

ORDINANCE NO. 12-36

BY: Nancy R. Moore

Amending, subject to the approval of the electors of the City of Shaker Heights, Ohio, Sections 111.0501 and 111.0502 of the Administrative Code of the Codified Ordinances of the City of Shaker Heights, in order to increase the rate of the municipal income tax from one and three-quarters percent (1.75%) to two and one-quarter percent (2.25%), and declaring an emergency.

WHEREAS, the tax rate set forth in Sections 111.0501 and 111.0502 of the Administrative Code of the Codified Ordinances of the City of Shaker Heights was established by Ordinance No. 80-89, enacted on September 22, 1980, placed on the ballot by Resolution 80-90, adopted on September 22, 1980, and approved by the electors of the City of Shaker Heights on March 3, 1981; and

WHEREAS, Sections 111.0501 and 111.0502 of the Administrative Code of the Codified Ordinances of the City of Shaker Heights were enacted in their current form by Ordinance No. 04-08, on January 26, 2004; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Shaker Heights, State of Ohio:

Section 1. Subject to the approval of the electors of the City of Shaker Heights, Ohio, as provided in Section 718.01 of the Ohio Revised Code, Sections 111.0501 and 111.0502 of the Administrative Code of the Codified Ordinances of the City of Shaker Heights, Ohio, are hereby amended, effective October 1, 2012, to read as follows:

111.0501 RATE AND INCOME TAXABLE.

An annual tax for the purposes specified in Section 111.0101 shall be imposed on and before September 30, 2012, at the rate of one and three-quarters percent (1.75%) per annum, and on and after October 1, 2012, at the rate of two and one-quarter percent (2.25%) per annum, upon the following:

- (a) On all salaries, wages, commissions and other compensation, and on income derived or received from gaming, wagering, schemes of chance or lotteries, including the Ohio State Lottery, totaling \$600.00 or more in a taxable year, which is earned or received by residents of the City of Shaker Heights. Income derived or received from gaming, wagering, schemes of chance or lotteries, including the Ohio State Lottery, shall not be taxed as business income unless the individual subject to the tax has a federal gambler's permit effective during the tax year in which the income from such activities is received.
- (b) On all salaries, wages, commissions and other compensation, and on income derived or received from gaming, wagering, schemes of chance or lotteries, including the Ohio State Lottery, totaling \$600.00 or more in a taxable year, which is earned or received by

nonresidents of the City of Shaker Heights for work done, services performed or rendered, lottery tickets purchased, or participation in gaming, wagering, schemes of chance or lotteries conducted, within the City of Shaker Heights. Income earned or derived from gaming, wagering, schemes of chance or lotteries, including the Ohio State Lottery, shall not be taxed as business income unless the individual subject to the tax has a federal gambler's permit effective during the tax year in which the income from such activities is received.

- (c) (1) On the portion attributable to the City of Shaker Heights on the net profits earned of all resident unincorporated business entities or professions or other activities, derived from sales made, work done, services performed or rendered, and business or other activities conducted in the City of Shaker Heights.
- (2) On the portion of the distributive share on the net profits earned of a resident partner or owner of a resident unincorporated business entity not attributable to the City of Shaker Heights and not levied against such unincorporated business entity by the City of Shaker Heights.
- (d) (1) On the portion attributable to the City of Shaker Heights of the net profits earned of all nonresident unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered, and business and other activities conducted in the City of Shaker Heights, whether or not such unincorporated business entity has an office or place of business in the City of Shaker Heights.
- (2) On the portion of the distributive share of the net profits earned of a resident partner or owner of a nonresident unincorporated business entity not attributable to the City of Shaker Heights and not levied against such unincorporated business entity by the City of Shaker Heights.
- (e) On the portion attributable to the City of Shaker Heights of the net profits earned of all corporations derived from sales made, work done, services performed or rendered, and business or other activities conducted in the City of Shaker Heights, whether or not such corporations have an office or place of business in the City of Shaker Heights.

111.0502 EFFECTIVE PERIOD.

Such tax shall be imposed, levied, collected, and paid with respect to the salaries, wages, commissions, and other compensation and with respect to the net profits of businesses, professions, or other activities earned, including with respect to the income derived or received from gaming, wagering, schemes of chance or lotteries, including the Ohio State Lottery, on or before September 30, 2012, at the rate of one and three-quarters percent (1.75%) per annum, and on and after October 1, 2012, at the rate of two and one-quarter percent (2.25%) per annum.

Section 2. Subject to the approval of the electors of the City of Shaker Heights, Ohio of the increase in income tax rate enacted in Section 1 of this Ordinance, Sections 111.0501 and 111.0502 of the Administrative Code of the Codified Ordinances of the City of Shaker Heights, as heretofore in effect are hereby repealed, effective October 1, 2012.

Section 3. The purpose of said income tax as set forth in Section 111.0101 of the Administrative Code of the Codified Ordinances of the City of Shaker Heights is for general municipal functions.

Section 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare for the reason that existing revenue sources are inadequate for necessary and proper operations of the City with regard to general municipal functions by reason of economic conditions and that this Ordinance must be filed with the Board of Elections of Cuyahoga County at least ninety (90) days before the day of the special election on August 7, 2012, and this Ordinance shall, therefore, take effect immediately upon its enactment by the Council and approval by the Mayor for the purpose of placing the question of passage of Section 1 of this Ordinance before the electors; otherwise, Section 1 of this Ordinance shall be effective only upon the approval of said question by the electors pursuant to Section 718.01 of the Ohio Revised Code, and the certification of the results of said election; provided that if such approval of the electors is not given, then Sections 111.0501 and 111.0502 of the Administrative Code of the Codified Ordinances of the City of Shaker Heights, as presently written, shall continue in full force and effect.

Enacted May 7, 2012.

Approved this ____ day of _____, 2012.

EARL M. LEIKEN, Mayor

Attest:

JERI E. CHAIKIN
Clerk of Council

TITLE THREE - Taxation
 Chap. 111. Municipal Income Tax.
 Chap. 112. Motor Vehicle License Tax.

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Municipal Income Tax

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

PURPOSE

111.0101 PURPOSE OF LEVY OF INCOME TAX.

To provide funds for the purposes of general municipal functions of the City of Shaker Heights there shall be and is hereby levied a tax on all salaries, wages, commissions and other compensation, on income derived or received from gaming, wagering, schemes of chance or lotteries, including the Ohio State Lottery, and on net profits as hereinafter provided. (Ord. 04-08. Enacted 1-26-04.)

DEFINITIONS

111.0301 DEFINITIONS GENERALLY.

For the purposes of this chapter, the terms, phrases, words and their derivatives shall have the meanings given in the next succeeding sections of this chapter. The singular shall include the plural, and the masculine shall include the feminine and the neuter.
(Ord. 66-135. Enacted 12-27-66.)

111.0302 ADMINISTRATOR.

"Administrator" means the Director of Finance who shall administer and enforce the provisions of the City of Shaker Heights Income Tax.
(Ord. 66-135. Enacted 12-27-66.)

111.0303 ASSOCIATION.

"Association" means any partnership, limited partnership, or any other form of unincorporated enterprise, owned by two (2) or more persons.
(Ord. 66-135. Enacted 12-27-66.)

111.0304 BOARD OF REVIEW.

"Board of Review" means the Board created by and constituted as provided in Section 111.2501.
(Ord. 66-135. Enacted 12-27-66.)

111.0305 BUSINESS.

"Business" means any 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, excluding however all nonprofit corporations which are exempt from the payment of Federal Income Tax.
(Ord. 66-135. Enacted 12-27-66.)

111.0306 CORPORATION.

"Corporation" means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency.
(Ord. 66-135. Enacted 12-27-66.)

111.0307 EMPLOYEE.

"Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.
(Ord. 66-135. Enacted 12-27-66.)

111.0308 EMPLOYER.

"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 basis of compensation.
(Ord. 66-135. Enacted 12-27-66.)

111.0309 FISCAL YEAR.

"Fiscal year" means an accounting period of twelve (12) months or less ending on any day other than December 31.
(Ord. 66-135. Enacted 12-27-66.)

111.0310 GROSS RECEIPTS.

"Gross receipts" means the total income from any source whatever.
(Ord. 66-135. Enacted 12-27-66.)

111.0311 NET PROFITS.

"Net profits" means a net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal Income Tax purposes without deduction of taxes imposed by this chapter, Federal, State and other taxes based on income; and in the case of an association, without deduction of salaries paid to partners and other owners.
(Ord. 66-135. Enacted 12-27-66.)

111.0312 NONRESIDENT.

"Nonresident" means an individual domiciled outside the City of Shaker Heights.
(Ord. 66-135. Enacted 12-27-66.)

111.0313 NONRESIDENT UNINCORPORATED BUSINESS ENTITY.

"Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the City of Shaker Heights.
(Ord. 66-135. Enacted 12-27-66.)

111.0314 PERSON.

"Person" means every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity, means the partners or members thereof, and as applied to corporations, the officers thereof.
(Ord. 66-135. Enacted 12-27-66.)

111.0315 PLACE OF BUSINESS.

"Place of business" means any bona fide office other than a mere statutory office, factory, warehouse, or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one (1) or more of his regular employees regularly in attendance.
(Ord. 66-135. Enacted 12-27-66.)

111.0316 RESIDENT.

"Resident" means an individual domiciled in the City of Shaker Heights.
(Ord. 66-135. Enacted 12-27-66.)

111.0317 RESIDENT UNINCORPORATED BUSINESS ENTITY.

"Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City of Shaker Heights.
(Ord. 66-135. Enacted 12-27-66.)

111.0318 TAXABLE INCOME.

"Taxable income" means:

- (a) Wages, salaries, and other compensation paid by an employer or employers before any deduction; and
- (b) Net profits from the operation of a business, profession, or other enterprise or activity; and
- (c) Income derived or received from gaming, wagering, schemes of chance or lotteries, including the Ohio State Lottery, totaling \$600.00 or more in a taxable year;

as adjusted in accordance with the provisions of this chapter.

(Ord. 04-08. Enacted 1-26-04.)

111.0319 TAXABLE YEAR.

"Taxable year" means the calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this chapter, and in the case of a return for a fractional part of a year, the period for which such return is required to be made.

(Ord. 66-135. Enacted 12-27-66.)

111.0320 TAXPAYER.

"Taxpayer" means a person, whether an individual, partnership, association or any corporation or other entity, required hereunder to file a return or pay a tax.

(Ord. 66-135. Enacted 12-27-66.)

IMPOSITION OF INCOME TAX**111.0501 RATE AND INCOME TAXABLE.**

An annual tax for the purposes specified in Section 111.0101 shall be imposed on and after April 1, 1981, at the rate of one and three-quarters percent (1.75%) per annum upon the following:

- (a) On all salaries, wages, commissions and other compensation earned on and after April 1, 1981, and on income derived or received from gaming, wagering, schemes of chance or lotteries, including the Ohio State Lottery, totaling \$600.00 or more in a taxable year, on and after February 1, 2004, which is earned or received by residents of the City of Shaker Heights. Income derived or received from gaming, wagering, schemes of chance or lotteries, including the Ohio State Lottery, shall not be taxed as business income unless the individual subject to the tax has a federal gambler's permit effective during the tax year in which the income from such activities is received.
- (b) On all salaries, wages, commissions and other compensation on and after April 1, 1981, and on income derived or received from gaming, wagering, schemes of chance or lotteries, including the Ohio State Lottery, totaling \$600.00 or more in a taxable year, on and after February 1, 2004, which is earned or received by nonresidents of the City of Shaker Heights for work done, services performed or rendered, lottery tickets purchased, or participation in gaming, wagering, schemes of chance or lotteries conducted, within the City of Shaker Heights. Income earned or derived from gaming, wagering, schemes of chance or lotteries, including the Ohio State Lottery, shall not be taxed as business income unless the individual subject to the tax has a federal gambler's permit effective during the tax year in which the income from such activities is received.
- (c) (1) On the portion attributable to the City of Shaker Heights on the net profits earned on and after April 1, 1981, of all resident unincorporated business entities or professions or other activities, derived from sales made, work done, services performed or rendered, and business or other activities conducted in the City of Shaker Heights.

(2) On the portion of the distributive share on the net profits earned on and after April 1, 1981, of a resident partner or owner of a resident unincorporated business entity not attributable to the City of Shaker Heights and not levied against such unincorporated business entity by the City of Shaker Heights.

(d) (1) On the portion attributable to the City of Shaker Heights of the net profits earned on or after April 1, 1981, of all nonresident unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered, and business and other activities conducted in the City of Shaker Heights, whether or not such unincorporated business entity has an office or place of business in the City of Shaker Heights.

(2) On the portion of the distributive share of the net profits earned on or after April 1, 1981, of a resident partner or owner of a nonresident unincorporated business entity not attributable to the City of Shaker Heights and not levied against such unincorporated business entity by the City of Shaker Heights.

(e) On the portion attributable to the City of Shaker Heights of the net profits earned on and after April 1, 1981, of all corporations derived from sales made, work done, services performed or rendered, and business or other activities conducted in the City of Shaker Heights, whether or not such corporations have an office or place of business in the City of Shaker Heights.
(Ord. 04-08. Enacted 1-26-04.)

111.0502 EFFECTIVE PERIOD.

Such tax shall be imposed, levied, collected, and paid with respect to the salaries, wages, commissions, and other compensation and with respect to the net profits of businesses, professions, or other activities earned during the period January 1, 1981 to March 31, 1981, inclusive, at the rate of one and one-half percent (1.5%) per annum, and on and after April 1, 1981, including with respect to the income derived or received from gaming, wagering, schemes of chance or lotteries, including the Ohio State Lottery, on and after February 1, 2004, at the rate of one and three-quarters percent (1.75%) per annum.
(Ord. 04-08. Enacted 1-26-04.)

DETERMINATION OF ALLOCATION OF TAX

111.0701 METHOD OF DETERMINATION.

In the taxation of income which is subject to City of Shaker Heights Income Taxes if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of the City of Shaker Heights, shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the City of Shaker Heights, then only such portion shall be considered as having a taxable situs in the City of Shaker Heights for the purposes of municipal income taxation. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the City of Shaker Heights, in the absence of actual records thereof, shall be determined as follows:

Multiply the entire net profits by a business allocation percentage to be determined by a three-factor formula of property, payroll, and sales, each of which shall be given equal weight, as follows:

(a) The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City of Shaker Heights during the taxable period to the average net book value of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, real property includes property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight (8).

(b) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City of Shaker Heights to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed.

(c) Gross receipts of the business or profession from sales made and services performed during the taxable period in the City of Shaker Heights to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

In the event that the foregoing allocation formula does not produce an equitable result, another basis may under uniform regulations be substituted so as to produce such result.

(Ord. 66-135. Enacted 12-27-66.)

111.0702 SALES MADE IN THE CITY.

As used in subsection (c) of Section 111.0701, "sales made in the City of Shaker Heights" means:

(a) All sales of tangible personal property which is delivered within the City of Shaker Heights regardless of where title passes if shipped or delivered from a stock of goods within the City of Shaker Heights.

(b) All sales of tangible personal property which is delivered within the City of Shaker Heights regardless of where title passes even though transported from a point outside the City of Shaker Heights if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Shaker Heights and the sales result from such solicitation or promotion.

(c) All sales of tangible personal property which is shipped from a place within the City of Shaker Heights to purchasers outside of the City of Shaker Heights 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.

(Ord. 66-135. Enacted 12-27-66.)

111.0703 TOTAL ALLOCATION.

(a) Add together the percentages determined in accordance with subsections (a), (b) and (c) of Section 111.0701 or such of the aforesaid percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving such total in order to obtain the business allocation percentage referred to in Section 111.0701.

(b) A factor is applicable even though it may be allocable entirely in or outside the City of Shaker Heights.

(Ord. 66-135. Enacted 12-27-66.)

111.0704 RENTALS.

(a) Rental income received by a taxpayer shall be included in the computation of net profits from business activities under subsections (c), (d) and (e) of Section 111.0501, only if and to the extent that the rental, ownership, management or operations of the real estate from which such rentals are derived, whether so rented, managed or operated by a taxpayer individually or through agents or other representatives, constitutes a business activity of the taxpayer in whole or in part.

(b) Where the gross monthly rental of any and all real properties regardless of number and value, aggregates in excess of two hundred fifty dollars (\$250.00) per month, it shall be prima-facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental property shall be subject to tax; provided that in the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds two hundred fifty dollars (\$250.00) per month.

(c) Property owners who are considered to have a business activity under the provisions of this section shall submit or cause to be submitted to the Administrator a list of names and addresses of all persons, firms, corporations or other entities occupying, leasing or renting any premises belonging to the property owner within this City. The required list shall be prepared as of December 31 of each year and submitted on or before January 31 of the following year.

(Ord. 66-135. Enacted 12-27-66; Ord. 71-125. Amended 11-22-71; Ord. 72-68. Amended 6-26-72.)

111.0705 OPERATING LOSS CARRY-FORWARD.

(a) The portion of a net operating loss sustained in any taxable year subsequent to January 1, 1967 allocable to the City of Shaker Heights may be applied against the portion of the profit of succeeding tax years allocable to the City of Shaker Heights, 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.

(b) The portion of net operating loss sustained shall be allocated to the City of Shaker Heights in the same manner as provided herein for allocating net profits to the City of Shaker Heights.

(c) The Administrator shall provide by rules and regulations the manner in which such net operating loss carry-forward shall be determined.

(Ord. 66-135. Enacted 12-27-66.)

EXEMPTIONS**111.0901 SOURCES OF INCOME NOT TAXED.**

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

(a) Pay or allowance of active 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) Poor relief, unemployment insurance benefits, old age pensions or similar payments including disability benefits received from local, State or Federal governments, or charitable, religious or educational organizations.
 - (c) Proceeds of insurance paid by reason of the death of the insured, pensions, disability benefits, annuities, or gratuities not in the nature of compensation for services rendered from whatever source derived.
 - (d) Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations.
 - (e) Alimony received.
 - (f) Personal earnings of any natural person under eighteen (18) years of age.
 - (g) Compensation for personal injuries or for damages to property by way of insurance or otherwise.
 - (h) Interest, dividends and other revenue from intangible property.
 - (i) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio from which the City is specifically prohibited from taxing, and income of a decedent's estate during the period of administration, except such income from the operation of a business.
 - (j) Salaries, wages, commissions, and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the States or their political subdivisions to impose net income taxes on income derived from interstate commerce.
 - (k) Salaries, wages, commissions, and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City of Shaker Heights to impose net income taxes.
- (Ord. 66-135. Enacted 12-27-66.)

RETURNS

111.1101 WHEN RETURN REQUIRED TO BE MADE.

Each taxpayer shall, whether or not a tax be due thereon, make and file a return on or before April 30 of the year following the effective date of this chapter and on or before April 30 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four (4) months from the end of such fiscal year or period.

(Ord. 66-135. Enacted 12-27-66; Ord. 71-125. Amended 11-22-71.)

111.1102 FORM AND CONTENTS OF RETURN.

The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from such Administrator, setting forth:

- (a) The aggregate amount of salaries, wages, commissions and other compensation earned, income derived or received from gaming, wagering, schemes of chance or lotteries, including the Ohio State Lottery, totaling \$600.00 or more in a taxable year, and gross income from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to such tax;
 - (b) The amount of the tax imposed by this chapter on such earnings, income and profits; and
 - (c) Such other pertinent statements, information returns or other information as the Administrator may require.
- (Ord. 04-08. Enacted 1-26-04.)

111.1103 EXTENSION OF TIME FOR FILING RETURNS.

The Administrator may extend the time for filing of the annual return upon the request of the taxpayer for a period of not to exceed six (6) months, or one (1) month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal Income Tax Return. The Administrator may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

(Ord. 66-135. Enacted 12-27-66.)

111.1104 CONSOLIDATED RETURNS.

(a) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Administrator.

(b) 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, or in case any person operates a division, branch, factory, office, laboratory or activity within the City of Shaker Heights constituting a portion only of its total business, the Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City of Shaker Heights. If the Administrator finds that net profits are not properly allocated to the City of Shaker Heights by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he shall make allocation as he deems appropriate to produce a fair and proper allocation of net profits to the City of Shaker Heights.

(Ord. 66-135. Enacted 12-27-66.)

111.1105 AMENDED RETURNS.

(a) Where necessary an amended return shall be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements, limitations or both contained in Sections 111.1701, 111.1702, 111.1703 and 111.1902. Such amended return shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

(b) Within three (3) months from the final determination of any Federal tax liability affecting the taxpayer's City of Shaker Heights tax liability, such taxpayer shall make and file an amended City of Shaker Heights return showing income subject to the City of Shaker Heights tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.
(Ord. 66-135. Enacted 12-27-66.)

PAYMENT OF TAX

111.1301 PAYMENT OF TAX ON FILING OF RETURN.

(a) The taxpayer making a return shall, at the time of filing thereof, pay to the Administrator the amount of taxes shown as due thereon; provided, however, that:

- (1) Where any portion of the tax so due has been deducted at the source pursuant to the provisions of Section 111.1302; or
- (2) Where any portion of the tax has been paid by the taxpayer pursuant to the provisions of Section 111.1303; or
- (3) Where an income tax has been paid on the same income to another municipality,

credit for the amount so deducted or paid, or credit to the extent provided for in Section 111.1902, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing such return.

(b) A taxpayer who has overpaid the amount of tax to which the City of Shaker Heights is entitled under the provisions of this chapter may have such overpayment applied against any subsequent liability hereunder or, at his election, indicated on the return, such overpayment or part thereof shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.
(Ord. 66-135. Enacted 12-27-66; Ord. 71-125. Amended 11-22-71.)

111.1302 COLLECTION AT SOURCE.

(a) In accordance with rules and regulations prescribed by the Administrator, each employer within or doing business within the City of Shaker Heights shall deduct, at the time of the payment of such salary, wages, commission or other compensation, the tax at the rate provided in Section 111.0501 on all gross salaries, wages, commissions or other compensation due by the employer to such employee, and shall, on or before the last day of each month, make a return and pay to the Administrator, the amount of taxes so deducted during the previous month; provided, however, that if the amount of the tax so deducted by any employer in any one month is less than one hundred dollars (\$100.00), the employer may defer the filing of a return and payment of the amount deducted until the last day of the month following the end of the calendar quarter in which such month occurred.

(b) Such returns shall be on a form or forms prescribed or acceptable to the Administrator and shall be subject to the rules and regulations prescribed therefor by the Administrator. 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.

(c) Such employer in collecting such tax shall be deemed to hold the same until payment is made by such employer to the City of Shaker Heights as a trustee for the benefit of the City of Shaker Heights, and any such tax collected by such employer from his employees shall, until the same is paid to the City of Shaker Heights be deemed a trust fund in the hands of such employer.

(d) No person shall be required to withhold the tax on wages or other compensation paid domestic servants employed by him exclusively in or about such person's residence, even though such residence is in the City of Shaker Heights, but such employee shall be subject to all of the requirements of this chapter.

(Ord. 66-135. Enacted 12-27-66; Ord. 68-74. Amended 6-12-68; Ord. 71-125. Amended 11-22-71.)

111.1303 DECLARATIONS OF INCOME.

Except as provided in this section, every person shall file a declaration setting forth taxable income, including distributive shares of net profits of unincorporated business entities, estimated to be earned by the taxpayer during the current tax year, together with the estimated tax due thereon, less tax withheld within the City of Shaker Heights, and less the tax credit allowed in Section 111.1902, unless the entire taxable income is subject to withholding within the City of Shaker Heights pursuant to Section 111.1302. If the estimated tax for the current year, less the tax to be withheld and less such tax credit, amounts to not more than fifty dollars (\$50.00), no declaration or payment of estimated tax is required.

(Ord. 94-205. Enacted 10-24-94.)

111.1304 FILING OF DECLARATION.

(a) The declaration required by Section 111.1303 shall be filed on or before April 30 of each year during the effective period set forth in Section 111.0502 or within four (4) months of the date the taxpayer becomes subject to tax for the first time.

(b) Those taxpayers reporting on a fiscal year basis shall file a declaration within four (4) months after the beginning of each fiscal year or period.

(Ord. 66-135. Enacted 12-27-66.)

111.1305 FORM OF DECLARATION.

(a) The declaration required by Section 111.1303 shall be filed upon a form furnished by or obtainable from the Administrator. As provided in Section 111.1303, credit shall be taken for the City of Shaker Heights tax to be withheld from any portion of such income and credit shall be taken for tax to be paid or withheld and remitted to another taxing municipality, in accordance with the provisions of Section 111.1902.

(b) The original declaration or any subsequent amendment thereof may be increased or decreased on or before any subsequent quarterly payment date as provided for herein.

(Ord. 66-135. Enacted 12-27-66; Ord. 71-125. Amended 11-22-71.)

111.1306 PAYMENT TO ACCOMPANY DECLARATION.

Such declaration of estimated tax to be paid to the City of Shaker Heights shall be accompanied by a payment of at least one-fourth (1/4) of the estimated annual tax and at least a similar amount shall be paid on or before the last day of the seventh and tenth months after the beginning of the taxable year, and on or before the last day of the first month of the succeeding year following the taxable year. Provided, however, that in case 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.

(Ord. 66-135. Enacted 12-27-66; Ord. 71-125. Amended 11-22-71; Ord. 73-165. Amended 11-26-73.)

111.1307 ANNUAL RETURN.

On or before the last 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 City of Shaker Heights shall be paid therewith in accordance with the provisions of Section 111.1301. Provided, however, that any taxpayer may file, on or before the last day of the first month of the year following that for which such declaration or amended declaration was filed, an annual return and pay any balance due at such time in lieu of filing such declaration or amended declaration, and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax.

(Ord. 66-135. Enacted 12-27-66; Ord. 71-125. Amended 11-22-71.)

111.1308 EXTENSION OF FILING TIME.

The Administrator may extend the time for filing of any return required, making any payment or performing any other act required by this chapter, for a period of not to exceed six (6) months beyond the original required date.

(Ord. 66-135. Enacted 12-27-66.)

INTEREST AND PENALTIES**111.1501 INTEREST ON UNPAID TAX.**

All taxes imposed and all moneys withheld or required to be withheld by employers and all installments of estimated taxes required to be paid under the provisions of this chapter and remaining unpaid after they become due, shall bear interest at the rate of nine percent (9%) per annum.

(Ord. 86-114. Enacted 11-24-86.)

111.1502 PENALTIES ON UNPAID TAX.

In addition to interest as provided in Section 111.1501, penalties based on the unpaid tax or installments of estimated tax are hereby imposed as follows:

- (a) For failure to pay taxes or estimated taxes due, other than taxes withheld: ten percent (10%) per annum, but not less than twenty-five dollars (\$25.00).

- (b) For failure to remit taxes withheld from employees: ten percent (10%) per month or fraction thereof, but accumulated penalty shall not exceed fifty percent (50%) upon any unpaid amount and shall not be less than twenty-five dollars (\$25.00).
(Ord. 79-161. Enacted 12-17-79.)

111.1503 EXCEPTIONS.

A penalty shall not be assessed on an additional tax assessment made by the Administrator against a taxpayer when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator; 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 (3) months after a final determination of the Federal tax liability.
(Ord. 66-135. Enacted 12-27-66.)

111.1504 ABATEMENT OF INTEREST AND PENALTY.

Either the Administrator or the Board of Review hereunder may abate penalty or interest or both, for good cause shown.
(Ord. 66-135. Enacted 12-27-66; Ord. 71-125. Amended 11-22-71.)

111.1505 VIOLATIONS AND PENALTY.

Any person who shall:

- (a) Fail, neglect or refuse to make any return or declaration required by this chapter; or
- (b) Make any incomplete, false or fraudulent return; or
- (c) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
- (d) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
- (e) Refuse to permit the Administrator, or any duly authorized agent or employee to examine his books, records, papers and Federal income tax returns relating to the income or net profits of a taxpayer; or
- (f) Fail to appear before the Administrator and to produce his books, records, papers or Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or
- (g) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
- (h) Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby; or
- (i) Give to an employer false information as to his true name, correct Social Security number, and residence address or fail to promptly notify an employer of any change in residence address and date thereof; or
- (j) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and the City of Shaker Heights tax withheld, or to knowingly give the Administrator false information; or
- (k) 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;

shall be guilty of a misdemeanor of the first degree and shall be punished for each offense in accordance with Section 101.99 of the Administrative Code of the Codified Ordinances.
(Ord. 66-135. Enacted 12-27-66; Ord. 73-166. Amended 11-26-73.)

111.1506 LIMITATION ON PROSECUTION.

All civil actions, criminal prosecutions and claims for refund shall be commenced within the time limitations provided in Ohio R.C. 718.06.

111.1507 FAILURE TO PROCURE FORMS NOT EXCUSE.

The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return, return or declaration, from filing such form, or from paying the tax.
(Ord. 66-135. Enacted 12-27-66.)

**COLLECTION OF UNPAID TAXES AND
REFUNDS OF OVERPAYMENTS****111.1701 UNPAID TAXES RECOVERABLE AS OTHER DEBTS.**

All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, or omission of a substantial portion of income subject to this tax, or of failure to file a return, an additional assessment shall not be made after three (3) years from the time the return was due or filed, whichever is later, provided, however, 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 Administrator shall be one (1) year from the time of the final determination of the Federal tax liability.
(Ord. 66-135. Enacted 12-27-66.)

111.1702 REFUNDS OF TAXES ERRONEOUSLY PAID.

Taxes erroneously paid shall not be refunded unless a claim for refund is made within the time limitation provided in Ohio R.C. 718.06(A).

111.1703 AMOUNTS OF LESS THAN ONE DOLLAR.

Amounts of less than one dollar (\$1.00) shall not be collected or refunded.
(Ord. 66-135. Enacted 12-27-66.)

TAXPAYER RELIEF**111.1901 NONRESIDENT TAXPAYERS.**

(EDITOR'S NOTE: The provisions of Section 111.1901 were repealed by Ordinance 71-125, enacted 11-22-71.)

111.1902 TAX CREDIT.

(a) When the taxable income of a resident of the City of Shaker Heights is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall be allowed a credit of the amount of income tax paid on such taxable income to such other municipality, equal to fifty percent (50%) of the amount obtained by multiplying the lower of the tax rate of

such other municipality or of the City of Shaker Heights by the taxable income earned in or attributable to the municipality of employment or business activity, but in any event, such credit shall not be applied to a rate in excess of one percent (1%) of the taxable income earned in or attributable to the municipality of employment or business activity. For purposes of this section, "taxable income" includes the distributive share of net profits of a resident partner or owner of an unincorporated business entity.

(b) A claim for credit or refund under this section shall be made in such manner as the Administrator may by rule or regulation provide. In the event such City of Shaker Heights resident fails, neglects or refuses to file an annual return or declaration on the form prescribed by the Administrator, he shall not be entitled to such credit or refund and shall be considered in violation of this chapter for failure to file a return.
(Ord. 79-22. Enacted 2-26-79.)

111.1903 CLAIM FOR CREDIT.

(EDITOR'S NOTE: The provisions of Section 111.1903 were repealed by Ordinance 71-125, enacted 11-22-71.)

DISBURSEMENTS OF RECEIPTS OF TAX COLLECTION

111.2101 DISBURSEMENT OF FUNDS COLLECTED.

The funds collected under the provisions of this chapter of the Codified Ordinances of the City of Shaker Heights shall be disbursed in the following manner:

- (a) First, such part thereof as shall be necessary to defray all expenses of collecting the tax and of administering and enforcing the provisions of this chapter shall be paid.
- (b) The balance remaining after payment of the expenses referred to in subsection (a) hereof shall be deposited in the General Fund for municipal purposes.
(Ord. 66-135. Enacted 12-27-66.)

DUTIES AND AUTHORITY OF THE ADMINISTRATOR

111.2301 DUTY TO RECEIVE TAX IMPOSED.

It shall be the duty of the Administrator to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, to keep an accurate record thereof and to report all moneys so received.
(Ord. 66-135. Enacted 12-27-66.)

111.2302 DUTY TO ENFORCE COLLECTION.

It shall be the duty of the Administrator to enforce payment of all taxes owing to the City of Shaker Heights to keep accurate records for a minimum of five (5) years showing the amount due from each taxpayer required to file a declaration and make any return, or both, including taxes withheld, and to show the dates and amounts of payments thereof.
(Ord. 66-135. Enacted 12-27-66.)

111.2303 AUTHORITY TO MAKE AND ENFORCE REGULATIONS.

The Administrator is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.
(Ord. 66-135. Enacted 12-27-66.)

111.2304 AUTHORITY TO ARRANGE INSTALLMENT PAYMENTS.

(a) The Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under this chapter.

(b) Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 111.1701 and 111.1505 shall apply.
(Ord. 66-135. Enacted 12-27-66.)

111.2305 AUTHORITY TO DETERMINE AMOUNT OF TAX DUE.

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 Administrator may determine the amount of tax appearing to be due the City of Shaker Heights from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined together with interest and penalties thereon, if any.
(Ord. 66-135. Enacted 12-27-66.)

111.2306 AUTHORITY TO MAKE INVESTIGATIONS.

The Administrator, 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 whom the Administrator 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. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Administrator, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.
(Ord. 66-135. Enacted 12-27-66.)

111.2307 AUTHORITY TO COMPEL PRODUCTION OF RECORDS.

The Administrator is 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 should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and Federal income tax returns, and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.
(Ord. 66-135. Enacted 12-27-66.)

111.2308 REFUSAL TO PRODUCE RECORDS.

The refusal to produce books, papers, records and Federal income tax returns, or the refusal to submit to such examination by any employer or persons subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this chapter or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 111.1505.

(Ord. 66-135. Enacted 12-27-66.)

111.2309 CONFIDENTIAL NATURE OF INFORMATION.

(a) Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential except for official purposes, or in accordance with proper judicial order, or where the taxpayer has signed a written waiver allowing the Tax Administrator to release non-financial information dealing strictly with questions of residency. Any person divulging such information in violation of this section, shall, upon conviction thereof, be deemed guilty of a first degree misdemeanor and shall be punished as provided in Section 101.99 of the Administrative Code. Each disclosure shall constitute a separate offense.

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

(Ord. 00-50. Enacted 7-24-00.)

111.2310 TAXPAYER REQUIRED TO RETAIN RECORDS.

Every taxpayer shall retain all records necessary to compute his tax liability for a period of five (5) years from the date his return is filed, or the withholding taxes are paid.

(Ord. 66-135. Enacted 12-27-66.)

111.2311 AUTHORITY TO CONTRACT FOR CENTRAL COLLECTION FACILITIES.

The City of Shaker Heights having already entered into an agreement for the establishment of a Regional Council of Governments pursuant to Ordinance No. 71-45, which Council has organized a municipal tax collection agency known as "Regional Income Tax Agency", the Board of Trustees of such Regional Income Tax Agency is authorized to administer and enforce the provisions of this chapter as the agent of the City of Shaker Heights, and the duties and authority of the Administrator hereunder may be performed by the Board of Trustees of such agency through the Administrator of such agency. Provided, however, the Administrator of the agency shall have no authority to abate penalties or interest provided for in Sections 111.1501 and 111.1502.

(Ord. 66-135. Enacted 12-27-66; Ord. 71-125. Amended 11-22-71.)

BOARD OF REVIEW

111.2501 BOARD OF REVIEW ESTABLISHED.

A Board of Review, consisting of the Mayor or a person designated by him, the Director of Law or an Assistant Director of Law designated by him, and a member of Council to be elected by that body, is hereby created. The Board shall select, each year for a one-year term, one of its members to serve as Chairman and one to serve as Secretary. 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 111.2309 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

(Ord. 66-135. Enacted 12-27-66.)

111.2502 DUTY TO APPROVE REGULATIONS AND TO HEAR APPEALS.

All rules and regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this chapter, shall 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 Administrator and, at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.

(Ord. 66-135. Enacted 12-27-66.)

111.2503 RIGHT OF APPEAL.

Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter may appeal therefrom to the Board of Review within thirty (30) days from the announcement of such ruling or decision by the Administrator, and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling, decision or any part thereof.

(Ord. 66-135. Enacted 12-27-66.)

OTHER PROVISIONS

111.2701 DECLARATION OF LEGISLATIVE INTENT.

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

(Ord. 66-135. Enacted 12-27-66.)

111.2702 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(a) This chapter shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions and proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of such taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Sections 111.1701, 111.1702, 111.1703, 111.1505, 111.1506 and 111.1507.

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Sections 111.1101 and 111.1302 as though the same were continuing.

(Ord. 66-135. Enacted 12-27-66.)