereof.

(32) "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 any one or more of his regular employees regularly in attendance.

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

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

(35) "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)(2) of the Ohio Revised Code.

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

(37) "Resident unincorporated business entity" means an unincorporated business entity whose office; place of operations or business situs is within the Municipality.

(38) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the Municipality.

(39) "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.

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

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

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

(43) "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.

(44) "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.

(45) "Taxable year" means the corresponding tax-reporting period as prescribed for the taxpayer under the Internal Revenue Code. In the case of a return for a fractional part of a year, the period for which such return is required to be made.

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

(47) "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.

(b) The singular shall include the plural, the masculine gender shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates.
(Ord. 43-2003. Passed 1-13-04.)

183.02 IMPOSITION OF TAX.

(a) To provide for the purposes of general municipal operations, maintenance, new equipment, and capital improvements of the Municipality, there is hereby levied a tax at the rate of 2% per annum upon the following:

(1) On all qualifying wages, salaries, including sick, vacation, severance and any pay as part of an employee buyout or wage continuation plan, commissions, lottery winnings, prize moneys, tips and gratuities, and other compensation earned, received, accrued or in any way set apart unto residents of the Municipality.

(2) On all qualifying wages, salaries, including sick, vacation, severance and any pay as part of an employee buyout or wage continuation plan, commissions, tips and gratuities, and other compensation earned, received, accrued or in any way set apart unto nonresidents of the Municipality for work done or services performed or rendered in the municipality.

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

(4) On the portion attributable to the Municipality 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 Municipality, whether or not such unincorporated business entity has an office or place of business in the Municipality. 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 Municipality and not levied against such unincorporated business entity or pass-through entity.

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

(6) On all income received as gambling winnings as reported on Internal Revenue Service 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) Businesses Both In and Outside the Municipal Boundaries: 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 of 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 and services, wherever made or performed.

(4) Adding together the percentages determined in accordance with subsections(b)(1), (2) and (3) 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 Finance Director, 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" mean:

(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 titles 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 to purchasers outside such municipal corporation regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(d) Except as otherwise provided in subsection (e) hereof, net profit from rental activity not constituting a business or profession shall be subject to tax only by the municipal corporation in which the property generating the net profit is located.

(e) This section does not apply to individuals who are residents of the Municipality and, except as otherwise provided in Section 718.01 of the Ohio Revised Code, the Municipality may impose a tax on all income earned by residents of the Municipality to the extent allowed by the United States Constitution.

(f) Net Operating Loss.

(1) The Village of New Albany does not allow a net operating loss carryback or carryforward.

(2) Nothing in Chapter 718.01 of the Ohio Revised Code requires a municipal corporation to allow a net operating loss carryback or carryforward.

(g) Consolidated Returns.

(1) A consolidated return may be filed by a group of corporations who are affiliated through stock ownership if that affiliated group filed for the same tax period a consolidated return for Federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code. A consolidated return must include all companies that are so affiliated.

(2) Once a consolidated return has been filed for any taxable year, consolidated returns shall continue to be filed in subsequent years unless permission in writing is granted by the Finance Director to file separate returns or until a corporation is no longer associated with other corporation(s).

(h) Exclusions. 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) Compensation attributable to a plan or program described in Section 125 of the Internal Revenue Code.

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

(5) 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).

(6) Alimony paid or received.

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

(8) Interest and dividends from intangible property.

(9) 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).

(10) Income of any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio Revised Code Section 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.

(11) 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.

(12) 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.

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

(14) 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.

(15) Compensation paid under Sections 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 (\$1,000) may be subjected to taxation. The payer of such compensation is not required to withhold Municipal tax from that compensation.

(16) 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 of residence or domicile in the Municipality, or the headquarters of the authority or commission is located within the Municipality.

(17) 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.

(18) The income of a public utility, when that public utility is subject to the tax levied under Sections 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 subsection (h)(18) hereof, "combined company", "electric company", and "telephone company" have the same meanings as in Section 5727.01 of the Ohio Revised Code.

(19) An S corporation shareholder's distributive share of net profits or losses of the S corporation.

(20) 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.

(Ord. 43-2003. Passed 1-13-04.)

183.03 ALLOCATION OF NET PROFITS.

(EDITOR'S NOTE: The provisions of former Section 183.03 are included in Section 183.02.)

183.04 LEVY OF TAX.

(EDITOR'S NOTE: The provisions of former Section 183.04 are included in Section 183.02.)

183.05 RETURN AND PAYMENT OF TAX.

(a) Each person who engages in business or other activity, or whose salaries, wages, commissions, lottery winnings, prize moneys, tips and gratuities, and other compensation and other taxable income is subject to the tax imposed by this Chapter shall, whether or not a tax be due thereon, make and file a return on or before April 15 of each year with the Finance Director or his/her delegate, on a form prescribed by and acceptable to the Municipality, setting forth the aggregate amount of qualifying salaries, wages, commissions, lottery winnings, prize moneys, tips and gratuities, other compensation and other taxable income earned during the preceding year and subject to the tax, together with such other pertinent information as the Finance Director or his/her delegate may require. Provided, however, that when the return is made for a fiscal year or other period different from the calendar year, the return shall be made on or before the fifteenth day of the fourth month after the close of that fiscal year or other period.

(b) 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 Finance Director 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 other taxable income.

(c) Each person residing in the Village, 18 years of age or older, shall be required to file a Village Income Tax Return, on or before April 15 of each year with the Finance Director or his/her delegate. When the return is made for a fiscal year or other period different from the calendar year, the return shall be made on or before the fifteenth day of the fourth month after the close of that fiscal year or other period.

(d) 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 nor deductions included on the Municipal return, regardless of whether their federal and state returns were filed separately or jointly. If a joint Village 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.

(e) The return shall be filed with the Finance Director or his/her delegate on a form or forms furnished by or obtainable upon request from the Finance Director or his/her delegate; or on a generic form, if the generic form, when completed and filed, contains all 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.

(f) 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/state/other municipal tax returns and/or schedules, or other information as the Finance Director 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.

(g) Extensions.

(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 income tax return by filing a copy of the taxpayer's federal extension request with the Finance Director. Any taxpayer not required to file a federal income tax return may request an extension for filing a Municipal income tax return 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 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 Finance Director 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 extension at the rate set out by Section 183.16. No penalty shall be assessed in those cases in which the return is filed within the extension period provided all other filing and payment requirements of the Tax Code have been met. Any extension by the Finance Director shall be granted upon the condition that declaration filing and payment requirements have been fulfilled; however, if, upon further examination it then becomes evident that declaration filing and payment requirements have not been fulfilled, penalty and interest may be assessed in full and in the same manner as though no extension had been granted.

(h) Payments With Returns.

(1) The taxpayer making a return shall, at the time of the filing thereof, pay to the Finance Director the amount of taxes shown as due. However, credit shall be allowed for:

- A. Any portion of the tax so due which shall have been deducted at the source pursuant to the provisions of Section 183.07; and
- B. Any portion of said tax which shall have been paid by the taxpayer pursuant to the provisions of Section 183.05; and
- C. Credit to the extent allowed by Section 183.13 for tax paid to another municipality.

(2) Subject to the limitations contained in Section 183.13 of this Tax Code, any taxpayer who has overpaid the amount of tax to which the Municipality is entitled under the provisions of this Tax Code 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 and one cent (\$1.01) shall be collected or refunded.

(i) Amended Return and Refund For Overpayment.

(1) Where necessary, an amended return shall be filed in order to report additional income and pay an additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 183.05 and 183.08. The Finance Director shall provide the format in which such amended return shall be filed. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

(2) Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's municipal tax liability, such taxpayer shall make and file an amended municipal return showing income subject to the municipal tax based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make a claim for refund of any overpayment.

(3) A. No refund shall be allowed unless a written request is presented to the Finance Director or his/her delegate within three years of the date the taxes were due or the return was filed, whichever is later.

B. For purposes of refunds sought under this section, the time specified in subsection (i)(3) hereof shall commence upon the first to be filed of either the employer's Form W1 (Employer's Return of Tax Withheld), the employer's W3 (Withholding Reconciliation), the current or former employee's personal income tax return, or the business income tax return.

(j) Information returns, schedules and statements required to support tax returns which are incomplete without such information shall be filed within the time limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements shall be a violation of this Tax Code. Provided, however, that the taxpayer shall have ten (10) days after notification by the Finance Director, or his authorized representative, to file the items required by this paragraph.

(Ord. 43-2003. Passed 1-13-04.)

183.06 RESERVED.

183.07 COLLECTION AT SOURCE.

(a) Withholding By Employer. Each employer within or doing business within the Municipality who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct, when such salary, wage, commission or other compensation is paid, allocated, apportioned or set aside, the tax at the rate provided in Section 183.02 hereof on the qualifying wages due by such employer to each such employee. The employer shall make a return and pay to the Finance Director the amount of taxes so deducted in accordance with subsection (b) hereof. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld. Every employer or officer of a corporation is deemed to be a trustee for this Municipality in collecting and holding the tax required under this chapter to be withheld and the funds so collected by such withholding are deemed to be trust funds.

(b) Employers shall pay to the Municipality all income taxes withheld or required to be deducted and withheld on either a semi-monthly, monthly or quarterly basis depending on the amount of taxes involved according to the following payment schedule:

(1) Semi-monthly payments of the taxes deducted are to be made by an employer if:

- A. The total taxes deducted in the prior calendar year were \$12,000 or more, or
- B. The amount of taxes deducted for any month in the preceding quarter exceeded \$1,000.

Such payment shall be paid to the Municipality within three banking days after the fifteenth and the last day of each month.

(2) Monthly payments of taxes withheld shall be made by an employer if the taxes withheld in the prior calendar year were less than \$12,000 but more than \$1,199 or if the taxes withheld during any month for the preceding quarter exceeded one hundred dollars (\$100.00). Such payments shall be made to the Municipality within 15 days after the close of each calendar month.

(3) All employers not required to make semimonthly or monthly payments of taxes withheld under subsections (b)(1) and (2) hereof shall make quarterly payments no later than the last day of the month following the end of each quarter.

(c) Each employer, on or before February 28, unless written request for 30 days extension is made to and granted by the Finance Director or his/her delegate, following any calendar year in which such deductions have been made, or should have been made by an employer, shall file with the Finance Director or his/her delegate an information return (Village of New Albany: Reconciliation of New Albany Income Tax withheld from wages) for each employee from whom income tax has been or should have been withheld showing the name, address, zip code and social security number of each such employee, the total amount of salaries, wages, commissions, lottery winnings, prize moneys, tips and gratuities and other compensation paid the employee during the year and the amount of municipal income tax withheld from each employee. 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.

(d) 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.

(e) An employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued.

(1) An employee is not relieved from liability for a tax by the failure of the employer to withhold the tax as required by the Municipality or by the employer's exemption from the requirement to withhold the tax.

(2) The failure of an employer to remit to the Municipality the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax withheld.

(f) The officer or the employee having control or supervision of or charged with the responsibility of filing the report and making payment, is personally liable for failure to file the report or pay the tax due as required by this section. The dissolution of a corporation does not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or pay tax due.

(Ord. 43-2003. Passed 1-13-04.)

183.08 DECLARATIONS.

(a) Requirements for Filing. Every person who anticipates any taxable income which is not subject to Section 183.07 or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 183.02(a)(4) and (5) 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; provided, however, if a person's income is wholly from qualifying wages, from which the tax will be withheld and remitted to the Municipality in accordance with Section 183.07, such person need not file a declaration.

(b) Dates for Filing.

(1) 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.

(2) Those taxpayers having a fiscal year or period differing from the calendar year basis shall file a declaration on or before the fifteenth (15th) day of the fourth (4th) month after the beginning of each fiscal year period.

(c) Forms; Credit for Tax Withheld or Paid Another Municipality. Such declaration shall be filed upon a form furnished by, or obtainable from the Finance Director or his/her delegate, provided, however, credit shall be taken for the municipal tax to be

withheld from any portion of such income. In accordance with the provisions of Section 183.13, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality.

(d) The original declaration, or any subsequent amendment thereof, may be increased or decreased on or before any subsequent quarterly payment day as provided herein. In the event that 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.

(e) For taxpayers who are individuals, such declarations 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 (7th), tenth (10th) and thirteenth (13th) months after the beginning of the taxable year.

(f) For taxpayers who 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 taxable year.

(g) The mere submission of a declaration estimating a tax liability shall not constitute filing unless accompanied by the required payment.

(h) On or before the fifteenth day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the Municipality shall be paid therewith in accordance with the provisions of Section 183.05.

(i) An entity (individual, corporate or association) may pay 100% of the prior year's tax in four equal installments in the current year and avoid any underpayment of estimated tax penalty. Prior year tax of zero or a prior year loss will not avoid penalty. No penalty for failure to pay estimated tax will apply to an entity whose tax for the year, after credit for tax withheld, is less than one hundred dollars (\$100.00). A declaration of estimated tax which is less than 90% of the tax shown to be due on the final return shall not be considered in good faith. The difference shall be subject to penalties and interest as provided for in Section 183.16.

(Ord. 43-2003. Passed 1-13-04.)

183.09 POWERS AND DUTIES.

(a) The Finance Director or his/her delegate shall collect and receive the tax imposed by this chapter in the manner prescribed by this chapter, and he shall also keep an accurate record showing payment received by him from each taxpayer and the date of the payment.

(b) The Finance Director shall have the power to appoint a delegate to assist in the administration of this chapter, and such Administrator shall be responsible to the Finance Director.

(c) The Finance Director and his/her delegate are hereby charged with the administration and enforcement of the provisions of this chapter and they are hereby empowered 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.

(d) In any case where a taxpayer has failed to file a return or failed to pay the tax due on a return or has filed a return which does not show the proper amount of tax due, the Finance Director or his/her delegate may determine the amount of tax appearing to be due the Municipality from the taxpayer based on any information in his possession and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

(e) The Finance Director or his/her delegate, or any authorized employee, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or of any taxpayer or person subject to, or who the Finance Director or his/her delegate believes is subject to the provisions of this chapter for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter, and every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Finance Director or his/her delegate, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(f) The Finance Director and his/her delegates are each hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or would 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.

(Ord. 43-2003. Passed 1-13-04.)

183.10 INVESTIGATIVE POWERS OF THE CHIEF FISCAL OFFICER.

(EDITOR'S NOTE: The provisions of former Section 183.10 are included in Section 183.09.)

183.11 TAX INFORMATION CONFIDENTIAL.

Any information gained as the result of any returns, investigations, hearing or verifications required or authorized by this chapter shall be confidential, except for official purposes, or except in accordance with proper judicial order, or except as hereinafter provided. The Finance Director or his/her delegate may furnish the Internal Revenue Service, Treasury Department of the United States, the Tax Commissioner of Ohio, and the duly authorized income tax administrator of any other Village or state with copies of the returns filed. The Finance Director or his/her delegate is also authorized to enter into agreements for the exchange of any information with any of the foregoing Federal, State or municipal officials. Any person divulging such information, except as hereinbefore authorized, shall be deemed guilty of a misdemeanor of the third degree and shall be subject to a fine of not more than five hundred dollars (\$500.00) or imprisoned for not more than sixty (60) days, or both. Each disclosure shall constitute a separate offense.

(Ord. 43-2003. Passed 1-13-04.)

183.12 COLLECTION OF UNPAID TAXES.

(a) All taxes imposed by this chapter shall be collectible together with any interest and penalties thereon, by suit, or other debts of like amount are recoverable.

(b) The Finance Director or his/her delegate is authorized to institute civil law suits to collect delinquent taxes due and owing the Municipality by virtue of the provisions of this chapter. The Finance Director or his/her delegate is authorized to waive penalties and interest and compromise tax liability and the right to accept waiver of state statutes of limitation.

(Ord. 43-2003. Passed 1-13-04.)

183.13 CREDITS.

(a) Every individual taxpayer who resides in the Municipality who received net profits, salaries, wages, commissions, lottery winnings, prize moneys, tips and gratuities or other compensation for work done or services performed or rendered outside of the Municipality, if it is documented 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 on such income, earned in such other municipality or municipalities where such tax is paid.

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

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

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

(Ord. 43-2003. Passed 1-13-04.)

183.14 EXEMPTIONS.

(a) The provisions of this chapter shall not be construed to tax the military pay or allowance of members of the armed forces of the United States, or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property or tax-exempt activities.

- (b) The tax provided for herein shall not be levied on the personal earnings of any natural person under 18 years of age.

(Ord. 43-2003. Passed 1-13-04.)

183.15 CONTRACT PROVISIONS.

No contract on behalf of the Municipality for works or improvements of the Municipality shall be binding or valid unless such contract contains the following provisions:

"Said _____ hereby further agrees to withhold all municipal income taxes due or payable under the provisions of Chapter 183 of the Codified Ordinances of New Albany, Ohio, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such municipal income taxes due under such chapter for services performed under this contract."

(Ord. 43-2003. Passed 1-13-04.)

183.16 INTEREST AND PENALTIES.

(a) All taxes imposed and monies withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid after they become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of eighteen percent (18%) per annum or fraction thereof, and the taxpayers upon whom such taxes were imposed by this chapter shall be liable in addition thereto, to a penalty of 10% of the amount of the unpaid tax.

(b) In addition to interest as provided in subsection (a) hereof, penalties for nonpayment of taxes due from taxpayers, moneys required to be withheld by employers under the provisions of this Chapter, and for failure to timely file tax returns are hereby imposed as follows:

(1) In the case of taxpayers upon whom such taxes are imposed, ten percent (10%) of the amount of unpaid tax if paid after the same has become due; provided that penalty shall not be assessed on an additional tax assessment made by the Finance Director or his/her delegate when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Finance Director or his/her delegate; and provided further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after final determination of the federal tax liability.

(2) In the case of taxpayers who fail to file tax returns when due as required by this Chapter, the following penalties shall apply:

A. Complete tax return, whether or not a tax be due thereon, is filed not more than 30 days late, penalty shall be twenty-five dollars (\$25.00).

B. Complete tax return, whether or not a tax be due thereon, is filed more than 30 but not more than 120 days late, penalty shall be fifty dollars (\$50.00).

C. Complete tax return, whether or not a tax be due thereon, is filed more than 120 days late, penalty shall be one hundred dollars (\$100.00).

(3) Any annual withholding reconciliation, including employee W-2 information returns, not submitted on or before February 28 of each year, shall be subject to a penalty of twenty-five dollars (\$25.00) effective March 1 and increased by twenty-five dollars (\$25.00) the first day of each month thereafter that such employer remains in violation, to a maximum of one hundred dollars (\$100.00). Upon written request to the Finance Director, a thirty (30) day extension may be granted.

(Ord. 43-2003. Passed 1-13-04.)

183.17 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be applied for the following purpose and in the following order, to wit:

(a) Such part thereof as shall be necessary to defray all costs of collecting the taxes levied by this chapter and enforcing the provisions hereof;

(b) The allocation required by Section 187.13;

(c) Two percent (2%) to the Parks Improvement Fund;

(d) Ten percent (10%) to the Capital Improvement Fund;

(e) The remainder to be deposited into the General Fund for the purpose of paying the cost of General Municipal Operations.

(Ord. 43-2003. Passed 1-13-04.)

183.18 SEVERABILITY.

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 the Council of the Municipality of New Albany that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not been included herein.

(Ord. 43-2003. Passed 1-13-04.)

183.19 EXERCISE OF POWERS.

Nothing in this chapter shall be deemed to prevent the exercise of any of the powers and duties imposed on any officer or division of the Municipality by any person or agency, including another municipal corporation, with which the Municipality may contract for the administration and/or enforcement of the provisions of this chapter, it being the intent hereof that all enforcement powers granted to any officer or division of the Municipality may be exercised by such contracting party.

(Ord. 43-2003. Passed 1-13-04.)

183.20 EFFECTIVE DATE.

The income tax imposed by this chapter and all conditions, rules and regulations pertaining to same and to the collection of same, shall take effect at 12:01 a.m. January 1, 2004, and shall remain in effect unless and until repealed or amended by the Council pursuant to the Ohio Revised Code and the Charter of the Municipality of New Albany.

(Ord. 43-2003. Passed 1-13-04.)

183.21 BOARD OF REVIEW.

(a) A Board of Review, consisting of a chairperson and two other individuals to be appointed by the Village Council with a recommendation from the Finance Committee is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 183.11 with reference to the confidential character of information required to be disclosed by the chapter shall apply to such matters as may be heard before the Board on appeal.

(b) All rules and regulations and amendments or changes thereto, which are adopted by the Finance Director under the authority conferred by this chapter, must be approved by the Board of Review before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the Finance Director, and, at the request of the taxpayer or Finance Director, is empowered to substitute alternate methods of apportionment. After such approval, such rules, regulations and changes shall be filed with the Clerk of Council and shall be open to public inspection.

(c) Whenever the Finance Director 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 Finance Director 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 Finance Director 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 Finance Director has issued the decision.

(e) The imposition of penalty and interest as prescribed in the Codified Ordinances of the Municipality 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 Finance Director'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 Finance Director may appeal the Board's decision as provided in Section 5717.011 of the Ohio Revised Code.

(h) Each Board of Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Section 149.43 of the Ohio Revised Code. Hearings requested by a taxpayer before a Board of Review created pursuant to this section are not meetings of a public body subject to Section 121.22 of the Ohio Revised Code.

(Ord. 43-2003. Passed 1-13-04.)

183.99 VIOLATIONS; GENERAL PENALTIES.

No person subject to the provisions of this chapter shall fail, neglect or refuse to make any return or declaration, and no employer shall fail, neglect or refuse to deduct and withhold the taxes or pay the taxes imposed by this chapter, and no taxpayer shall fail, neglect or refuse to pay the tax, interest and penalties imposed by this chapter, and no person shall refuse to permit the Finance Director or his/her delegate, or his duly authorized agent or employee, to examine the books, records and papers of a taxpayer, and no person shall knowingly make an incomplete, false or fraudulent return, or attempt to do anything whatever to avoid payment of the whole or any part of the tax under this chapter.

(a) Any person divulging information in violation of Section 183.11, except as authorized in Section 183.11, shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than six months, or both. Each disclosure shall constitute a separate offense.

(b) Whoever violates this section shall be fined not more than two hundred fifty dollars (\$250.00) for the first offense, and not more than five hundred dollars (\$500.00) or imprisoned for not more than 90 days, or both, for a second and subsequent offense.

(c) The failure of an employer or taxpayer to receive or procure a return or declaration form shall not excuse him from making a return or declaration or paying the tax levied under this chapter.

(d) Whosoever violates any provision of Sections 183.02 through 183.99 shall be guilty of a misdemeanor of the third degree and fined not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) for the first offense. For each subsequent offense such person shall, with a corporation, be fined not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) or imprisoned not more than 60 days, or both.

(Ord. 43-2003. Passed 1-13-04.)