

# CITY OF DAYTON, OHIO

## **Income Tax Ordinance No. 30519-06**



Approved by the City of Dayton Electorate

**March 27, 1984**

**March 14, 2006**

Effective April 1, 1984 and January 1, 2007

## **HISTORY OF THE DAYTON INCOME TAX**

### **ORDINANCE 16922**

On May 23, 1950, a special election was held and the Voters of the City of Dayton enacted Initiated Ordinance 16922, which provided an Income Tax Levy of  $\frac{1}{2}$  of 1%. The Ordinance became effective July 1, 1950 and expired on December 31, 1954. A total of 44,278 citizens voted at this special election, 33,242 or 75.07% voted for the Tax Levy while 11,036 or 24.93% opposed it.

### **ORDINANCE 18111**

On May 23, 1954, a special election was held and the Voters of the City of Dayton approved a Charter Amendment authorizing the City Commission to impose an Income Tax Levy of  $\frac{1}{2}$  of 1% to become effective January 1, 1955 and expiring December 31, 1959. A total of 22,814 citizens voted at this special election, 17,463 or 76.55% voted for the Charter Amendment while 5,381 or 23.45% opposed it. On December 1, 1954 the City Commission passed Ordinance 18111.

### **ORDINANCE 18320 AND 19444**

On March 24, 1959, a special election was held and the Voters of the City of Dayton approved a Charter Amendment authorizing the City Commission to impose an additional Income Tax Levy of  $\frac{1}{4}$  of 1% to become effective July 1, 1959 and expiring December 31, 1959. This same Charter Amendment authorized an Income Tax Levy of  $\frac{3}{4}$  of 1% to become effective January 1, 1960 and expiring December 31, 1964. A total of 39,614 citizens voted at this special election, 22,069 or 55.71% voted for the Charter Amendment while 17,545 or 44.29% opposed it. On June 3, 1959, the City Commission passed Ordinance 19320 imposing an additional Income Tax of  $\frac{1}{4}$  of 1% for the period July 1, 1959 through December 31, 1959. On November 25, 1959, the City Commission passed Ordinance 19444 imposing an Income Tax of  $\frac{3}{4}$  of 1% for the period January 1, 1960 through December 31, 1964.

### **ORDINANCE 21420**

On May 5, 1964, at the regular primary election, the Voters of the City of Dayton approved a Charter Amendment authorizing the City Commission to impose an Income Tax Levy of 1% for the period January 1, 1965 through December 31, 1969. A total of 39,555 voted on the issue, 20,406 or 51.09% voted for the Charter Amendment while 19,149 or 48.41% opposed it. On November 4, 1964 the City Commission passed Ordinance 21420 imposing an Income Tax of 1% for the period January 1, 1965 through December 31, 1969.

### **ORDINANCE 23542**

On August 12, 1969, at a special election, the Voters of the City Dayton approved a Charter Amendment authorizing the City Commission to impose an Income Tax Levy of 1% for the period January 1, 1970 through December 31, 1974. A total of 27,854 voted on the issue, 18,797 or 67.5% voted for the Charter Amendment while 9,057 or 32.5% opposed it. On November 19, 1969, the City Commission passed Ordinance 23542 imposing an Income Tax of 1% for the period January 1, 1970 through December 31, 1974.

#### **ORDINANCE 24845**

On September 27, 1974, a special election was held and the Voters of the City of Dayton approved a Charter Amendment authorizing an additional Income Tax Levy of  $\frac{3}{4}$  of 1% to become effective October 1, 1974 and expiring December 31, 1979. This same Charter Amendment authorized the City Commission to impose an Income Tax Levy of 1% for the period January 1, 1975 through December 31, 1979. A total of 31,422 citizens voted in this election, 19,726 or 62.78% voted for the Charter Amendment while 11,696 or 37.22% opposed it. On December 11, 1974 the City Commission passed Ordinance 24845 imposing an income tax of  $1\frac{3}{4}$ % for the period January 1, 1975 through December 31, 1979.

#### **ORDINANCE 25695**

On March 27, 1979, a special election was held and the Voters of the City of Dayton approved a Charter Amendment authorizing an Income Tax Levy of 1.75% to become effective January 1, 1980 and expiring December 31, 1984. A total of 26,973 citizens voted in this election, 20,484 or 75.94% voted for the Charter Amendment while 6,489 or 24.06% opposed it.

#### **ORDINANCE 26940**

On March 27, 1984, a special election was held, the Voters of the City of Dayton approved a Charter Amendment authorizing the City Commission to levy an Income Tax at the annual rate of 1.75% for a continuing period commencing January 1, 1985. This same Charter Amendment imposed an additional income tax at an annual rate of .50% for the period commencing April 1, 1984 and expiring December 31, 1990. A total of 26,209 citizens voted in this election, 18,024 or 68.77% voted for the Charter Amendment while 8,185 or 31.23% opposed it. Ordinance 26940 being approved by the electorate became effective April 1, 1984.

#### **ORDINANCE 28067**

On March 27, 1990, a special election was held and the Voters of the City of Dayton approved a Charter Amendment authorizing the continuation of an additional .5% income tax for the period commencing January 1, 1991 and expiring December 31, 1994. A total of 16,037 citizens voted in this election, 12,411 or 77.39% voted for the Charter Amendment while 3,626 or 22.61% opposed it. Ordinance 28067 being approved by the electorate became effective January 1, 1991.

#### **ORDINANCE 28780**

On March 29, 1994 a special election was held and the Voters of the City of Dayton approved a Charter Amendment authorizing the continuation of an additional .5% income tax for the period commencing January 1, 1995 expiring December 31, 2000. A total of 14,472 citizens voted in this election, 12,420 or 85.82% voted for the Charter Amendment while 2,052 or 14.18% opposed it. Ordinance 28780 being approved by the electorate became effective January 1, 1995.

### **ORDINANCE 29803**

On May 2, 2000 a special election was held and the Voters of the City of Dayton approved a Charter Amendment authorizing the continuation of an additional .5% income tax for the period commencing January 1, 2001 expiring December 31, 2006. A total of 8,293 citizens voted in this election, 7,036 or 84.84% voted for the Charter Amendment while 1,257 or 15.16% opposed it. Ordinance 29803 being approved by the electorate became effective January 1, 2001.

### **ORDINANCE 30519-06**

On March 14, 2006, a special election was held and the Voters of the City of Dayton approved a Charter Amendment authorizing the continuation of an additional .5% income tax for the period commencing January 1, 2007 and ending December 31, 2014. A total of 9,050 citizens voted in this election, 7,750 or 85.64% voted for the Charter Amendment while 1,300 or 14.36% opposed it. Ordinance 30519-06 being approved by the electorate became effective January 1, 2007.

CITY OF DAYTON  
INCOME TAX  
ORDINANCE

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## INCOME TAX

### **36.100 PURPOSE.**

To provide funds for municipal purposes there shall be and is hereby levied a tax on all taxable income as hereinafter provided.

### **36.101 DEFINITIONS.**

- A. 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.
1. "Board of Tax Appeals" means the Board created by and constituted as provided for in Section 36.113.
  2. "Board of Tax Review" means the Board created by and constituted as provided for in Section 36.112.
  3. "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, pass-through entity, corporation or any other entity, including but not limited to the renting or leasing of property, real, personal or mixed.
  4. "Business" conducted within the city includes the direct or indirect ownership of an interest in a pass-through entity that conducts business within the city.
  5. "City" means the City of Dayton, Ohio.
  6. "Corporation" means a corporation, S corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency, or any unincorporated entity treated as a corporation for federal income tax purposes. "Corporation" also includes a "combined company," an "electric company" and a "telephone company," all as defined in Ohio Revised Code Section 5727.01. The term "corporation" does not include a limited liability company that is treated as a partnership for federal income tax purposes.
  7. "Deferred compensation," means earned compensation the receipt of, which is delayed to a later date.
  8. "Domicile" means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he is absent he intends to return. A taxpayer has only one domicile even though he may have more than one residence.
  9. "Employee" means one who works for qualifying wages in the services of an employer.

10. "Employer" means an individual, corporation, pass-through entity, 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 qualifying wages basis.
11. "Fiscal year" means an accounting period of twelve (12) months or less ending on any day other than December 31.
12. "Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer with his federal income tax return.
13. "Generic form" means an electronic or paper form designed for reporting estimated city income taxes, the annual return of city income tax liability or for filing a claim for refund of city income taxes that is not prescribed by the city for the reporting of city income tax but that comports with the requirements of Ohio Revised Code Section 718.05, this chapter and the rules and regulations.
14. "Intangible income" means that income specified in Ohio Revised Code Section 718.01(A)(5) and includes of any of the following types of income: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.
15. "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
16. "Joint Economic Development District" means districts created under the Ohio Revised Code Sections 715.70 through 715.83, as amended from time to time.
17. "Limited Liability Company" means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.
18. "Net operating loss" means the negative adjusted federal taxable income recognized by a taxpayer from the operation of a business for the taxable year.
19. "Net profits" means: (i) the case of a corporation, "adjusted federal taxable income," as that term is defined in Ohio Revised Code Section 718.01(A)(1)(a)-(f); (ii) in the case of a pass-through entity, "adjusted federal taxable income," as that term is defined in Ohio Revised Code Section 718.01(A)(1)(g); and (iii) in the case of a sole proprietorship, the profit shown by the individual on Internal Revenue Service Schedule C, Schedule E, and Schedule F. Adjusted federal taxable income shall be determined in accordance with (i) the accounting method used by the taxpayer for federal income tax purposes and (ii) the

Internal Revenue Code, Treasury Regulations, federal case law interpreting these authorities and administrative authorities promulgated by the Internal Revenue Service.

20. "Nonqualified deferred compensation plan" means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.
21. "Nonresident" means an individual domiciled outside the city.
22. "Nonresident owner" means an individual domiciled outside the city who has a direct or indirect ownership interest in a pass-through entity that conducts business in the city and a corporation that has a direct or indirect ownership interest in a pass-through entity that conducts business in the city.
23. "Owner" means an individual, partner, member, or any other person having an ownership interest in a pass-through entity.
24. "Pass-through entity" means a partnership, limited liability company or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code. "Pass-through entity" does not include an S corporation.
25. "Passive activity" means a business or trade in which the taxpayer does not materially participate, within the meaning of Section 469 of the Internal Revenue Code.
26. "Person" means every natural person, pass-through entity, fiduciary, or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to a pass-through entity, shall mean the owners thereof, and as applied to corporations, the officers thereof.
27. "Place of business" means any bona fide office, other than a mere statutory office, factory, warehouse, or other space, which is occupied and used by the taxpayer in carrying on any business activity, individually or through one or more of his regular employees regularly in attendance.
28. "Qualifying wages" means wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with Section 718.03(A) of the Ohio Revised Code. Qualifying wages includes compensation attributable to a nonqualified deferred compensation plan or program described in Section 3121(V)(2)(C) of the Internal Revenue Code and compensation from employment arising from the sale, exchange or other disposition of a stock option, the exercise of a stock option, or the sale, exchange or other disposition of stock purchased under a stock option. Qualifying wages does not include compensation deferred before January 1, 2004, to the extent that such deferred compensation would not be treated as wages within the meaning of Section 3121(a) of the Internal Revenue Code at the time such deferred compensation is paid or distributed.
29. "Resident" means an individual domiciled in the city.

30. "Resident owner" means an individual domiciled in the city that has an ownership interest in a pass-through entity.
  31. "Rules and regulations" means the rules and regulations as promulgated by the Tax Administrator and as approved by the Board of Tax Review pursuant to Section 36.112.
  32. "Schedule A" means the Internal Revenue Service Schedule A filed by a taxpayer with his federal income tax return.
  33. "Schedule C" means Internal Revenue Service Schedule C filed by a taxpayer with his federal income tax return.
  34. "Schedule E" means Internal Revenue Service Schedule E filed by a taxpayer with his federal income tax return.
  35. "Schedule F" means Internal Revenue Service Schedule F filed by a taxpayer with his federal income tax return.
  36. "S Corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.
  37. "Tax Administrator" means the person appointed to administer the city's income tax ordinance and to direct the operation of the city tax division or the person executing the duties of the Tax Administrator.
  38. "Taxable income" means qualifying wages, net profits and other income set forth in Section 36.102 as taxable.
  39. "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.
  40. "Taxing municipality" means a municipality other than the city that levies a tax on income earned by nonresidents working within such municipality or on income earned by the municipality's residents.
  41. "Taxpayer" means a person; whether an individual, pass-through entity, or corporation, the taxable income of which is subject to the tax imposed by this chapter, whether that tax is imposed on the entity itself or the owners of the entity. "Taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.
- B. As set forth in this chapter, the singular shall include the plural, the masculine shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates.

### **36.102 IMPOSITION OF TAX.**

- A. Subject to Section 36.116, an annual tax authorized by this chapter shall be imposed at the rate specified in Section 36.103 upon the following:
1. On all qualifying wages and on all net profits from the operation of a business earned or received by a resident.
  2. On all qualifying wages earned or received by a nonresident for work done or services performed or rendered in the city, subject to the limitations provided in Ohio Revised Code Section 718.011, and on net profits earned or received by a nonresident from the operation or conduct of business in the city. Where a nonresident is employed at a place of business in the city, the qualifying wages of such nonresident for the performance of employee services will be treated as earned outside the city only for those services which of necessity, as distinguished from convenience, obligate such nonresident to duties outside the city in the service of the nonresident's employer.
  3. On a resident owner's distributive share of the net profits of a pass-through entity earned from business conducted by the pass-through entity regardless of where such business is conducted.
  4. On a nonresident owner's distributive share of the net profits of a pass-through entity attributable to the city and earned from business conducted in the city, whether or not such pass-through entity has an office or place of business in the city.
  5. On the portion attributable to the city of the net profits of a corporation derived from business conducted in the city, whether or not such corporation has an office or place of business in the city. The tax imposed by this Section 36.102(A)(5) on the net profits of an electric company, combined company or telephone company shall be subject to, and shall accord with, Ohio Revised Code Chapter 5745.
  6. On all income derived anywhere from prizes, awards, gaming, wagering, lotteries, or schemes of chance by a resident, and on all income derived from prizes, awards, gaming, wagering, lotteries, or schemes of chance by a nonresident when such income is won or received from sources within the city.
  7. On covenants not to compete and on cancellation of indebtedness to the extent includible on the taxpayer's federal income tax return.
  8. On guardian, executor, conservator, trustee or administrator fees earned or received by a taxpayer.
- B. The city income tax imposed by Section 36.102(A)(4) upon nonresident owners shall be collected and remitted pursuant to Section 36.105(J).

C. **Businesses Both In and Outside the City.** The portion of the net profits attributable to the city of a taxpayer conducting a business both within and without the boundaries of the city shall be determined as provided in Ohio Revised Code Section 718.02 and in accordance with rules and regulations adopted by the Tax Administrator pursuant to this chapter.

D. **Net Operating Loss (NOL) and Business Expenses.**

1. The city does not allow a net operating loss carryback or carryforward to any taxable year other than the taxable year in which the taxpayer incurs the net operating loss.
2. Losses from other sources, including net operating losses and passive activity losses reported for federal income tax purposes, may not be combined with qualifying wages.
3. The only expenses that can be deducted against qualifying wages are those employee business expenses deductible for federal income tax purposes in determining adjusted gross income, unless otherwise allowed on a uniform and consistent basis by the Tax Administrator. The total of such expenses cannot exceed the employee's related W-2 wage income from the same employer. Notwithstanding anything to the contrary in this Section 36.102(D)(3), if a taxpayer's taxable income for a taxable year includes income against which the taxpayer has taken a deduction for federal income tax purposes and reported on Form 2106 as attached to the taxpayer's federal income tax return filed for that taxable year, the taxpayer shall determine taxable income to the city by deducting the same amount deducted for federal income tax purposes and reported on the taxpayer's Form 2106 for that taxable year. This deduction shall be allowed for city income tax purposes only if the taxpayer attaches to the taxpayer's city income tax return a copy of Form 2106 and Schedule A as filed with the taxpayer's federal income tax return for that taxable year.

E. **Consolidated Returns.**

1. A consolidated return may be filed by an affiliated group of corporations subject to the tax imposed by this chapter if that affiliated group filed for the same taxable year a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code. Only corporations subject to the tax imposed by this chapter may be included in such consolidated return filed for city income tax purposes. If an affiliated group of corporations subject to the tax imposed by this chapter properly files a consolidated return in accordance with this Section 36.102(E)(1), the affiliated group must file a consolidated return that includes those corporations in the group that are subject to city income tax for each succeeding taxable year in which the group files a consolidated return for federal income tax purposes unless, on or before the due date (taking into account extensions of time properly granted) of the return for a taxable year, the affiliated group obtains the permission of the Tax Administrator to cease filing a consolidated return for that year.

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, or in case any person operates a division, branch, factory, office, laboratory or activity within the city constituting only a portion of its total business, the Tax Administrator shall require such additional information as the Tax Administrator deems necessary to ascertain whether net profits are properly allocated to the city. If the Tax Administrator finds the net profits are not properly allocated to the city by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with a division, branch, factory, office, laboratory or activity, or by some other method, the Tax Administrator shall make such adjustments to, and allocation of, net profits to fairly and reasonably reflect the proper allocation of net profits to the city.

F. Exclusions. The tax provided for in this chapter shall not be levied upon the following:

1. Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard.
2. Income of any religious, charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio Revised Code Section 718.01(F)(2) to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.
3. Proceeds from welfare benefits, unemployment insurance benefits, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service.
4. Proceeds of insurance, annuities, workers' compensation insurance, permanent disability benefits, compensation for damages for personal injury and like reimbursements, not including damages for loss of profits and wages.
5. Gains from involuntary conversion, interest on Federal obligations and income of a decedent's estate during the period of administration (except such income from the operation of a business).
6. Alimony.
7. Personal earnings of all persons under 16 years of age.
8. Interest, dividends, gains and other revenue from intangible property, as described in Ohio Revised Code Section 718.01(A)(5).
9. If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from city income tax.
10. Items excluded from federal gross income pursuant to Section 107 of the Internal Revenue Code.

11. Compensation paid under Section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually. Such compensation in excess of one thousand dollars may be subjected to taxation. The payer of such compensation is not required to withhold city income tax from that compensation.
12. Compensation paid to an employee of a transit authority, regional transit authority, or a regional transit commission created under Chapter 306 of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the city, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such tax by reason of residence or domicile in the city, or the headquarters of the authority or commission is located within the city.
13. An S corporation shareholder's distributive share of net profits or losses of the S corporation, except to the extent that the distributive share of net profits represents wages as defined in Section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in Section 1402(a) of the Internal Revenue Code.
14. 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 taxes on income derived from interstate commerce.
15. Compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any other act of the Ohio General Assembly limiting the power of a city to impose net income taxes.
16. Generally the above noted items in this Section 36.102(F) are the only forms of income not subject to the tax imposed by this chapter. Any other income, economic benefits or other forms of compensation earned or received by a taxpayer shall be subject to the tax imposed by this chapter.

### **36.103 EFFECTIVE PERIOD AND RATE.**

The city income tax shall be levied at the annual rate of 1.75% on taxable income as provided in Section 36.102. In addition, as provided in the City Charter, city income tax at the rate of 0.50% is levied until December 31, 2014, on taxable income as set forth in Section 36.102.

- A. In the event that the anticipated revenues for general operating funds exceed appropriations and beginning cash reserves exceed one-fifth of appropriations, a reduction of the rates of taxation established in 36.102 shall be effected.
- B. Each year in the Annual Program Strategies there shall be a summary section denominated the "Charter Compliance" section which shall present anticipated revenues for general operating funds, appropriations, and beginning cash reserves for the fiscal year together with a statement from the City Manager stating whether anticipated

revenues for general operating funds exceed appropriations and whether the beginning cash reserves exceed one-fifth of appropriations.

- C. If anticipated revenues for general operating funds exceed appropriations and if the beginning cash reserves exceed one-fifth of the rate of taxation appropriate to insure that revenues for general operating funds do not exceed appropriations.
- D. The Commission upon review of and concurrence with the report of the City Manager shall, no later than April 1, take action to reduce the income tax rate for the fiscal year in which both conditions described in divisions (A), (B), and (C) above exist. The reduced rate shall become effective on July 1 of any year in which adopted and shall terminate on December 31 of the same year at which time the rates established by Section 36.1021 shall be restored.  
(Ord. 27107, passed 11-14-84)

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

- A. Each taxpayer who engages in business or whose qualifying wages are subject to the tax imposed by this chapter shall, whether or not city income tax be due thereon, make and file a city income return on or before the fifteenth day of the fourth month following the end of the taxpayer's taxable year. A city income tax return shall be deemed filed when received by the Tax Administrator. Notwithstanding anything in this chapter to the contrary, the return of an employer or employers that shows the amount of city income tax deducted by the employer or employers from the qualifying wages of an employee and paid by the employer or employers to the Tax Administrator shall be accepted as the city income tax return required of any employee whose sole income subject to city income tax consists of such qualifying wages.
- B. Married taxpayers may elect to file separate or joint city income tax returns; the filing of a joint federal income tax return does not bind married taxpayers to file a joint city income tax return for the same taxable year, and the filing of separate federal income tax returns does not bind married taxpayers to file separate city income tax returns for the same taxable year. If a joint city income tax return is made, the city income tax shall be computed on the aggregate taxable income of the husband and wife, and the liability with respect to the tax shall be joint and several.
- C. The city income tax return shall be filed with the Tax Administrator on a form or forms furnished by or obtainable upon request from the Tax Administrator or on generic form as prescribed by Ohio Revised Code Section 718.05. As provided in Ohio Revised Code Section 718.051 and in the rules and regulations, a business the net profits of which are subject to tax under this chapter may file its city income tax return by using the Ohio business gateway.
- D. The city income tax return shall set forth:

1. The aggregate amounts of qualifying wages and other taxable income earned or received by the taxpayer, and gross income from any business less allowable expenses incurred in the acquisition of such gross income earned during the taxable year and subject to city income tax;
  2. The amount of the tax imposed by this chapter on such qualifying wages, net profits and taxable income; and
  3. Such other pertinent statements, information returns, copies of federal or state tax returns and/or schedules, copies of all 1099's issued and/or received, or other information as the Tax Administrator may require, including a statement that the figures used in the return are the figures used in the taxpayer's federal income tax return for that taxable year, adjusted to set forth only such income as is taxable under the provisions of this chapter.
- E.
1. Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of the city income tax return for the same taxable year by filing a copy of the taxpayer's federal extension request for such taxable year with the Tax Administrator. Any taxpayer not required to file a federal income tax return may make a written request for an extension to file a city income tax return. The request for extension must be filed on or before the original due date for the city income tax return, as set forth in Section 36.104(A). If the request is granted, the extended due date of the city income tax return shall be the last day of the month following the month to which the due date of the taxpayer's federal income tax return for the same taxable year has been extended. As provided in Ohio Revised Code Section 718.051 and in the rules and regulations, a taxpayer who receives an extension for filing the federal income tax return will receive an extension for filing the city income tax return for the same taxable year by complying with Ohio Revised Code Section 718.051(B), but such taxpayer must pay any city income tax owed by the unextended due date for filing the city income tax return, as provided in Section 36.104(F).
  2. The Tax Administrator may deny a taxpayer's request for an extension of the due date to file the city income tax return if the taxpayer:
    - a. fails to timely file the request;
    - b. fails to file a copy of the federal extension request, if applicable;
    - c. owes the city any delinquent income tax, penalty, interest or other charge for the late payment or nonpayment of city income tax; or
    - d. has failed to file any required city income tax return, report, or other related document for a prior taxable year.

3. The granting of an extension of the due date for filing a city income tax return does not extend the due date as provided in this Section 36.104 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 36.109. No penalty shall be assessed in those cases in which the city income tax return is filed and the final tax paid within the extended period for filing such return provided all other filing and payment requirements of this chapter have been met. The Tax Administrator shall grant any extension of the due date for filing the city income tax return upon the condition that city income tax declaration filing and payment requirements have been fulfilled; however, if, upon further examination it then becomes evident that such 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 of the due date for filing the city income tax return had been granted.

F. PAYMENTS WITH RETURNS.

1. The taxpayer making a city income tax return shall, at the time of the filing thereof, pay to the Tax Administrator the amount of taxes shown as due thereon. However, credit shall be allowed for:
  - a. Any portion of the city income tax so due that shall have been deducted at the source pursuant to the provisions of Section 36.105;
  - b. Any portion of said tax that shall have been paid by the taxpayer pursuant to the provisions of Sections 36.104 and 36.106; and
  - c. Credit to the extent allowed by Section 36.114 for tax paid to another city.
2. Subject to the limitations contained in Section 36.110, any taxpayer who has overpaid the amount of tax to which the city 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 a dollar value specified by regulation shall be assessed, collected or refunded.

G. AMENDED RETURNS.

1. Where necessary, an amended return shall be filed in order to report additional income and pay any additional city income tax due, or claim a refund of city income tax overpaid, subject to the requirements and/or limitations contained in Section 36.110. The Tax Administrator shall provide by regulation the format in which such amended return shall be filed. A taxpayer may not change its method of accounting or apportionment of net profits after the due date for filing the original city income tax return.
2. Within three (3) 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 city income tax based upon such

final determination of federal tax liability and pay any additional city income tax shown due thereon or make claim for refund of any overpayment.

- H. Information returns, schedules and statements required to support city income tax returns that would be incomplete without such information shall be filed within the time limits set forth in this Section 36.104 for the filing of the city income tax return. The failure to file such information returns, schedules and statements shall be a violation of this chapter; provided, however, that the taxpayer shall have ten (10) days after notification by the Tax Administrator to file the items required by this Section 36.104(H).

### **36.105 COLLECTION AT SOURCE.**

- A. Withholding by Employer - Each employer within, or doing business within, the city who employs one or more persons shall deduct city income tax from qualifying wages paid to a taxpayer for work done or services performed or rendered in the city by the taxpayer. Notwithstanding anything in this chapter to the contrary, no person shall be required to withhold and remit city income tax on the qualifying wages paid to an individual employed exclusively to perform domestic service at the employer's residence within the city; such employee shall, however, be subject to city income tax on the qualifying wages he or she receives from such employment. The employer shall deduct city income tax at the time such qualifying wages are paid, allocated, apportioned or set aside, and the employer shall deduct city income tax on such qualifying wages at the rate provided in Section 36.103. Except as provided in Section 36.105(D), on or before the fifteenth (15th) day of the month following such withholding, the employer shall make a return and pay to the Tax Administrator the amount of city income taxes so deducted from such qualifying wages. The return shall be on a form or forms prescribed by or acceptable to the Tax Administrator and shall be subject to the regulations prescribed by the Tax Administrator. Where required by the rules and regulations, the return and remittance of withheld city income tax shall be in the format and on the electronic media specified in the rules and regulations. As provided in Ohio Revised Code Section 718.051 and in the rules and regulations, any employer subject to this Section 36.105 may use the Ohio business gateway both to report the amount of city income tax withheld from qualifying wages and to remit such amounts. Such employer shall be liable for the payment of the city income tax required to be deducted and withheld whether or not such taxes have in fact been withheld. Nothing in this Section 36.105 prohibits an employer from withholding city income tax on a basis greater than qualifying wages.
- B. An employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued.
- C. 1. An employee is not relieved from liability for city income tax by the failure of the employer to withhold the tax as required by this Section 36.105 or by the employer's exemption from the requirement to withhold city income tax.

2. The failure of an employer to remit to the city the city income tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax withheld.
- D. Based on city income taxes withheld by an employer during the measurement period and the amounts specified in the rules and regulations, monthly, quarterly or semi-monthly payments are required on or before the fifteenth day of the month following the end of each period. The Tax Administrator may revoke the approval of quarterly filing and payments whenever the Tax Administrator has reason to believe that the conditions for granting such authorization have changed, were judged incorrectly, were not met, or when it is in the best interest of the city to do so. Notice of withdrawal shall be made in writing and, in such case, the employer must begin to file in accordance with Section 36.105(A).
  - E. Employer Considered as Trustee. Each employer in collecting city income tax shall be deemed to hold the same, until payment is made by such employer to the city, as a trustee for the benefit of the city, and any such tax collected by such employer from his employees shall, until the same is paid to the city, be deemed a trust fund in the hands of such employer. Each employer shall be liable for the payment of city income tax required to be deducted and withheld whether or not such tax, in fact, has been withheld.
  - F. Any person who is required to withhold city income tax from qualifying wages shall pay all such tax to the city in accordance with the provisions of this Section. In the event city income taxes withheld from the qualifying wages of employees are not paid to the city in accordance with the provisions of this Section 36.105, all officers, members, managers, employees, and trustees having control or supervision of or charged with the responsibility of filing the return and making payment of such taxes are jointly and severally personally liable for the tax not returned or paid to the city, as well as any related interest and penalties, and are also liable under the provisions of Section 36.111 hereof. The dissolution, termination, or bankruptcy of an employer does not discharge an officer's, member's, manager's, employee's, or trustee's liability for a failure of the employer to file returns in respect of city income tax withheld from qualifying wages or to pay such tax.
  - G. Withholding Return; List of Employees. Each employer shall file a withholding tax reconciliation showing the sum total of all compensation paid all employees, the portion of which, if any, was not subject to city income tax withholding along with an explanation for same, and the portion of which was subject to city income tax withholding, together with the amount of such withholdings remitted. Such return shall include information concerning each employee from whom city income tax was withheld, showing the name, address, zip code and social security number of each such employee, the total amount of qualifying wages paid during the year and the amount of city income tax withheld. If the total tax withheld from any employee includes tax withheld and remitted to another municipality, the amount of such withholding shall be separately shown on the return of information to the city concerning each employee. The

withholding tax reconciliation shall be filed by each employer on or before February 28 (February 29 in the case of leap year) following the end of each calendar year. Employers with more than 100 employees shall provide the information required by this Section 36.105(G) in the format and on the electronic media specified in the rules and regulations.

- H. In addition to the wage reporting requirements of this Section 36.105, any person required by the Internal Revenue Service to report on Form 1099-Misc payments to individuals not treated as employees for services performed shall also report such payments to the city when the services were performed in the city. The information may be submitted on a listing, and shall include the name, address and social security number (or federal identification number) of the individual who performed such services, as well as the amount of the payments made to such individual. Federal form(s) 1099 may be submitted in lieu of such listing. The information required by this Section 36.105(H) shall be filed annually on or before February 28 (February 29 in the case of leap year) following the end of the calendar year in which the payments described in this Section 36.105(H) were made.
- I.
  - 1. Any person who shall employ or contract for the services of any professional entertainer(s) or professional athlete(s) to be performed in the city or any person who, acting as a promoter, booking agent or employer, engages the services of or arranges the appearance of any professional entertainer(s) or professional athlete(s) in the city and who makes any payment arising from said appearance in the city shall be deemed to be an employer and shall, for purposes of the collection of city income tax, be required to withhold, report and remit as required under this Section 36.105 city income tax on the gross amount so paid to the professional entertainer(s) or professional athlete(s) for services performed in the city.
  - 2. Any person who rents facilities located in the city that are made available to any professional entertainer(s) or professional athlete(s) for use in performing services in the city and who makes any payment arising from said use of facilities shall be deemed to be an employer and shall, for purposes of the collection of city income tax, be required to withhold, report and remit as required under this Section 36.105 city income tax on the gross amount so paid to the professional entertainer(s) or professional athlete(s) for services performed in the city.
- J. Except as otherwise provided in this Section 36.105(J), a pass-through entity that conducts business within the city and that has a nonresident owner must: (i) withhold city income tax at the rate specified in Section 36.103 on the nonresident owner's distributive share of the pass-through entity's net profits attributable to the city; and (ii) remit such tax to the city by the applicable dates provided in Section 36.105. A pass-through-entity subject to this Section 36.105(J) that fails to collect or remit city income tax as provided in this Section 36.105(J) shall be liable for the tax that it should have withheld or remitted and shall be subject to the interest and penalty provisions of Sections 36.109 and 36.111. The nonresident owner shall receive a credit against its city income tax liability in the amount of city income tax so withheld by the pass-through entity. All claims for refund

of city income tax withheld by a pass-through entity pursuant to this Section 36.105(J) must be made by the nonresident owner within the period set forth in Section 36.110(B). A pass-through entity is not required to withhold and remit city income tax to the extent that its nonresident owners both: (i) file city income tax returns and declarations as provided in Sections 36.104 and 36.106, respectively, that report their distributive shares of the pass-through entity's net profits attributable to the city; and (ii) pay city income tax thereon.

- K. Any return or form required to be filed under this Section 36.105, other than information required to be submitted on electronic media, is considered filed on the date received by the Tax Administrator.

### **36.106 DECLARATIONS.**

- A. Requirement for Filing. Every person who anticipates earning or receiving any taxable income that is not subject to Section 36.105 or who engages in any business subject to the tax imposed by Section 36.102 shall file a declaration setting forth such estimated income or the estimated net profits from such business activity together with the estimated tax due thereon, if any. Provided, however, if a person's income is wholly from qualifying wages from which city income tax will be withheld and remitted to the city in accordance with Section 36.105, such person need not file a declaration described in this Section 36.106.
- B. Dates for Filing.
  - 1. Such declaration of estimated city income tax for a taxable year that is a calendar year shall be filed on or before April 15 of each year during the life of this chapter, or on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the date the taxpayer becomes subject to city income tax for the first time.
  - 2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the start of each fiscal year or period.
- C. Forms; Credit for Tax Withheld or Paid Another Community.
  - 1. Such declaration of estimated city income tax shall be filed upon a form furnished by or obtainable from the Tax Administrator or an acceptable generic form, and credit shall be taken for city income tax to be withheld from any portion of such income. In accordance with the provisions of Section 36.114 credit may be taken for tax to be withheld and remitted to another taxing municipality. As provided in Ohio Revised Code Section 718.051 and in the rules and regulations, declarations of estimated net profits from any business conducted within the city and payment of estimated city income tax thereon may be made by using the Ohio business gateway.

2. 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.
3. For Taxpayers who are individuals, such declaration of estimated city income tax shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of such taxpayer's estimated city income tax for the taxable year, and at least twenty-two and one-half percent (22.5%) of such estimated city income tax shall be paid on or before each of the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year.
4. For Taxpayers that are not individuals, such declaration of estimated city income tax shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of such taxpayer's estimated city income tax, and at least twenty-two and one-half percent (22.5%) of such estimated city income tax shall be paid on or before each of the fifteenth (15<sup>th</sup>) day of the sixth, ninth and twelfth months after the beginning of the taxable year.
5. The mere submission of a declaration of estimated city income tax shall not constitute the filing of such declaration under this Section 36.106 unless the declaration is accompanied by the required payment of estimated city income tax.
6. The declaration and accompanying required payment is considered filed on the date received by the Tax Administrator.

D. Amended Declaration.

1. A declaration of estimated city income tax may be amended at any time.
2. In the event that an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates set forth in Section 36.106(C).
3. An amended declaration of estimated city income tax must be filed on or before January 31 of the following year, or in the case of a taxpayer on a fiscal year, on or before the date fixed by regulation of the Tax Administrator, if it appears that the original declaration made for such taxable year underestimated the taxpayer's city income tax liability for such year by 10% or more. At such time, a payment that, together with prior payments, is sufficient to pay the taxpayer's entire estimated city income tax liability shall be made. If upon filing the city income tax return required by Section 36.104 it appears that the taxpayer did not pay 90% of his city income tax liability, as shown on the return, on or before January 31, or the date fixed by regulation, whichever is applicable, the difference between 90% of the taxpayer's city income tax liability and the amount of estimated city income tax actually paid on or before January 31, or the date fixed by regulation, whichever is applicable, shall be subject to the interest and penalty provisions of Section 36.109. However, the interest and penalty provision of Section 36.109 shall not apply where either: (i) the taxpayer

is a resident but was not domiciled in the city on January 1 of the taxable year for which estimated payments of city income tax have been made; or (ii) the taxpayer has remitted on a timely basis an amount of estimated city income tax at least equal to one hundred percent (100%) of the taxpayer's city income tax liability for the preceding taxable year, provided that the return for the preceding taxable year reflected a 12-month period and the taxpayer filed a city income tax return for the preceding taxable year.

4. The last quarterly payment of estimated city income tax need not be made if the taxpayer files his city income tax return and pays the balance of the tax due thereon within 45 days following the end of his taxable year.
- E. Annual Return Required. On or before the fifteenth day of the fourth month of the calendar or fiscal year, a taxpayer shall file a city income tax return and shall remit to the city any balance of city income tax that may be due in accordance with the provisions of Section 36.104.

### **36.107 APPOINTMENT AND DUTIES OF TAX ADMINISTRATOR.**

- A. 1. It shall be the duty of the Tax Administrator to collect and receive the tax imposed by this chapter in the manner prescribed herein, to keep an accurate record thereof, and to report all monies so received to the Director of Finance.
2. It shall be the duty of the Tax Administrator to enforce payment of all income taxes owing the city, to keep accurate records for a minimum of six (6) years, showing the amount due from each taxpayer required to file a declaration of estimated city income tax or make any return, including a return of taxes withheld, and to show the dates and amounts of payments thereof.
- B. The Tax Administrator is hereby charged with the enforcement of the provisions of this chapter, including the interpretation and enforcement of the rules and regulations promulgated hereunder, and is hereby empowered, subject to the approval of the Board of Tax 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 city income tax returns.
- C. In any case where a taxpayer has failed to file a city income tax return, the Tax Administrator may determine the amount of city income tax appearing to be due the city from the taxpayer and may send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any, in the following manner:
1. The proposed assessment shall be served upon the taxpayer in person or by mailing to his last known address. Proof of mailing furnished by the U. S. Post Office shall be presumptive proof of receipt thereof by the addressee.

2. A taxpayer may, within 15 days after the date the proposed assessment was served or mailed, file a written protest with the Tax Administrator. The protest is considered filed on the date received by the Tax Administrator. Within 15 days after the receipt of the protest, the Tax Administrator shall give the protestant an opportunity to be heard. However, the Tax Administrator may extend the date of hearing for good cause shown. After the hearing the Tax Administrator shall withdraw the assessment or he shall adjust or reaffirm the assessment and it shall then become final. The taxpayer may appeal the final assessment to the Board of Tax Review in the manner provided in Section 36.112, and may appeal an adverse determination of the Board of Tax Review to the Board of Tax Appeals in the manner provided in Section 36.113.
- D. When any taxpayer has filed a city income tax return indicating the amount of tax due and has failed to pay such amount of city income tax, the Tax Administrator need not issue an assessment but may proceed under the provisions of Sections 36.109 and 36.110 to impose interest and penalties thereon and to enforce the collection of the outstanding city income tax, together with interest and penalties.
  - E. If the Tax Administrator determines that an employer has failed to withhold city income tax on qualifying wages, to file a return for city income tax withheld or to pay to the Tax Administrator the full amount of city income tax subject to withholding, all as required by Section 36.105, the Tax Administrator may cause issuance of an assessment showing the amount of tax due, together with any penalties and interest that may have accrued thereon, and the provisions of Sections 36.112 and 36.113 shall then apply to any appeal of such assessment..
  - F. When an employer has filed a return indicating the amount of city income tax withheld and has failed to pay such amount of withheld city income tax, the Tax Administrator need not issue an assessment but may proceed under the provisions of Sections 36.109 and 36.110 to impose interest and penalties thereon and to enforce the collection the outstanding city income tax, together with interest and penalties.
  - G. When a taxpayer files an application for deferred payment of city income tax due, the Tax Administrator may authorize partial payment of unpaid taxes when, in his judgment, the taxpayer is unable, due to hardship conditions, to pay the full amount of the tax when due. However, except as provided in Section 36.112(D), the Tax Administrator shall not authorize an extension of time for the payment of city income tax due for more than 12 months beyond the date the taxpayer files an application for deferred payment of such tax.
  - H. Subject to the prior written consent of a majority of the Board of Tax Review, the Tax Administrator may be given the power to compromise any liability imposed by this chapter.
  - I. Upon the demonstration and documentation of good cause, and consistent with this chapter and the rules and regulations, the Tax Administrator may be given authority by

the Board of Tax Review to compromise penalty and interest liabilities imposed under this chapter in an amount not to exceed one thousand dollars (\$1,000).

- J. The Tax Administrator shall submit to the Board of Tax Review on a regular basis outstanding city income tax balances that the Tax Administrator recommends for cancellation because such balances either cannot be collected or can be collected only at a cost in excess of the outstanding balance.
- K. The Tax Administrator may delegate any of the duties set forth in this chapter to employees of the Department of Finance as needed, with the approval of the Director of Finance.

**36.108 INVESTIGATIVE POWERS OF TAX ADMINISTRATOR; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.**

- A. The Tax Administrator, or any of his authorized agents, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer, taxpayer, or any person subject to, or whom the Tax 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 or withholdings due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish within 15 days upon written request of the Tax Administrator, or his duly authorized agent or employee, the means, facilities and opportunities for making such examinations and investigations as are hereby authorized.
- B. The Tax Administrator is hereby authorized to order any person, presumed to have knowledge of the facts, to appear at the office of the Tax Administrator and to examine such person, under oath, concerning any income which was or should have been reported for city income tax purposes or withheld, or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and federal income tax returns, and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.
- C. The refusal to produce books, papers, records or federal 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 city income tax or required to withhold such tax, or the failure of any person to comply with the provisions of this Section 36.108 or with an order or subpoena of the Tax Administrator authorized hereby, shall be deemed a violation of this chapter punishable as provided in Section 36.111.
- D. Every taxpayer shall retain all records necessary to compute his city income tax liability for a period of six (6) years from the date his city income tax return is filed or the city income taxes required to be withheld are paid.

- E. Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by this chapter shall be confidential and no person shall disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the city as authorized by this chapter. The Tax Administrator may furnish copies of city income tax returns filed under this chapter to the Internal Revenue Service and to the State Tax Commissioner.
- F. Any person divulging information described in Section 36.108(E) shall be guilty of a misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00) or imprisonment for not more than six (6) months, or both. Each disclosure of information described in Section 36.108(E) shall constitute a separate offense.
- G. In addition to the above penalty, any employee of the city who violates the provisions of this Section 36.108 relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.
- H. If, but for this Section 36.108, an individual would have been privileged to withhold any information given, and such individual complies with paragraph (B) of this Section compelling him to give an answer or produce any information to the Tax Administrator, he shall not be prosecuted or subjected to any criminal penalty in the courts of this State for or on account of any transaction or matter concerning which, in compliance with the order, such individual gave an answer or produced any information to the Tax Administrator.
- I. An individual granted immunity from prosecution under Section 36.108(H) may be subjected to a criminal penalty for any violation of this chapter outside the scope of such immunity or for failing to answer or failing to produce information in compliance with an order of the Tax Administrator.

### **36.109 INTEREST AND PENALTIES.**

- A. All city income taxes imposed and monies withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid five (5) days after they become due shall bear interest at a rate equal to the prime rate plus three percentage points (3%). The interest rate for any year will be determined on the first business day of December of the previous year from the prime rate published in the Wall Street Journal.
- B. In addition to interest as provided in Section 36.109(A), penalties are hereby imposed as follows based on the city income tax remaining unpaid after it becomes due:
  - 1. For failure to pay city income tax due, other than taxes withheld, two and one-half percent (2.5%) of such outstanding tax per month or fraction thereof that the tax remains outstanding, or 10% of the outstanding liability, whichever is greater, with the penalty not to exceed fifty percent (50%) of such outstanding city income tax liability.

2. For failure to remit city income taxes withheld or required to be withheld from employees, five percent (5%) of such unremitted city income tax per month or fraction thereof that the unremitted tax remains outstanding, or 10% of the outstanding unremitted tax, whichever is greater, with the penalty not to exceed fifty percent (50%) of such outstanding unremitted tax.
3. Where the taxpayer has failed to file a city income tax return by the due date or by the date resulting from extension, fifty dollars (\$50) per month or fraction thereof that the city income tax return is not filed, with the penalty not to exceed five hundred dollars (\$500). The penalty provided in this Section 36.109(B) shall be imposed regardless of cause.
4. Where the taxpayer has failed to file a declaration on which he has estimated and paid a tax equal to or greater than the tax paid for the previous year, or where he has filed a previous return and has failed to file a declaration on which he has estimated and paid a tax equal to or greater than ninety percent (90%) of the actual tax for the year or has failed to file a return and pay the total tax on or before the end of the month following the end of the taxable year; ten percent (10%) of the difference between ninety percent (90%) of the actual city income tax for the year and the amount paid through withholding and declaration.
5. Any person or employer required to withhold city income tax who knowingly fails to withhold such tax or pay over such tax or knowingly attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for a penalty equal to the total amount of the tax evaded, or not withheld, or not paid over. No other penalty under this Section 36.109 shall be applied to any offense to which this penalty is applied.
6. Interest but no penalty shall be assessed where an extension of the due date for the city income tax return is granted and the city income tax is paid within the period as extended.
7. Where a check is used to pay city income tax, interest and/or penalties and is subsequently returned by a financial institution as not negotiable, a return check fee as set forth by the Director of Finance will be assessed. This amount will be added to the balance of city income tax, penalty or interest remaining unpaid and shall be payable along with such tax, interest or penalty. The check may automatically be represented electronically if it is returned for insufficient funds.
8. Any employer required to file employee wage and tax statements and a reconciliation of returns in accordance with Section 36.105, who fails to file such returns or statements or who files incomplete returns or statements shall be subject to a penalty as detailed in the rules and regulations.
9. Any employer required to file employee wage and tax statements on electronic media under Section 36.105(H) who fails to report electronically and/or in the specified format as required by the Tax Administrator will be assessed a penalty as detailed in the rules and regulations.

10. The Tax Administrator may by regulation establish a fee to cover printing, postage, and personnel costs for forms requested in quantities of ten (10) or more per request.
- C. Exceptions. A penalty shall not be assessed on an additional tax assessment made by the Tax Administrator when a city income return has been filed in good faith and the tax paid thereon within the time prescribed by Section 36.104(A); and provided further that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional city income tax assessment resulting from a federal audit, providing an amended city income tax return is filed and the additional tax is paid within three (3) months after the final determination of the taxpayer's federal income tax liability.
- D. Computed penalties of up to ten dollars (\$10) shall not be assessed.
- E. Upon recommendation of the Tax Administrator, the Board of Tax Review may abate penalty or interest, or both, or upon a written appeal by the taxpayer upon the refusal of the Tax Administrator to recommend abatement of penalty and interest concerning an item of income or expense, the Board may nevertheless abate penalty or interest, or both.
- F. In addition to the interest and penalties provided in this Section 36.109, the Tax Administrator may collect from a taxpayer the costs incurred by the Tax Administrator to assess and collect city income tax, interest and penalties from such taxpayer.

**36.110 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.**

- A. The city income tax imposed by this chapter shall be collectible, together with any interest and penalties thereon and the costs incurred to collect such tax, interest and penalties, by suit as other debts of like amount are recoverable. Such suit shall be brought within three years after the city income tax was due or the return was filed, whichever is later, and no additional assessment shall be made after three (3) years from the time the city income tax was due or the city income tax return was filed, whichever is later. Prosecutions for an offense made punishable under this chapter shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of the taxable income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense.
- B. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made or the return was due, or within three (3) months after final determination of the federal tax liability, whichever is later. No refund of city income tax on qualifying wages paid to a taxpayer for personal services performed by the taxpayer outside the city on twelve (12) or fewer days in a calendar year shall be granted unless the taxpayer can show that another municipality taxed such qualifying wages. No refund of city income tax on qualifying wages paid to a taxpayer for personal services performed by the taxpayer outside the city at the

convenience, as distinguished from the necessity, of the taxpayer's employer shall be granted.

- C. No interest shall be allowed on any overpayment of city income tax that is refunded within ninety (90) days after the due date, as extended, for filing the city income tax return or ninety (90) days after the complete return is filed, whichever is later. For purposes of computing the payment of interest on overpayments of city income tax, no amount of city income tax for any taxable year shall be treated as having been paid before the date on which the city income tax return for that year was due, without regard to any extension of time for filing that return. Interest on any overpayment of city income tax shall be paid at the rate of interest prescribed by Ohio Revised Code Sections 718.12 and 5703.47.

### **36.111 VIOLATIONS AND PENALTIES.**

- A. Any person shall be guilty of a separate misdemeanor of the first degree if he shall:
1. Fail, neglect or refuse to make any return or declaration required by this chapter; or
  2. Knowingly make an incomplete, false or fraudulent return; or
  3. Willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
  4. Fail, neglect or refuse to withhold city income tax from his employees and remit such withholding tax to the Tax Administrator; or
  5. Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his or his employer's books, records, papers, or federal income tax returns; or
  6. Fail to appear before the Tax Administrator and to produce his or his employer's books, records, papers or federal income tax returns upon order or subpoena of the Tax Administrator; or
  7. Refuse to disclose to the Tax Administrator any information with respect to such person's income or net profits or, in the case of a person responsible for information pertaining to his employer's income or net profits, such person's employer's income or net profits; or
  8. In an effort to avoid the imposition or collection of city income tax, willfully give to an employer or a prospective employer false information as to his true name or his correct social security number, residence address or date of birth, or willfully fail to notify promptly an employer or a prospective employer of any change in residence address and the date thereof; or
  9. Failure on the part of any employer to maintain proper records of employees' residence addresses, total wages paid and city tax withheld, or to knowingly give the Tax Administrator false information; or

10. Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator; or
  11. Willfully fail or willfully refuse to make any payment of estimated city income tax for any taxable year or part of any taxable year as required by Section 36.106; or
  12. Fail to cause the city income tax withheld from the qualifying wages of employees pursuant to this chapter to be paid to the city in accordance with the provisions of Section 36.105; or
  13. 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.
- B. Where a violation set forth in this Section 36.111 does not specify a culpable mental state or intent, the violation shall be one of strict liability and no culpable mental state or intent shall be required for a person to be guilty of such violation.
- C. The failure of any employer, taxpayer or person to receive or procure a city income tax return, declaration or other required form shall not excuse such employer, taxpayer or person from making any information return or city income tax return or declaration, from filing such return or from paying city income tax.
- D. The term "person" as used in this Section 36.111 shall, in addition to the meaning prescribed in Section 36.101, include in the case of a corporation or pass-through entity not having any resident owner or officer within the city, any employee or agent of such corporation or pass-through entity who can be found within the corporate limits of the city and who has control or supervision over or is charged with the responsibility of filing the return and making the payment required under Section 36.104, Section 36.105 or Section 36.106.

### **36.112 BOARD OF TAX REVIEW.**

- A. A Board of Tax Review, consisting of three (3) members, who shall be the City Manager, Director of Finance and Director of Law, or their designees, is hereby created and shall be maintained to hear appeals by taxpayers of assessments issued by the Tax Administrator and to hear recommendations by the Tax Administrator of outstanding city income tax balances that should be canceled because such balances either cannot be collected or can be collected only at a cost in excess of the outstanding balance.
- B. The Director of Finance shall serve as chair of the Board of Tax Review and a selected employee of the Department of Finance shall serve as secretary for the Board.
- C. A majority of the members of the Board shall constitute a quorum. Any hearing by the Board shall be conducted privately and the provisions of Section 36.108 with reference to

the confidential character of information shall apply to such matters as may be heard before the Board.

D. Authority of the Board.

1. The Board of Tax Review shall have the authority to modify in whole or in part any assessment of city income tax, penalty or interest made by the Tax Administrator and, on the recommendation of the Tax Administrator, to cancel outstanding city income tax balances described in Section 36.112(A). In addition, the Board may authorize the Tax Administrator to accept partial payments of city income tax for a period in excess of the time authorized in Section 36.107(G).
2. All rules and regulations and amendments or changes thereto which are adopted by the Tax Administrator under the authority conferred by this chapter must be approved by the Board of Tax Review before the same become effective. After such approval, such rules, regulations, amendments and changes shall be filed with the City Commission and shall be open to public inspection. The Board shall hear and pass on appeals from any ruling or decision of the Tax Administrator, and, at the request of the taxpayer or Tax Administrator, is empowered to substitute alternate methods of apportionment.

E. Whenever the Tax Administrator issues an assessment or decision regarding a city income tax obligation that is subject to appeal as provided in this Section 36.112, or in an ordinance or regulation of the city, the Tax Administrator shall notify the taxpayer in writing at the same time of such assessment or decision of the taxpayer's right to appeal the assessment or decision and of the manner in which the taxpayer may appeal the assessment or decision.

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

G. The imposition of penalty and interest as prescribed in Section 36.109 is not a sole basis for an appeal to the Board of Tax Review.

H. The Board of Tax Review shall schedule a hearing within forty-five (45) days after receiving the taxpayer's request for appeal, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented before the Board as provided by law.

I. The Board may affirm, reverse or modify the Tax Administrator's assessment or decision or any part of that assessment or decision. The Board shall issue a decision on the appeal

within ninety (90) days after the Board's final hearing on the appeal, and send notice of its final decision by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the decision. The taxpayer or the Tax Administrator may appeal the decision of the Board of Tax Review to the Board of Tax Appeals as provided in Section 36.113 or, to the extent authorized by Ohio Revised Code Section 718.11, the taxpayer or the Tax Administrator may appeal the decision of the Board of Tax Review as provided in Ohio Revised Code Section 5717.011.

- J. The Board of Tax Review created pursuant to this Section 36.112 shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Section 149.43 of the Ohio Revised Code. Hearings requested by a taxpayer before a Board of Tax Review created pursuant to this Section 36.112 are not meetings of a public body subject to Section 121.22 of the Ohio Revised Code.

### **36.113 BOARD OF TAX APPEALS.**

- A. A Board of Tax Appeals, consisting of three (3) citizen representative members, appointed by the City Commission, is hereby created and shall be maintained to hear appeals from decisions of the Board of Tax Review.
- B. The members of the Board of Tax Appeals shall be appointed for a term of three (3) years and may be reappointed for only one (1) additional three (3) year term; however, the members of the first Board of Tax Appeals shall be appointed for terms of one (1), two (2) and three (3) years, respectively. A majority of the members of the Board shall constitute a quorum. Any hearing by the Board shall be conducted privately and the provisions of Section 36.108 with reference to the confidential character of information required to be disclosed by the Chapter shall apply to such matters as may be heard before the Board on appeal.
- C. Authority of the Board of Tax Appeals. The Board of Tax Appeals shall have the authority to modify in whole or in part any decision of the Board of Tax Review relating to the assessment of city income tax, penalty or interest.
- D. Whenever the Board of Tax Review issues a decision regarding an income tax obligation that is subject to appeal as provided in this Section 36.113, or in an ordinance or regulation of the city, the Board of Tax Review shall notify the taxpayer and the Tax Administrator in writing at the same time it issues its decision of the taxpayer or Tax Administrator's right to appeal the decision of the Board of Tax Review and of the manner in which the taxpayer or Tax Administrator may appeal the decision.
- E. Any person who or is a party to a decision of the Board of Tax Review and who is aggrieved by a decision by the Board of Tax Review may appeal the decision to the Board of Tax Appeals by filing a request with the Board of Tax Appeals. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Board of Tax

Review has issued the decision. Such appeal is considered filed on the date received by the Board of Tax Appeals.

- F. The Board of Tax Appeals shall schedule a hearing within forty-five (45) days after receiving the request for appeal, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented before the Board as provided by law.
- G. The Board of Tax Appeals may affirm, reverse or modify the Board of Tax Review's decision or any part of that decision. The Board of Tax Appeals shall issue a decision on the appeal within ninety (90) days after the Board's final hearing on the appeal, and send notice of its final decision by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the decision. The taxpayer or the Tax Administrator may appeal the decision of the Board of Tax Appeals as provided in Section 5717.011 of the Ohio Revised Code.
- H. The Board of Tax Appeals created pursuant to this Section 36.113 shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Section 149.43 of the Ohio Revised Code. Hearings requested by a taxpayer or the Tax Administrator before the Board of Tax Appeals created pursuant to this Section 36.113 are not meetings of a public body subject to Section 121.22 of the Ohio Revised Code.

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

- A. Residents. When a resident is subject to and has paid, or has acknowledged liability for, a municipal income tax in another taxing municipality or joint economic development district on the same income taxable under this chapter, regardless of whether such other taxing municipality or joint economic development district allows credit to its nonresidents, such resident may claim a credit against the tax imposed by this chapter in an amount equal to the lesser of (i) the amount of such tax paid to such other taxing municipality or joint economic development district or (ii) the city income tax on such income taxable under this chapter. In no case shall the credit exceed the tax assessed under this chapter on the resident's taxable income that is also subject to tax in another taxing municipality or joint economic development district.
- B. A resident owner of a pass-through entity that does not conduct business in the city and that has paid, or has acknowledged liability for, an income tax in another taxing municipality or joint economic development district may claim a credit equal to the lesser of the following amounts:
  - 1. The resident owner's proportionate share of the amount, if any, of income tax paid by the pass-through entity to another taxing municipality or joint economic development district in the State; or

2. The resident owner's proportionate share of the amount of city income tax that would be imposed on the pass-through entity if the pass-through entity conducted business in the city.
  3. In no case shall the credit authorized by this Section 36.114(B) exceed the city income tax assessed under this chapter on the taxable income that is also subject to tax in another taxing municipality or joint economic development district.
- C. Where applicable, the credits provided by Ohio Revised Code Sections 718.021 and 718.121 shall be available to residents.
- D. Nonresidents. Except as provided in Ohio Revised Code Sections 718.021 and 718.121 and Section 36.105(J), when a nonresident is subject to the tax imposed by this chapter and is also subject to tax on the same income in the municipal corporation in which the nonresident resides, such nonresident shall not be allowed any credit against or claim of refund for city income tax, and the city will not acknowledge or allow any claim for refund of any portion of the city income tax so levied.
- E. Claim for Credit. The credits provided for in subsections (a) and (b) hereof will not be allowed unless the same are claimed in a timely return or form acceptable to, and filed with, the Tax Administrator. In the event a taxpayer fails, neglects or refuses to file such timely return or form, he shall not be entitled to such credit and shall be liable for the full amount of tax assessed by this chapter, together with such interest and penalties, both civil and criminal, as prescribed in this chapter.
- F. No credit shall be given to any taxpayer for any school district income tax.

### **36.115 ALLOCATION OF FUNDS.**

The funds collected under the provisions of this chapter shall be placed in the Income Tax Collection Fund of the city to be used for the purpose of paying all costs of collecting the taxes levied and the cost of administering and enforcing the provisions thereof; for the payment of other current operating expenses of the city; and for payment of the costs of making such permanent improvements as the City Commission may determine from time to time. However, a portion of such funds may be placed in a Sundry Trust Tax Refund Account as may be determined from time to time by the Director of Finance on the basis of need to provide a fund for the refund of income tax overpayments as provided in Section 36.110.

### **36.116 SAVING CLAUSE.**

This chapter shall not apply to any person, corporation, pass-through entity or employer or to any property as to whom or which it is beyond the power of the city to impose the tax herein provided. If any sentence, clause, section or part of this chapter, or any tax against or exception granted any taxpayer or forms of income specified herein is found to be unconstitutional or illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter so found and shall not affect or impair any of the

remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of the City Commission that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence or part thereof not been included in this chapter.

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Definitions

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- Business Section 36.101(A)(3)
- City Section 36.101(A)(4)
- Corporation Section 36.101(A)(5)
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- Employee Section 36.101(A)(8)
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