

## CHAPTER 35: TAXATION

## Section

## Municipal Income Tax

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## MUNICIPAL INCOME TAX

**§ 35.01 PURPOSE**

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities, and capital improvements of the city there shall be, and is hereby levied a tax on salaries, wages, commissions, and other compensation, and on net profits as hereinafter provided.

**§ 35.02 DEFINITIONS**

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADJUSTED FEDERAL TAXABLE INCOME** means a "C" corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute "Adjusted Federal Taxable Income" as if the pass-

through entity was a "C" corporation. This definition does not apply to any taxpayer required to file a return under the Ohio Revised Code (ORC) section 574.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2006.

**ASSOCIATION.** A partnership, limited partnership, limited liability company or any other form of unincorporated enterprise, owned by one or more persons.

**BOARD OF REVIEW.** The Board created by and constituted as provided for in § 35.24.

**BUSINESS.** 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.

**CORPORATION** A corporation, sub s 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.

**DAY** means a full day or any fractional part of a day.

**DOMICILE.** The place where a taxpayer has his true, fixed and permanent legal residence. A taxpayer may have more than one residence but not more than one domicile. Factors to be considered when determining domicile include, but are not limited to: registration of vehicles, current driver's license, address on Federal and State income tax returns; address of voter's registration, attendance at schools by taxpayer's family, county of taxpayer's estate of deceased.

**EMPLOYEE.** One who works for wages, salary, commissions, or other types of compensation in the services of an employer.

**EMPLOYER.** 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.

**FISCAL YEAR.** An accounting period of 12 months ending on any day other than December 31.

**FORM 2106.** Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

**GENERIC FORM.** An electronic or paper form designated for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or separate requests for refunds that contain all the information required on Leesburg's regular tax return and estimated payment forms, and are in a similar format that will allow processing of the generic forms without altering the city's procedures for processing forms.

**GROSS RECEIPTS.** Total revenue derived from sales, work done, or service rendered.

**INCOME.** All monies, subject to limitations imposed by ORC718, derived from any source whatsoever, including but not limited to:

- (A) All income, qualifying wages, commissions, other compensation and other income from whatever source received by residents of the municipality.
- (B) All income, qualifying wages, commissions, other compensation and other income from whatever source received by nonresidents for work done or services performed or rendered or activities conducted in the municipality.
- (C) The portion attributable to the municipality of the net profit of all unincorporated businesses, associations, professions, corporations, or other entities from sales made, work done, service performed or rendered, and business or other activities conducted in the municipality.

**INTANGIBLE INCOME.** Income of any of the following types: Income yield, interest, 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 R.C. Chapter 5701.

**INTERNAL REVENUE CODE.** The Internal Revenue Code of 1986, 100 Stat. 2085, 26 USC 1, et seq., as amended, or any replacements or amendments thereto.

**INTERNET.** The international computer network of both federal and non-federal interoperable packet switched data networks, including the graphical subnetwork known as the worldwide web (www).

**NETPROFITS.** (See **ADJUSTED FEDERAL TAXABLE INCOME**)

**NON-RESIDENT.** A person, whether an individual, association, corporation, or other entity, domiciled outside the city.

**NON-RESIDENT UNINCORPORATED BUSINESS ENTITY.** An unincorporated business entity not having any office or place of business within the municipality.

**OTHER PAYER.** Any person that pays to an individual any item included in the taxable income of the individual, other than the individual's employer or employer's agent.

**PERSON.** Every natural person, partnership, fiduciary, association, corporation, or other entity. Whenever used in any clause prescribed and imposing a penalty, the term PERSON shall include in the case of an association or corporation not having any partner, member or officer within the municipality, any employee or agent of the association or corporation who can be found within the corporate limits of the municipality.

**PLACE OF BUSINESS.** 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 employees, regularly in attendance.

**QUALIFYING WAGE** means wages as defined in Section 3121 (a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. "Qualifying wage" represents employees' income from which municipal tax shall be deducted by the employer, and any wages not considered a part of the "qualifying wage" shall not be taxed by the municipality. This definition is effective January 1, 2006.

**RESIDENT** A person, whether an individual, association, corporation, or other entity domiciled in the city.

**RESIDENT UNINCORPORATED BUSINESS ENTITY** business entity not having any office or place of business within the municipality.

**RETURN PREPARER.** 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.

**SCHEDULE C.** Internal Revenue Service Form 1040 Schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

**TAX YEAR.** The calendar year, or the fiscal year upon the basis of which net profits are to be computed under this subchapter and, in the case of a return for a fractional part of a year, the period for which the return is required to be made.

**TAX COMMISSIONER.** The Tax Commissioner of the city or the person executing the duties of the commissioner.

**TAXPAYER.** A person, whether an individual, partnership, association, corporation, or other entity, required by this subchapter to file a return or pay a tax.

### **§ 35.03 IMPOSITION OF TAX**

Subject to provisions of § 35.05, an annual tax, for the purposes specified in § 35.01, shall be, and is hereby levied on and after January 1, 2006 at the rate of 1.0% per annum upon the following:

- (A) On all income, qualifying wages, including sick and vacation pay, commissions, and other compensation earned during the effective period of this subchapter, by residents.
- (B) On all income, qualifying wages, including sick and vacation pay, commissions, and other compensation earned during the effective period of this subchapter, by non-residents for work done or service performed by a resident employer.
- (C) On the portion attributable to the municipality of the net profits earned during the effective period of this subchapter of all resident associations, unincorporated businesses, professions, or other entities, derived from sales made, work done, or services performed or rendered, or business or other activities conducted in the municipality.

- (D) On a resident partner's or owner's share of the net profits earned during the effective period of this subchapter of a resident association or other unincorporated entity, not attributable to the municipality and not levied against the association or other unincorporated entity.
- (E) On the portion attributable to the municipality of the net profits earned during the effective period of this subchapter, of all non-resident associations, unincorporated businesses, professions, or other entities, derived from sales made, work done, services performed or rendered, or business or other activities conducted in the municipality, whether or not the association or other unincorporated entity has an office or place of business in the municipality.
- (F) On a resident partner's or owner's share of the net profits earned during the effective period of this subchapter of a non-resident association or other unincorporated entity, not attributable to the municipality, and not levied against the association or other unincorporated entity.
- (G) On the net profits earned during the effective period of this subchapter of all corporations derived from sales made, work done, or services performed or rendered, and business or other activities conducted in the municipality, whether or not the corporations have an office or place of business in the municipality.
- (H) The Tax Commissioner may establish a schedule of percentages setting forth the portion of income taxable attributable to a taxpayer residing outside of the city limits but engaged in activities producing taxable income only partially or part-time in the city. Such percentages shall be in increments of 25% and the determination of the Commissioner shall be final, based upon the written application of a taxpayer or employer. Such determinations shall be reviewed every three years and may be adjusted automatically by the Commissioner with or without notice.

#### **§ 35.04 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY**

- (A) Limitation on amount paid. Every individual taxpayer who resides in the municipality and who receives salaries, wages, commissions, or other compensation or net profits from sales made, work done, or services performed or rendered outside of the municipality, if it be made to appear that he has paid a municipal income tax on the income taxable under this subchapter, to another municipality, shall be allowed a credit for the tax paid, against the tax imposed by this subchapter in an amount not to exceed the tax due the city under this subchapter.
- (B) Credits and limitations. Notwithstanding the provisions contained in § 35.22 and 35.23, or any other provisions inconsistent herewith, a claim for refund or credit under this section shall be made in a manner as the Tax Commissioner may by regulation provide. No claim for refund or credit shall be

allowed unless made on or before the date of filing the taxpayer's final return, unless the taxpayer's employer files with the Tax Commissioner a list showing the tax withheld from the taxpayer's wages, salaries or commissions for other municipalities.

#### § 35.05 EXEMPTIONS

The tax provided for herein shall not be levied on the following:

- (A) Military pay or allowance of members of the Armed Forces of the United States and of members of their reserve components, including the National Guard.
- (B) The income of any civic, charitable, religious fraternal, literary, educational or other organization specified in R.C. Ch. 718 to the extent that the net profits are exempted from municipal income taxes under that chapter.
- (C) The income of Social Security benefits, unemployment benefits, IRS qualified retirement plans, or disability benefits received from local, state or federal governments.
- (D) Compensation for personal injuries or for damages to property by way of insurance or otherwise, but this exclusion does not apply to compensation paid for lost salaries or wages.
- (E) Compensation paid to a precinct election official, to the extent that such compensation does not exceed \$1,000 annually.
- (F) Parsonage allowances, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation.
- (G)
  - 1. Compensation paid to a nonresident individual for personal services performed within the municipality if the personal services are performed during twelve (12) or fewer days during the calendar year.
  - 2. Compensation paid to a nonresident employee by a nonresident employer for work or services performed in the municipality if the services or work is performed during twelve (12) or fewer days during the calendar year and further provided that the individual's employer is located outside of the municipal corporation in which the employer's principal place of business is located and no portion of the tax paid is refunded to the individual.
- (H) Interest, dividends & other revenue from intangible property as set forth in O.R.C. 718.01

### **§ 35.06 ALLOCATION OF NET PROFITS**

Net profit from a business or profession conducted both within and without the boundaries of the municipality shall be considered as having a taxable situs in the municipality for purposes of this tax in the same proportion as the average ratio of:

1. The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the municipality 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. Real property includes property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereupon by eight.
2. Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the municipality to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed. Wages, salaries, and other compensation shall be included to the extent that they represent qualifying wages.
3. Gross receipts of the business or profession from sales made and services performed during the taxable period in the municipality to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

### **§ 35.07 OPERATING LOSS CARRY-FORWARD**

The portion of a net operating loss sustained in any taxable year, beginning with January 1, 2006, allocable to the municipality, may be applied against the portion of the profit of succeeding tax years, allocable to the municipality, until exhausted, but in no event for more than five (5) taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year. The portion of a net operating loss sustained shall be allocated to the municipality in the same manner as provided herein for allocating net profits to the municipality.

### **§ 35.08 CONSOLIDATED RETURNS**

Filing of consolidated returns may be permitted or required in accordance with the rules and regulations prescribed by the Tax Commissioner. In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, the Tax Commissioner shall require any information, in addition to the return hereinafter required, as he may deem necessary to ascertain whether net profits are properly allocated to the municipality. If the Tax Commissioner finds net profits are not properly allocated to the municipality by reason of transactions with stockholders or

other corporations related by stock ownership, interlocking directorates, or some other method, he may require the filing of a consolidated return or adjust the transactions so as to produce a fair and proper allocation of net profits to the municipality.

#### **§ 35.09 EFFECT PERIOD**

The tax imposed by this subchapter shall be levied, collected, and paid with respect to the income, qualifying wages, commissions and other compensation, and with respect to the net profits of persons, businesses, professions, or other activities as defined in this ordinance, earned or received on and after January 1, 2006.

#### **§ 35.10 RETURN AND PAYMENT OF TAX**

- A. Each taxpayer or person who engages in business as hereinbefore defined, or whose income, wages, salaries, commissions or other compensation are subject to the tax imposed by this ordinance, shall, whether or not a tax is due thereon, make and file a return on or before April 15<sup>th</sup> of each year with the Tax Commissioner. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or other period.
- B. A husband and wife may, for any tax year elect to file separate or joint returns. However, a loss from the business activity of one spouse may not be used to reduce the taxable income of the other spouse. Also, a loss from the operation of a business, including rental losses, may not be used to offset the income on a taxpayer's W-2 form.
- C. The Tax Commissioner is hereby authorized to provide by regulation, subject to the approval of the Board of Review, that the W-2 form furnished by an employer or employers, for a nonresident employee showing the full amount of tax deducted by such employer or employers from the income, qualifying wages or commissions or other compensation and paid to the municipality or other municipality or state, imposing a tax equal to or greater than the Leesburg income tax, on the same taxable income, shall be accepted as the return required of a nonresident employee under this ordinance, whose sole income subject to the tax or taxes under this ordinance is such salary, wages, commissions or other compensation.
- D. Such return shall be filed with the Tax Commissioner on a form or forms furnished by or obtainable from the Commissioner on a generic form, setting forth:
  1. The aggregate amounts of income, qualifying wages, commissions and other compensation earned or received.
  2. Gross receipts from such business less allowable expenses incurred in the acquisition of such gross receipts to arrive at a net profit.
  3. The amount of a tax imposed by this ordinance thereon.
  4. Any credits to which the taxpayer may be entitled; tax withheld by employer, estimated tax payments and tax paid to another municipality, and
  5. Such other pertinent statements, information returns, or other information as the Tax Commissioner may require, including but not limited to copies of all W-2 forms, 1099



miscellaneous income forms, page one of the 1040, page one and two of form 1120, 1120S (including K-1), 2106, 1065, Schedule C, Schedule E, Schedule F and any other Federal Schedules if applicable.

- E. The taxpayer making a return required hereunder shall, at the time of filing thereof, pay to the commissioner the balance of the tax due, if it exceeds \$.99.
1. Should the return or the records of the Tax Commissioner indicate an overpayment of the tax to which the municipality is entitled under the provisions of this ordinance such overpayment shall be first applied against any existing tax liability, penalties, or interest, and the balance, if any, at the election of the taxpayer communicated to the Tax Commissioner, shall be refunded or applied against any liability hereunder; provided that any overpayment of less than one dollar (\$.00) shall not be refunded but may be carried forward to a subsequent tax year.
  2. Where necessary, an amended return shall be filed in order to report additional income and pay any additional tax due, or claim a return of tax overpaid. Such amended return shall be on a form obtainable on request from the Commissioner. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the annual return.
  3. Within three months from the determination of any Federal tax liability affecting the taxpayer's municipal tax liability, such taxpayer shall make and file an amended return showing income subject to the Leesburg tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make claim for return of any overpayment.
- F. The officer or employee of such employer having control or supervision or charged with the responsibility of filing the return and making the payment, shall be personally liable for failure to file the return or pay the tax, penalties, or interest due as required herein. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer or employee's liability for a prior failure of such business to file a return or pay taxes, penalties, or interest due.
- G. The Tax Return is considered received: (1) if mailed, on the date postmarked by the United States Postal Service or (2) on the date delivered without mailing to the tax office.
- H. Extension of time for filing returns. Taxpayers granted extensions of time for filing their federal income tax returns may have an extension for filing their municipal tax return provided that a copy of the federal extension is filed with the Tax Commissioner on or before the original due date of the municipal tax return. The Commissioner may deny a request for extension if the request is not filed by the original due date or the taxpayer is delinquent in any way. The granting of an extension does not extend the due date for payments required by Chapter 35, and payments after the due date regardless of the granting of an extension will be subject to

interest and penalties; however, no penalty shall be assessed solely upon the tax due upon the return for which the extension is granted.

- \* All extensions are granted subject to review of the Tax Commissioner to determine if all payments and declarations are made when due, and if later found delinquent, the extension may be nullified.

- I. The failure of any taxpayer to receive or procure a return, declaration or other required form shall not excuse the taxpayer from filing such forms or from paying the tax due.

#### **§ 35.101 TAXATION and FINANCE; MUNICIPAL FUNDS**

- A. Dates and exemptions. Each person who, engaged in business, or whose salary, wages, commissions, or other compensation are subject to the tax imposed by this subchapter shall, and each resident, whether or not a tax is due thereon, make and file, on or before April 15<sup>th</sup> in each year, a return with the Tax Commissioner. A taxpayer on a fiscal year accounting basis for federal income tax purposes shall, beginning with his first fiscal year, any part of which falls within the effective period of this subchapter, file his return within four months from the end of the 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 tax deducted by the employer or employers, showing the amount of tax deducted by the employer or employers from the salaries, wages, commissions, or other compensation of an employee, and paid by him or them to the Tax Commissioner shall be accepted as the return required of any employee whose sole income, subject to tax under this subchapter, is the salary, wages, commissions, or other compensation.
- B. Returns and contents thereof. The return shall be filed with the Tax Commissioner on a form furnished by or obtainable upon request from the Tax Commissioner setting forth the following:
  - 1. The aggregate amounts of salaries, wages, commissions, and other compensation earned, and gross income from any business, profession, or other activity, less allowable expenses incurred in the acquisition of the gross income, earned during the preceding year and subject to the tax.
  - 2. The amount of the tax imposed by this subchapter on the earnings and profits.
  - 3. Any other pertinent statements, information returns, or other information as the Tax Commissioner may require, including a statement that the figures used in the return are the figures used in the return for federal income tax, adjusted to set forth only that income as is taxable under the provisions of this subchapter.
- C. Payment with returns. The taxpayer making a return shall at the time of the filing thereof pay to the Tax Commissioner the amount of taxes shown as due thereon; however, where the source, pursuant to the provisions of 35.11 through 35.14 or where any portion of the tax has been paid by the taxpayer, pursuant to the provisions of 35.15 or where an income tax creditable against the tax pursuant to 35.04 has been paid to another municipality, 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 a return. A taxpayer who has overpaid the amount of tax to which the municipality is entitled under the provisions of this subchapter may have the overpayment applied against subsequent liability hereunder or as his election indicated on the return, the overpayment, or part thereof, shall be refunded. However, no additional taxes or refunds of less than \$1.00 shall be collected or refunded.

- D. Amended returns. Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund or tax overpaid, subject to the requirements and limitations contained in 35.04, 35.22, and 35.23, the amended returns shall be on a form obtainable on request from the Tax Commissioner. Within three months from the final determination of any federal tax liability affecting the taxpayer's city tax liability, the taxpayer shall make and file an amended city return, showing income subject to the municipality tax based upon the final determination of federal tax liability, and pay any additional tax shown thereon, or make claim for refund of any overpayment.

#### **§ 35.11 WITHHOLDING BY EMPLOYER**

- A. 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, at the time of the payment thereof, deduct the tax of one percent (1%) from the income, qualifying wages, commissions, income, or other compensation earned in the city.
- B. Each such employer shall, on or before the last day of the month following the close of each calendar quarter, make a return and remit the tax hereby required to be withheld to the Tax Commissioner. Such return shall be on a form or forms prescribed by or acceptable to the Commissioner and shall be subject to the rules and regulation prescribed therefore by the Commissioner. Such employer shall be liable for the payment of taxes hereby required to be deducted and withheld, whether or not such taxes have in fact been so deducted and withheld.
- C. Such employer in collecting such tax shall be deemed to hold the same, until payment is made by such employer to the municipality as a trustee for the benefit of the municipality, and any such tax collected by such employer from its employees shall until the same is paid to the municipality, be deemed a trust fund in the hands of such employer.
- D. All individuals, business, employers, brokers or others who are required under the Internal Revenue Code to furnish forms, 1099 to the IRS for individuals or businesses to whom or which they have non-employee compensation shall furnish copies of the said form 1099's to the Commissioner in lieu thereof, a list containing the same information as required by the IRS on the 1099's on or before the due date for such forms 1099's as established by the IRS. Failure to provide the foregoing information may result in any deduction for payment by the taxpayer taken on the taxpayer's return to be disallowed.

- E. Every employer shall retain all records necessary to compute withholding taxes due for a period of five years from the date the Reconciliation Form, W-2 forms, and 1099 forms are filed.
- F. All returns and forms required to be filed by an employer are considered received: (1) if mailed on the date postmarked by the United States Postal Service or (2) on the date delivered without mailing by the taxpayer to the tax office.
- G. The failure of any employer to receive or procure a return, or other required form shall not excuse the employer from preparing any information, return, withholding tax returns or from filing such forms or from paying the tax due.
- H. All employers that provide any contractual service with the municipality and who employ subcontractors in conjunction with that service, shall provide the municipality the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax withholding requirements under this ordinance.

#### **§ 35.12 WITHHOLDING BY CORPORATE OFFICERS**

It shall be the responsibility, jointly and severally, of the president and treasurer of each corporation required to withhold the tax from wages of its employers under 35.11 through 35.14, to see that all taxes so withheld are paid to the municipality in accordance with the provisions of 35.11 through 35.14. In the event taxes withheld by a corporation from the salaries of its employees are not paid to the municipality in accordance with the provisions of 35.11 through 35.14, the president and treasurer of the corporation shall each be criminally liable under the provision of 35.27.

#### **§ 35.13 EMPLOYER TO FILE WITHHOLDING RETURN**

On or before April 30 following any calendar year, such employer shall file with the Commissioner an annual reconciliation return along with an information return for such employee from whom the income tax has been or should have been withheld, showing the name, address, and social security number of the employee, the total amount of compensation paid during the year and the amount of municipal income tax withheld from the employee with the municipality for which said tax as withheld identified. The information return shall also include all of the information required to be reported by the employer to the IRS on a W-2 form. At the time of filing the annual reconciliation return the employer shall pay over any amounts deducted or which should have been deducted during the preceding year but which was not remitted. The annual reconciliation form shall be obtained from the Administrator.

#### **§ 35.14 WITHHOLDING FOR DOMESTIC SERVANTS**

No person shall be required to withhold the tax on the wages or other compensation paid to domestic servants employed exclusively in or about the person's residence. However, domestic servants shall be responsible for filing and paying their own returns and taxes.

### **§ 35.15 DECLARATION OF ESTIMATED INCOME OR ESTIMATED PROFIT OR LOSS**

- A. Every person who anticipates any taxable income which is not subject to 35.11 through 35.14, or engages in any business, profession, enterprise, or activity, shall file a declaration setting forth the estimated income or the estimated profit or loss from the business activity, together with the estimated tax due thereon, if any. The declaration shall be filed on or before April 15<sup>th</sup> of each year during the life of this chapter or within four months of the date the taxpayer first becomes subject to the provision of this section. Those taxpayers reporting on a fiscal year basis shall file a declaration within four months after the start of each fiscal year or period.
- B. The declaration shall be filed on a form furnished by or obtainable from the Tax Commissioner. Credit shall be taken in the declaration for the tax to be withheld from any portion of the income and for income taxes to be paid to another taxing municipality for which credit is allowed against the tax under 35.04. Beginning with the year 1999, a declaration of estimated tax to be paid to the municipality shall be accompanied by a payment of at least one-fourth of the estimated tax, less credit for taxes withheld or paid to another municipality, and at least a similar amount shall be paid on or before July 31<sup>st</sup> and October 31<sup>st</sup> of the taxable year, and January 31<sup>st</sup> of the following year.
- C. Estimated tax to be paid to the municipality by corporations and associations shall be accompanied by a payment of at least one-fourth of 90% of the estimated annual tax.
- D. On or before the 15<sup>th</sup> 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 shall be paid therewith in accordance with the provisions of 35.10.

### **§ 35.16 DUTIES OF TAX COMMISSIONER**

- A. There is created an Income Tax Bureau for the administration of the chapter. The Bureau shall consist of a Tax Commissioner and any clerical and secretarial personnel as determined to be necessary for the administration of this chapter. All personnel shall be appointed by the Mayor, with the consent of the City Council. It shall be the duty of the Tax Commissioner to collect and receive the tax imposed by this chapter in the manner prescribed herein, to keep an accurate record of the taxes collected, and to report all moneys so received. It shall be the duty of the Tax Commissioner to enforce payment of all income tax owing the municipality, to keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration or make any return including a return of taxes withheld, and to show the dates and amounts of payments thereof.
- B. The Tax Commissioner is charged with the enforcement of the provisions of this chapter, and is empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations authorized or required by this chapter

relating to any matter or thing pertaining to the collection and payment of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.

- C. In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Commissioner may determine the amount of tax appearing to be due the municipality from the taxpayer and may send to the taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.
- D. Subject to the consent of the Board of Review or pursuant to regulation approved by the Board of Review, the Tax Commissioner shall have the power to compromise any liability imposed by this chapter.

#### **§ 35.17 EXAMINATION OF TAXPAYER RECORDS**

The Tax Commissioner, or any of his authorized agents, is authorized to examine the books, papers, records, and federal income tax returns of any employer, taxpayer, or any person subject to, or whom the Tax Commissioner believes subject to, the provisions of this chapter, for the purpose of verifying the accuracy of any withholdings or returns due this chapter. Every employer, supposed employer, taxpayer, or supposed taxpayer, is directed and required to furnish, on written request of the Tax Commissioner, or his duly-authorized agent or employee, the means, facilities, and opportunity for making these examinations and investigations as are hereby authorized.

#### **§ 35.18 APPEARANCE ORDERS TO TAXPAYERS**

The Tax Commissioner is hereby authorized to order any person, presumed to have knowledge of the facts, to appear at the office of the Tax Commissioner and to examine this person, under oath, concerning any income which was or should have been returned for taxation, or withheld, or any transaction tending to affect this income. For this purpose, he 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 these persons have knowledge of the income or information pertinent to inquiry.

#### **§ 35.19 REFUSAL OF TAXPAYER TO SUBMIT INFORMATION**

The refusal to produce books, papers, records, and federal income tax returns, or the refusal to submit to an examination by any 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 withhold tax, or the failure of any person to comply with the provisions of 35.17 through 35.21, or with an order or subpoena of the Tax Commissioner authorized hereby shall be deemed a violation of this chapter punishable as provided in 35.27.

## **§ 35.20 TAXPAYER TO RETAIN RECORDS**

Every taxpayer shall retain all records necessary to compute his tax liability for a period of five years from the date his return is filed or the taxes required to be withheld are paid.

## **§ 35.21 TAXPAYER INFORMATION CONFIDENTIAL**

Any information gained as a result of any returns, investigations, hearings, or verifications required or authorized by this chapter, shall be confidential, except for official purposes, which includes the exchange of information with other tax authorities or in accordance with proper judicial order. Any person divulging such information in violation of this section shall be fined not more than \$500 and imprisoned not more than six months, or both, for each offense. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the municipality who violates the provisions of this section relatively to the disclosure or confidential information shall be guilty of and punishable by immediate dismissal.

## **§ 35.22 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. No additional assessment shall be made after three years from the time of payment of any tax due hereunder. However, there shall be no period of limitation on an additional assessment in a case of a return that omits gross income in excess of 25% of that required to be reported, or in the case of filing a false or fraudulent return with intent to evade the tax, or in the case of a failure to file a return. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations the period within which an additional assessment may be made by the Tax Commissioner shall be extended one year from the time of the final determination of the federal tax liability.

## **§ 35.23 THE LIMIT ON REFUNDS**

A. Taxes erroneously paid shall not ~~be~~ refunded unless a claim for refund is made within three years from the date on which payment was made or the return was due, or within three months after final determination of the federal tax liability, whichever is later. Income tax that has been deposited with the municipality, but should have been deposited with another municipality, is allowable by this municipality as a refund but is subject to the three-year limitation on refunds. Income tax that should have been deposited with this municipality but was deposited with another municipality, shall be subject to recovery by this municipality. The municipality will allow a non-refundable credit for any amount owed this municipality that is in excess of the amount to be refunded by the other municipality, as long as the tax rate of the other municipality is the same or higher than this municipality's tax rate. If this municipality's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the municipality.

B. Amounts less than one dollar (\$1.00) shall not be refunded.

**§ 35.24 BOARD OF REVIEW; RIGHT TO APPEAL**

- A. A Board of Review consisting of the Mayor as chairman and two other individuals, each to be appointed by the Mayor and approved by Council, is created. The individual acting as the local administrator of the tax shall act as secretary of the Board. Board members shall review compensation as Council may determine. 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. All hearings by the Board shall be conducted privately unless the taxpayer requests a public hearing, and the provisions of 35.17 through 35.21 with references to the confidential character of information required to be disclosed by the chapter shall apply to all matters as may be heard before the Board of appeal.
- B. Any person dissatisfied with any ruling or decision of the Tax Commissioner which is made under the authority conferred by this chapter may appeal therefrom to the Board of Review within 30 days from the announcement of the ruling or decision by the Tax Commissioner, and the Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any ruling or decision, or any part thereof.
- 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 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 by 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 30 days after the Tax Commissioner has issued the decision.
- E. The imposition of penalty and interest as prescribed in this code is not a sole basis for an appeal.
- F. The Board of Review shall schedule a hearing within 45 days after receiving the request, unless the taxpayer waives a hearing.
- G. If the taxpayer does not waive the hearing, the taxpayer may appeal before the Board and may be represented by an attorney at law, certified public accountant or other licensed representative.
- H. 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 90 days after the Board's final hearing on the appeal, and send notice of its decision by ordinary mail to the petitioner within 15 days after issuing the decision.



- I. The Board of Review shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under R.C. 149.43. Hearings requested by a taxpayer before a Board of Review created pursuant to this section are not meetings of a public body subject to R.C. 121.22.

**§ 35.25 TAX FUNDS TO BE DEPOSITED IN GENERAL FUND**

The funds collected under the provisions of this chapter shall be deposited in the General Fund and the funds collected from the imposition date of the tax under this chapter shall be disbursed for the following:

- A. The part thereof as shall be necessary to defray all cost of collecting the taxes and the cost of administering and enforcing the provisions thereof.
- B. The balance of any monies collected under the provisions of this chapter shall be allocated in the manner regulated by law to provide funds for the purposes of general municipal operations, including but not limited to maintenance, new equipment, extension, and enlargement of municipal services and facilities, and capital improvements for the municipality.

**§ 35.26 INTEREST, PENALTIES FOR FAILURE TO <sup>PAY</sup> TAX WHEN DUE**

- A. All taxes imposed and moneys withheld or required to be withheld by employers under the provisions of this chapter, remaining unpaid after they become due shall bear interest at the rate of 1% per month.
- B. In addition to interest as provided in division (A) above, penalties for failure to pay taxes and to withhold and remit taxes pursuant to the provisions of this chapter are hereby imposed as follows:
  1. In the case of taxpayers failing to pay the full amount of tax due, a penalty of the higher of \$25 or 1% per month or fraction thereof, of the amount of the unpaid tax, if the tax is paid during the first six months after the tax becomes due; a penalty of 2% per month, or fraction thereof, of the unpaid tax, if the tax is paid between the seventh and twelfth months after the tax became due; and a penalty of 4% per month, or fraction thereof, of the amount of the unpaid tax, if the tax is paid later than 12 months after it became due. The percentages herein specified, when used, shall apply from the first month of delinquency.
  2. In the case of employers who fail to withhold and remit to the Tax Commissioner the taxes to be withheld from employees, a penalty of the higher of \$50 or 2% per month or fraction thereof, of the unpaid withholding, if paid during the first three months after it was due; a penalty of 4% per month, or fraction thereof, of the unpaid withholding if paid during the fourth to six months, inclusive after it was due; and a penalty of 5% per month or

fraction thereof, of the unpaid withholding, if paid later than six months after it was due. The percentages herein specified, when used, shall apply from the first month of delinquency.

- C. A penalty shall not be assessed or an additional tax assessment made by the Tax Commissioner when a return has been filed in good faith and the tax paid thereon within the time period prescribed by the Tax Commissioner. In the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, provided an amended return is filed and the additional tax is paid within three months after final determination of the federal tax liability.
- D. Upon an appeal from the refusal of the Tax Commissioner to recommend abatement of penalty and interest, the Board of Review may abate the penalty or interest or both.

#### **§ 35.27 VIOLATIONS; TIME LIMIT ON PROSECUTIONS**

- A. No person shall do any one of the following:
  1. Fail, neglect, or refuse to make any return or declaration required by this chapter.
  2. Make an incomplete, false or fraudulent return.
  3. Fail, neglect, or refuse to pay the tax, penalties or interest imposed by this chapter.
  4. Fail, neglect, or refuse to withhold the tax from his employees and remit this withholding tax to the Tax Commissioner.
  5. Refuse to permit the Tax Commissioner or any duly authorized agent or employee to examine his or his employer's books, records, papers, and federal income tax returns.
  6. Fail to appear before the Tax Commissioner and produce his employer's books, records, papers, or federal income tax returns upon order or subpoena of the Tax Commissioner.
  7. Refuse to disclose to the Tax Commissioner any information with respect to that person's or that person's employer's income or net profits.
  8. Fail to comply with the provisions of this chapter or an order or subpoena of the Tax Commissioner.
  9. Fail, neglect, or refuse to make any payment on the estimated tax for any year, as required by 35.15.
  10. Fail, as president or treasurer of a corporation, to cause the tax withheld from the wages of the employees of the corporation pursuant to this chapter to be paid to the municipality in accordance with the provisions of 35.11 through 35.14.
  11. Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties, or interest imposed by this chapter, or fail, refuse, or neglect to answer an questionnaire required of them by the Income Tax office.

- B. Any person found guilty of violating any of the provisions of division (A) above shall be guilty of a misdemeanor of the third degree and shall be penalized as provided in R.C. Chapter 2901.
- C. All criminal prosecutions under this section must be commenced within three years, and all civil actions within five years following the date on which the final return for a taxable year was due, or five years from the time of any other offense complained of.

**§ 35.28 FAILURE TO OBTAIN FORMS NO DEFENSE**

The failure to of any employer, taxpayer or person to receive or procure a return, declaration, or other required form shall not excuse him from making any information return, or declaration, from filing the form, or from paying the tax.

**§ 35.29 LATE FILING PENALTY**

There shall be a late charge of \$25 levied upon every income tax filer who does not file his municipal income tax return by April 15 of the following year for calendar year filers or within four months from the end of the fiscal year for fiscal year filers; except a filer who receives an extension for filing his federal income tax return.

**§ 35.30 GENERIC FORM**

The municipality shall accept a generic form of any return, report, or document required to be filed if the generic form, once complete and filed, contains all the information required to be submitted with the municipality's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances governing the filing of returns, reports or documents.