

## CHAPTER 171 Income Tax

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### CROSS REFERENCES

- Power to levy - see Ohio Const., Art. XII, Sec. 8
- Payroll deductions - see Ohio R.C. 9.42
- Municipal income taxes - see Ohio R.C. Ch. 718
- Tax Commissioner and Deputy as assistant treasurers - see ADM. 117.06
- Registration with Tax Commissioner required for building permit - see BLDG. 1301.04

### **171.01 PURPOSE.**

The purpose of this chapter is 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, and there shall be, and is hereby, levied a tax on income, salaries, qualifying wages, commissions and other compensation, and on net profits as hereinafter provided in Ordinance 4590, passed 2-16-06, and as subsequently amended or replaced. This ordinance replaces Ordinance 1637, passed July 21, 1977, and any amendments and supplements thereto.  
(Ord. 4590. Passed 2-16-06.)

### **171.02 DEFINITIONS.**

As used in this chapter, the following words shall have the meanings ascribed to them in this

section, except as and if the context clearly indicates or requires a different meaning:

(a) "Adjusted federal taxable income" means a "C" corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute "adjusted federal taxable income" as if the pass-through entity were a "C" corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) Section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.

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

(c) "Board of Review" means the Board created by and constituted as provided in Section 171.13.

(d) "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity.

(e) "Corporation" means a corporation, subchapter S corporation as defined in the Federal Tax Code, 26 U.S.C. 1361, 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.

(f) "Domicile" means the permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

(g) "Employee" means one who works for income, qualifying wages, salary, commissions or other types of compensation in the services and under the control of any employer.

(h) "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 an income, salary, wage, commission or other compensation basis.

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

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

(k) "Generic Form" means an electronic or paper form designed 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 Wilmington's regular tax return, estimated payment, and refund request forms, and are in a similar format that will allow processing of the generic forms without altering Wilmington's procedures for processing forms.

(l) "Gross receipts" means the total revenue derived from sales, work done, or service rendered.

(m) Subsection (m) is reserved for future legislation.

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

(o) "Income" means all monies and compensation in any form, subject to limitations

imposed by ORC 718, derived from any source whatsoever, including but not limited to:

(1) All income, qualifying wages, commissions, other compensation and other income from whatever source received by residents of Wilmington.

(2) All salaries, wages, commissions, other compensation and other income from whatsoever source received by nonresidents for work done or services performed or rendered or activities conducted in Wilmington.

(3) The portion attributable to the City of the net profits of all businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in Wilmington.

(p) Subsection (p) is reserved for future legislation.

(q) "Municipality" means the City of Wilmington, Ohio.

(r) "Net profits" means, for taxable years prior to 2004, the net gain from all operations including those pertaining to capital gains and losses of a business, profession or enterprise after provision for all ordinary and necessary expenses, except taxes imposed by this chapter, and Federal and other taxes based on income, paid or accrued in accordance with the accounting system (i.e., either cash or accrual) used by the taxpayer for Federal income tax purposes, and, in the case of an association, without deduction of salaries paid to partners or owners. (For taxable years 2004 and later, see "adjusted federal taxable income".)

(s) "Nonresident" means domiciled outside the Municipality.

(t) "Non-resident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the Municipality.

(u) "Other payer" means any person that pays an individual any item included in the taxable income of the individual, other than the individual's employer or that employer's agent.

(v) "Person" means every natural person, partnership, fiduciary, association, corporation or other entity. Whenever used in any clause prescribed and imposing a penalty the term "person" as applied to any association shall include the partners or members thereof, and as applied to corporations, the officers thereof.

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

(x) "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 "qualifying wage" shall not be taxed by the Municipality. This definition is effective January 1, 2004, for taxable years 2004 and later.

(y) "Resident" means an individual domiciled in the City.

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

(aa) "Return Preparer" means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.

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

(cc) "Taxable year" means the calendar year, or the fiscal year upon the basis of which 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. The taxable year of an individual shall be a calendar year.

(dd) "Tax Commissioner" means the Tax Commissioner of the Municipality or the person executing the duties of the aforesaid Commissioner.

(ee) "Taxpayer" means a person, whether an individual, partnership, association, corporation or other entity, required by this chapter to file a return and/or pay a tax.

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

(Ord. 4590. Passed 2-16-06.)

### **171.03 IMPOSITION OF TAX.**

(a) Basis of Imposition. Subject to provisions of Section 171.16, an annual tax, for the purposes specified in Section 171.01, shall be, and is hereby levied on and after July 1, 1986, at the rate of eight-tenths of one percent (.8%) per annum, with the same to be levied effective on and after January 1, 2001, at the rate of one percent (1%) per annum upon the following:

(1) On all income, qualifying wages, including sick and vacation pay, commissions and other compensation earned and/or received during the effective period of this chapter by residents.

(2) On all income, qualifying wages, including sick and vacation pay, commissions and other compensation earned and/or received, during the effective period of this chapter, by nonresidents for work done or service performed in the Municipality. Separation pay, termination pay, reduction- in-force pay, and other compensation paid as a result of an employee leaving the service of an employer shall be allocable only to the Municipality.

(3) A. On the portion attributable to the Municipality of the net profits earned during the effective period of this chapter 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.

B. On a resident partner's or owner's share of the net profits earned during the effective period of this chapter of a resident association or other unincorporated entity not attributable to the Municipality and not levied against such association or other unincorporated entity.

(4) A. On the portion attributable to the Municipality of the net profits, earned during the effective period of this chapter, of all nonresident 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, whether or not such association or other unincorporated entity has an office or place of business in the Municipality.

B. On a resident partner's or owner's share of the net profits earned during the effective period of this chapter of a nonresident association or other unincorporated entity not attributable to the Municipality, and not levied against such association or other unincorporated entity.

(5) On the net profits earned during the effective period of this chapter 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 such corporations have an office or place of business in the Municipality.

(b) 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 in the business and situated within the Municipality, during the period covered by the return is of the average original cost of all the real and tangible personal property owned or used in the business, wherever situated, during such period. 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) Gross receipts of the business from sales made and services performed in the Municipality, during the period covered by the return, are of the total gross receipts from all sales and services, wherever made or performed, during such period.

(3) Total wages, salaries, commissions and other compensation paid, during the period covered by the return, to employees for services performed in the Municipality is of the total wages, salaries, commissions and other compensation paid during such period to all employees within and outside the Municipality. Wages, salaries, and other compensation shall be included to the extent that they represent qualifying wages.

(4) Adding together the percentages determined in accordance with subsections (1), (2), and (3) above, or such of the aforesaid percentages as are applicable to the particular taxpayer, and dividing the total so obtained by the number of percentages used in deriving such total.

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

B. However, in the event a just and equitable result cannot be obtained under the formulas provided herein, the Board of Review, upon application of the taxpayer or the Tax Commissioner, shall, under uniform regulations adopted by the Board, have the authority to substitute other factors or methods calculated to effect a fair and proper allocation, including the use of books and records to determine allocation.

(c) Operating Loss Carry-Forward.

(1) The portion of a net operating loss sustained in any taxable year, 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 taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against the net profits of any prior year.

(2) 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.

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

(d) Consolidated Returns.

(1) Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the Municipality. However, once the affiliated group has elected to file a consolidated return or a separate return with the Municipality, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the Municipality.

(2) 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 such information, in addition to the return hereinafter provided for, as he may deem necessary to ascertain whether net profits are properly allocated to the Municipality. If the Commissioner finds net profits are not properly allocated to the Municipality by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, he may require the filing of a consolidated return or adjust such transactions so as to produce a fair and proper allocation of net profits to the Municipality.

(e) Exception. The tax provided for herein shall not be levied upon the following:

(1) The military pay or allowances of members of the armed forces of the United States and of members of their reserved components, including the National Guard.

(2) Unemployment compensation, payments from pension plans or similar payments, including, long-term and short-term disability payments received from private industry, or local, state, or federal governments, or from charitable, religious or educational organizations, and the proceeds of sick, accident, or liability insurance policies. The long-term disability benefits excludable must be a permanent nature as determined by a physician or government entity.

(3) Compensation for personal injuries or for damages to property by way of insurance or otherwise, but this exception does not apply to compensation paid for lost salaries or wages or to compensation from punitive damages.

(4) Alimony received. Alimony used herein shall be as defined in the Internal Revenue Service.

(5) Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from casual entertainment, amusements, sports events, and health and welfare activities conducted by bona fide charitable, religious or educational organizations and associations, and only to the extent that the said receipts are income that is exempt from federal income tax.

(6) Income, dues, and contributions received by religious, fraternal, charitable, scientific, literary, educational institutions or organizations, labor unions and similar organizations.

(7) Any association, organization, corporation, club or trust which is exempt from federal taxes on income by reason of its purpose(s), but only to the extent that the said income is exempt from federal income tax.

(8) Gains from involuntary conversion, collection of indebtedness, interest income received by corporations not regularly engaged in the business of lending money or banking

as described in Section 581 of the Internal Revenue Code, interest on federal, state, municipal, or other political subdivision obligations, items of income already taxed by the State of Ohio, gains from sale of capital assets as defined by the Internal Revenue Code, any dividends received from any other corporation, but only to the extent that such dividends are included in net profits, and income of a decedent's estate during the period of administration (except such income from the operation of a business).

(9) Compensation paid to a precinct election official, to the extent that such compensation does not exceed \$1,000 annually.

(10) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained clergy's compensation. The clergy must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination, and must have authority to perform all sacraments of the church.

(11) The income of a public utility when that public utility is subject to the tax levied under Section 5727.24 or 5727.30 of the Ohio Revised Code. However, subject to Section 5745 of the Ohio Revised Code, starting January 1, 2002 this exemption does not apply to the income of an electric company or combined company, and starting January 1, 2004 it does not apply to the income of a telephone company, as both are defined in Section 5727.01 of the Revised Code.

(12) Income 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, and/or is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of a Municipality to impose net income taxes.

(f) 12-Day Occasional Entry Rule. The City of Wilmington shall not tax the compensation of an individual if all of the following apply:

(1) The individual does not reside in the City of Wilmington;

(2) The compensation is paid for personal services performed by the individual in the City of Wilmington on twelve or fewer days during the calendar year. A day is a full day or any fractional part of a day;

(3) In the case of an individual who is an employee, the principal place of business of the individual's employer is located outside the City of Wilmington and the individual pays tax on compensation described in subsection (f)(2) of this section to the City, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual;

(4) The individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the City of Wilmington. (Ord. 4590. Passed 2-16-06.)

#### **171.04 EFFECTIVE PERIOD.**

The tax imposed by this chapter shall be levied, collected and paid with respect to all income and net profits, subject to the tax, earned and/or received on or after January 1, 2001. (Ord. 4590. Passed 2-16-06.)

### **171.05 RETURN AND PAYMENT OF TAX.**

(a) Registration. Each person who becomes a taxpayer after the effective date of this section and resides within the City shall register with the Tax Commissioner as follows:

- (1) Thirty days after the taxpayer becomes a resident of the City.
- (2) Every employer, contractor or subcontractor who now does work within the City shall register with the Tax Commissioner. He shall present to the Tax Commissioner a list of its employees, subcontractors, contractors or others who may do work for it whose salary, wages, commissions or other compensation are not presently subject to withholding by the City.
- (3) Each employer, contractor or subcontractor who begins work within the City after the effective date of this section shall register with the Tax Commissioner within five (5) calendar days after they begin work within the City.

(b) Dates and Exemptions. Each person residing in the City who engages in business, or whose income, salary, qualifying wages, commissions or other compensation are subject to the tax imposed by this chapter shall, whether or not a tax be due thereon, on or before April 15 in each year, make and file 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 chapter, file his return within one hundred five (105) days from the end of such fiscal year or period. The Tax Commissioner is hereby directed to accept the return of an employer or employers, showing the amount of tax deducted by such employer or employers from the salaries, wages, commissions or other compensation of a nonresident employee, and paid by him or them to the Commissioner shall be accepted as the return required of a nonresident employee whose sole income, subject to tax under this chapter, is such salary, wages, commissions or other compensation.

(c) Returns and Contents Thereof. The City of Wilmington shall accept a generic form of any return, report, or document required to be filed if the generic form once completed and filed, contains all of the information required to be submitted with the City of Wilmington's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances of the City of Wilmington governing the filing of returns, reports or documents set forth, at a minimum:

- (1) The aggregate amounts of income, salaries, wages, commissions and other compensation earned and/or received, and gross receipts from any business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income, earned during the preceding year and subject to the tax.
- (2) The amount of the tax imposed by this chapter on such earnings and profits; and
- (3) Such other pertinent statements, information returns or other information as the Tax Commissioner may require, including but not limited to a statement that the figures used in the return are the figures used in the return for Federal income tax and are adjusted to set forth only such income as is taxable under the provisions of this chapter, copies of all W-2 forms, 1099 miscellaneous income forms, page one of Form 1040, page one and two of Form 1102, 1120S (including (K-1), 2106, 1065, Schedule C (including cost of goods manufactured and/or sold), Schedule E, Schedule F and any other Federal Schedules, if applicable.



(d) Extensions.

(1) Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of a City of Wilmington tax return. The taxpayer shall make the request by filing a copy of the taxpayer's request for a federal filing extension with the Tax Commissioner.

(2) Any taxpayer not required to file a federal income tax return may request an extension for filing a City of Wilmington tax return in writing.

(3) The request for extension shall be filed not later than the last day for filing the City of Wilmington tax return as prescribed by ordinance or rule of this municipal corporation.

(4) For individuals, the extended due date shall be the last day of the month following the month to which the due date of the Federal Income Tax return has been extended. For businesses, the extended due date shall be the last day of the month to which the due date of the Federal Income Tax return has been extended, if the extension is filed through the Ohio Business Gateway. If not filed through the Ohio Business Gateway the extended due date is the last day of the month following the month to which the due date of the Federal Income Tax return has been extended. The Tax Commissioner may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon on or before the original due date.

(5) The City of Wilmington may deny a taxpayer's request for extension if the taxpayer:

- A. Fails to timely file the request;
- B. Fails to file a copy of the federal extension request;
- C. Owes the City of Wilmington any delinquent income tax or any penalty, interest, assessment or other charge for the late payment or nonpayment of income tax; or has failed to file any required income tax return, report, or other related document for a prior tax period.

(6) The granting of an extension for filing a City of Wilmington income tax return does not extend the last date for payment of the tax, hence, penalty and interest may apply to any unpaid tax during the period of extension at the rate set out by Section 171.10. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the extension period provided all other filing and payment requirements of the Tax Code have been met. Any extension by the Tax Commissioner shall be granted with the understanding that declaration filing and payment requirements have been fulfilled; however, if, upon further examination it then becomes evident that declaration filing and payment requirements have not been fulfilled, penalty and interest may be assessed in full and in the same manner as though no extension had been granted.

(e) Payment with Returns.

(1) 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; provided, however, that where the source, pursuant to the provisions of Section 171.06 or where any portion of such tax shall have been paid by the taxpayer, pursuant to the provisions of Section 171.07, or where an income tax, creditable against the Municipality's tax pursuant to Section 171.15

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 such return.

(2) A taxpayer who has overpaid the amount of tax to which the Municipality 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.

(f) Amended Returns.

(1) 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 and limitations contained in Sections 171.11 and 171.15, such amended returns shall be on a form obtainable on request from the Tax Commissioner. A taxpayer may not change the method of accounting (i.e., cash or accrual) or apportionment of net profits after the due date for filing the original return.

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

(g) Any business, profession, association or corporation reporting a net loss is subject to the filing requirements of this chapter.

(h) A loss from the operation of a business may not be used to offset the income on a taxpayer's W-2 form.

(i) Expenses shown on Federal Form 2106 are deductible, but are subject to review and audit by the City's income tax office. The 2106 expenses must be apportioned to municipalities in the same manner to which the related income is apportioned.

(j) The officer or employee of such employer having control or supervision or charged with the responsibility of withholding the tax and making the payment, shall be personally liable for failure to withhold or pay the tax, penalties, or interest due as required herein. The dissolution, bankruptcy or reorganization or other fundamental change of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to withhold the tax or pay taxes, penalties, or interest due.

(Ord. 4590. Passed 2-16-06.)

**171.06 COLLECTION AT SOURCE.**

(a) Withholding by Employer. Each employer within, or doing business within the Municipality, who employs one or more persons on an income, salary, wage, commission or other compensation basis shall deduct at the time of the payment of such income, salaries, wages, commissions or other compensations, or other compensation due by such employer to

each employee, and shall, on or before the last of the month following the close of each calendar quarter, make a return and pay to the Tax Commissioner the amount of taxes so deducted during the preceding calendar quarter. The return shall be on a form or forms prescribed therefor by the Commissioner.

(b) Employer Considered as Trustee. Each employer in collecting the 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 his employees shall, until the same is paid to the Municipality, be deemed a trust fund in the hands of such employer. Each employee shall be liable for the payment of the tax required to be deducted and withheld, whether or not such tax, in fact, has been withheld.

(c) Corporate Officers and Employees Personal Liability. Responsibility and liability herein shall be the same as the provisions of Section 171.05(j).

(d) Employees' Listings. On or before the last day of February of each year, each employer shall file a withholding return, on a form or forms prescribed by and obtainable from the Tax Commissioner, setting forth the tax which was withheld during the preceding calendar year and such other information as may be required by the rules and regulations adopted by the Commissioner. Such information shall include, but not be limited to, the name, address, and social security number of each employee, the total amount of income, salaries, wages, commissions and other compensation paid the employee during the year, and the amount of municipal income tax withheld from each employee.

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

(Ord. 4590. Passed 2-16-06.)

### **171.07 DECLARATIONS.**

(a) Requirement for Filing. Every person who anticipates any taxable income which is not subject to Section 171.06, or engages in any business, profession, enterprise or activity, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity, together with the estimated tax due thereon, if any.

(b) Dates for Filing.

(1) Calendar year filers shall file on or before April 15, or within one hundred five (105) days of the date the taxpayer first becomes subject to the provisions of this section.

(2) Those taxpayers reporting on a fiscal year basis shall file a declaration within one hundred five days after the start of each fiscal year or period.

(3) A. No penalties or interest shall be assessed, for not filing a declaration, on any resident taxpayer who was not domiciled in the Municipality on the first day of January in the year in which they became subject to estimated payments.

B. Penalties or interest shall not be assessed on estimated payments if the

taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period and the taxpayer filed a return for that year.

C. Penalties or interest shall not be assessed on estimated payments if the taxpayer has remitted an amount equal to ninety percent (90%) of the final tax liability for the tax year due on or before April 15th of the current year.

(c) Forms; Payment Dates.

(1) Such declaration shall be filed upon a form furnished by or obtainable from the Tax Commissioner, or on an acceptable generic form as defined in this chapter. Credit shall be taken in such declaration for the Municipality tax to be withheld from any portion of such income and for income taxes to be paid to another taxing municipality for which credit is allowed against the Municipality tax under Section 171.15.

(2) A declaration of estimated tax to be paid the Municipality by taxpayers who are individuals 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 the last day of the seventh, tenth and thirteenth months after the beginning of the tax year.

(3) Estimated tax to be paid by taxpayers who are corporations and associations shall be accompanied by a payment of at least one-fourth of the estimated tax required to be paid by this section, and at least a similar amount shall be paid on or before the fifteenth day of the sixth, ninth, and twelfth months of the taxable year.

(d) Amended Declaration. An amended declaration may be filed with the filing of any quarterly return. Provided, however, that in the case of an amended declaration being filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(e) Annual Return Required. On or before the fifteenth day of the fourth month of the calendar or fiscal year following that for which the declaration was filed, an annual return shall be filed and any balance which may be due the Municipality, shall be paid therewith in accordance with the provisions of Section 171.05.

(Ord. 4590. Passed 2-16-90.)

**171.075 INFORMATION BY LANDLORDS; INVESTIGATIVE AND SUBPOENA POWERS OF TAX COMMISSIONER; PENALTY.**

(a) All property owners of real property located in the Municipality, who rent or otherwise lease the same, or any part thereof, to any person for residential dwelling purposes, including apartments, rooms and other rental accommodations, during any calendar year, or part thereof, commencing with the effective date of this section, shall file with the Tax Commissioner on or before the January 31 first following such calendar year a written report disclosing the name, address and also telephone number, if available, of each tenant known to have occupied on December 31 during such calendar year such apartment, room or other residential dwelling rental property.

(b) The Tax Commissioner may order the appearance before him, or his duly authorized agent, of any person whom he believes to have any knowledge of the name, address and telephone number of any tenant of residential rental real property in the Municipality. The Tax Commissioner, or his duly authorized agent, is authorized to examine any person, under oath, concerning the name, address and telephone number of any tenant of residential real property located in the Municipality. The Tax Commissioner, or his duly authorized agent, may compel the production of papers and records and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such person has knowledge of the name, address and telephone number of any tenant of residential real property in the Municipality.

(c) Any property owner or person who:

(1) Fails, refuses or neglects to timely file a written report required by subsection (a) hereof; or

(2) Makes an incomplete or intentionally false written report required by subsection (a) hereof; or

(3) Fails to appear before the Tax Commissioner or any duly authorized agent and to produce and disclose any tenant information pursuant to any order or subpoena of the Tax Commissioner as authorized in this section; or

(4) Fails to comply with the provisions of this section or any order or subpoena of the Tax Commissioner:

shall be subject to payment of a penalty of not more than one hundred dollars (\$100.00) for each offense which shall be enforceable in a civil action brought by the Tax Commissioner in any court of competent jurisdiction.

(Ord. 4590. Passed 2-16-06.)

#### **171.08 DUTIES OF THE TAX COMMISSIONER.**

(a) Collection and Maintenance Responsibility.

(1) There is hereby created an Income Tax Bureau for the administration of the provisions of this chapter. Such Bureau shall consist of a Tax Commissioner, Deputy Tax Commissioner and such clerical and secretarial personnel as may be determined to be necessary for the administration of this chapter. All such personnel shall be appointed by the City Treasurer with the consent of Council.

(2) It shall be the duty of the Tax Commissioner to collect and receive the tax imposed by this chapter in the manner prescribed therein, and to keep an accurate record thereof, and to report all moneys so received.

(3) It shall be the duty of the Tax Commissioner to enforce payment of all income taxes owing the Municipality, to keep accurate records for a minimum of six 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) Enforcement Authority. The Tax Commissioner is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations 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 reexamination and correction of returns. Taxpayers are hereby required to comply with the requirements of this chapter and the rules and regulations.

(c) Determination of Taxes. 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 will send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any. Such determination may be modified or amended based upon information or data subsequently secured by or made available to the Tax Commissioner. If the taxpayer fails to respond to the assessment within 30 days, the tax, penalties, and interest assessed shall become due and payable and collectible as are other unpaid taxes.

(d) Compromise Authority. 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.  
(Ord. 4590. Passed 2-16-06.)

#### **171.09 INVESTIGATIVE POWERS OF THE TAX COMMISSIONER; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.**

(a) Examination of Taxpayers Records. The Tax Commissioner, or any of his authorized agents, is hereby authorized to examine the books, papers, records and Federal and State income tax returns of any employer, or taxpayer, or any person subject to, or whom the Tax Commissioner believes is subject to, the provisions of this chapter, for the purpose of verifying the accuracy of any withholdings due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer, is directed and required to furnish within ten (10) calendar days following a written request of the Tax Commissioner, or his duly authorized agent or employees, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

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

(c) Result of Refusal to Submit Information. The refusal to produce books, papers, records and Federal and State income tax returns, or the refusal to submit to such 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 comply with the provisions of this section or with an order or subpoena of the Tax Commissioner authorized hereby shall be deemed a violation of this chapter, punishable as

provided in Section 171.12.

(d) Retention of Records by Taxpayer. Every taxpayer shall retain all records necessary to compute his tax liability for a period of six years from the date his return is filed or the taxes required to be withheld are paid.

(e) Confidential Nature of Information. Any information gained as a result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, and no disclosure thereof shall be made except to municipal, County, State or Federal taxing agencies, or, except for official tax purposes as the Director of Law shall determine, or except in accordance with proper judicial order. Any person divulging such information in violation of this section shall be fined not more than five hundred dollars (\$500.00) 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 relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal. (Ord. 4590. Passed 2-16-90.)

#### **171.10 INTEREST AND PENALTIES.**

(a) Interest. All taxes imposed, including estimated taxes, 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 one-half of one percent ( $\frac{1}{2}\%$ ) per month or fraction of a month.

(b) Penalties. In addition to interest as provided in subsection (a) hereof, 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 one hundred dollars (\$100.00) or one percent (1%) per month or fraction of a month thereof, of the amount of the unpaid tax, if the tax is paid during the first three months after such tax becomes due; a penalty of two percent (2%) per month or fraction of a month thereof, of the unpaid tax, if such tax is paid during the fourth to six month, inclusive, after such tax becomes due; and a penalty of four percent (4%) per month, or fraction of a month thereof, of the amount of the unpaid tax, if such tax is paid later than six 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/or remit to the Tax Commissioner the taxes to be withheld from employees, a penalty of the higher of one hundred dollars (\$100.00) or two percent (2%) per month or fraction of a month thereof, of the unpaid withholding, if paid during the first three months after it was due; a penalty of four percent (4%) per month, or fraction of a month thereof, of the unpaid withholding, if paid during the fourth to sixth month, inclusive, after it was due; and a penalty of five percent (5%) per month or fraction of a month 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) Exceptions. 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 prescribed by the Commissioner; and provided further that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after the final determination of the Federal tax liability.

(d) Abatement by Board of Review. Upon an appeal from the refusal of the Tax Commissioner to recommend abatement of penalty and interest, the Board of Review may abate such penalty or interest, or both.  
(Ord. 4590. Passed 2-16-06.)

### **171.11 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.**

(a) Time Limitation on Suits. 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; provided, however, in the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later. 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.

(b) Time Limitation on Refunds. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date on which such payment was made or the return was due, or within three months after final determination of the Federal tax liability, whichever is later. In addition, the following shall apply regarding refunds of tax withheld from Nonqualified-Deferred Compensation Plans (NDCP):

(1) A taxpayer may be eligible for a refund if the taxpayer has suffered a loss from a NDCP. The loss will be considered sustained only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to the NDCP. Full loss is sustained if no distribution of money and property will be made by the NDCP.

(2) A taxpayer who receives income as a result of payments from a NDCP, and that income is less than the amount of income deferred to the NDCP and upon which municipal tax was withheld, then a refund will be issued on the amount representing the difference between the deferred income that was taxed and the income received from the NDCP. If different tax rates applied to the tax years in which deferrals, a weighted average of the different tax rates will be used to compute the refund amount.

(3) Refunds shall be allowed only if the loss is attributable to the bankruptcy of the employer who had established the NDCP, or the employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified compensation.

(c) Income tax that has been deposited with the City of Wilmington, but should have been deposited with another municipality, is allowable by the City of Wilmington as a refund but is



subject to the three-year limitation on refunds. Income tax that should have been deposited with the City of Wilmington, but was deposited with another municipality, shall be subject to recovery by the City of Wilmington. The City of Wilmington will allow a non-refundable credit for any amount owed the City of Wilmington 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 the City of Wilmington's tax rate. If the City of Wilmington's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the City of Wilmington.

(d) Overpayments of withheld tax that have resulted due to incorrect withholding of an employee by an employer, and are not due as a result of excess withholding requested by the employee, shall be refunded to the employer. It shall be the responsibility of the employer, and not the municipality, to refund such overpayment to the employee. However, nothing in this subparagraph shall affect the right of a nonresident employee to apply directly to the municipality for refund of income tax withheld for days worked out of Wilmington.

(e) Amounts of less than one dollar (\$1.00) shall not be refunded or collected.

(f) Payments on delinquent amounts shall be applied in the following manner:

(1) To unpaid penalty and interest assessments in the order in which such assessments became due.

(2) To the taxes owed for any previous year in the order in which such taxes became due.

(3) To the taxpayer's current estimated tax liability.

(Ord. 4590. Passed 2-16-06.)

#### **171.12 VIOLATIONS; PENALTIES.**

(a) Enumeration of Penalties. Any person who shall:

(1) Fail, neglect or refuse to make any return or declaration required by this chapter; or

(2) Fail, neglect or refuse to register with the Tax Commissioner as required by Section 171.05; or

(3) Make an incomplete, false or fraudulent return; or

(4) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or

(5) Fail, neglect or refuse to withhold the tax from his employees and remit such withholding tax to the Tax Commissioner; or

(6) 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 and State income tax returns; or

(7) Fail to appear before the Tax Commissioner and to produce his or her employer's books, records, papers or Federal and State income tax returns upon order or subpoena of the Commissioner; or

(8) Refuse to disclose to the Tax Commissioner any information with respect to such person's or such person's employer's income or net profits; or

(9) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Commissioner; or

(10) Fail, neglect or refuse to make any payment on the estimated tax for any year as required by Section 171.07; or

(11) Fail to cause the tax withheld from the wages of the employees of such corporation pursuant to this chapter to be paid to the Municipality in accordance with the provisions of Section 171.06; or

(12) 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 third degree, which is a fine of not more than \$500.00 and a jail term of not more than 60 days, and shall be punished as provided for in Section 501.99 of the Codified Ordinances.

(b) Time Limitations on Prosecutions. All criminal prosecutions under this section and all civil actions must be commenced within the time limits provided in Ohio R.C. 718.12.

(c) Failure to Obtain Forms not a Defense. The failure of any employer, taxpayer or persons to receive or procure a return, declaration or other required form shall not excuse him from making any information return, or declaration, from filing such form, or from paying the tax.

(d) Responsibility of Corporation Employees. The term "person" as used in this section shall, in addition to the meaning prescribed in Section 171.02, include in the case of an association or corporation not having any partner, member or officer within the Municipality, any employee or agent of such association or corporation who can be found within the corporate limits of the Municipality.

(Ord. 4590. Passed 2-16-06.)

### **171.13 BOARD OF REVIEW.**

(a) Composition. A Board of Review consisting of the Director of Law, the President of Council and one resident of the City holding no municipal office, who shall be appointed by Council. The individual acting as the local administrator of the tax shall act as secretary of the Board. Board members shall receive such compensation as Council may determine.

(b) Procedure. The Board of Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Ohio 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 Ohio R.C. 121.22.

(c) Appeals. 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 City of Wilmington, 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.

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

(2) The imposition of penalty and interest as prescribed in the Codified Ordinances of the City of Wilmington is not a sole basis for an appeal.

(3) The Board of Review shall schedule a hearing within forty-five days after receiving the request, unless the taxpayer waives a hearing.

(4) If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant or other representative.

(5) The Board may affirm, reverse, or modify the Tax Commissioner's decision or any part of that decision. The Board shall issue a decision on the appeal within ninety days after the Board's final hearing on the appeal, and send notice of its decision by ordinary mail to the petitioner within fifteen days after issuing the decision.

(6) Any person dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to a court of competent jurisdiction within thirty (30) days from the announcement of such ruling or decision. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

(Ord. 4590. Passed 2-16-06.)

#### **171.14 ALLOCATION OF FUNDS.**

(a) 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:

(1) Such part thereof as shall be necessary to defray all cost of collecting the taxes and the cost of administering and enforcing the provisions thereof.

(2) The balance of any moneys collected under the provisions of this chapter shall be allocated to the General Fund for the purpose of general municipal operations.

(Ord. 4590. Passed 2-16-06.)

#### **171.15 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.**

Limitation on Amount Paid. Every individual taxpayer who resides in the Municipality and who receives income, 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 is made to appear that he has paid a municipal income tax on such income, taxable under this chapter, to another municipality, shall be allowed a credit for such tax paid, against the tax imposed by this chapter in an amount not to exceed the tax due the Municipality under this chapter.

(Ord. 4590. Passed 2-16-06.)

#### **171.16 SAVING CLAUSE.**

This chapter shall not apply to any person, firm or corporation, or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for. Any sentence, clause, section or part of this chapter or any tax against or exception granted any individual or any of the several groups of persons, or forms of income specified herein if found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, or part hereof, not been included therein.  
(Ord. 4590. Passed 2-16-06.)

**171.17 COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE.**

(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 or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of said taxes levied hereunder in the aforesaid periods are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Section 171.11 and Section 171.12 hereof.

(b) Annual returns due for all or any part of the last effective year of this ordinance shall be due on the date provided in Section 171.05 and Section 171.06 of this ordinance as though the same were continuing.  
(Ord. 4590. Passed 12-6-06.)