

CITY OF DAYTON, OHIO

**Income Tax Ordinance No.
31500-16**



Approved by the City of Dayton Electorate

November 8, 2016

Effective January 1, 2017

**CITY OF DAYTON
INCOME TAX ORDINANCE**

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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 expiring 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 electorate became effective January 1, 2007.

ORDINANCE 31288-14

On May 6, 2014, at the regular primary election, 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 2.25% for a continuing period commencing January 1, 2015. A total of 9,391 citizens voted in this election; 6,496 or 69.18% voted for the Charter Amendment while 2,895 or 30.83% opposed it. Ordinance 31288-14 being approved by the electorate became effective January 1, 2015.

ORDINANCE 31500-16

On November 8, 2016, at the general election, the Voters of the City of Dayton approved a Charter Amendment authorizing the City Commission to levy an additional one quarter of one percent (1/4%) Income Tax at the annual rate of 2.50% for a continuing period commencing January 1, 2017, and expiring December 31, 2024. A total of 55,284 citizens voted in this election. 51,901 citizens voted on Issue 9 of which 28,892 or 55.67% voted for the Charter Amendment while 23,009 or 44.33% opposed it. Ordinance 31500-16 being approved by the electorate became effective January 1, 2017.

36.100 PURPOSE.

To provide funds for municipal purposes, including but not limited to general municipal operations, maintenance, acquisition of new equipment, and the provision of municipal services, facilities, and capital improvements, there shall be and is hereby levied a tax on an annual basis on the income of every person residing in or earning or receiving income in the City of Dayton, which tax is measured by the person's municipal taxable income, all as hereinafter provided.

The taxes levied under this Chapter shall be levied in accordance with the provisions and limitations set forth in Chapter 718 of the Ohio Revised Code to the fullest extent required for the City to continue to levy those taxes. The required provisions and limitations of Chapter 718 of the Ohio Revised Code are hereby incorporated into this Chapter, and those required provisions or limitations of Chapter 718 of the Ohio Revised Code shall control to the extent there is a conflict between a provision or limitation of this Chapter and an express provision or limitation of Chapter 718 of the Ohio Revised Code.

36.101 DEFINITIONS.

- A. As used herein, all references in this Chapter to provisions or limitations of Chapter 718 of the Ohio Revised Code and to any Section of that Chapter 718 shall include those provisions or limitations of that Chapter or Section as in effect on January 1, 2016, of any successor statute, and of any subsequent amendment to that Chapter or Section or a successor statute in effect from time to time to the fullest possible extent required for the City to continue to levy the taxes specified under this Chapter.
- B. The following terms as used in this Chapter (either directly or by reference to Chapter 718 of the Ohio Revised Code) shall have the meanings ascribed to them in Section 718.01 of the Ohio Revised Code: "municipal taxable income"; "income"; "exempt income"; "net profit"; "adjusted federal taxable income"; "Schedule C"; "Schedule E"; "Schedule F"; "Internal Revenue Code"; "resident"; "nonresident"; "taxpayer"; "person"; "pass-through entity"; "S corporation"; "single member limited liability company"; "limited liability company"; "qualifying wages"; "intangible income"; "taxable year"; "tax administrator"; "employer"; "employee"; "other payer"; "calendar quarter"; "Form 2106"; "municipal corporation"; "disregarded entity"; "generic form"; "tax return preparer"; "Ohio business gateway"; "local board of tax review" and "board of tax review"; "net operating loss"; "postal service"; "certified mail," "express mail," and "United States mail"; "postmark date" and "date of postmark"; "related member"; "related entity"; "assessment"; "taxpayer's rights and responsibilities"; "pre-2017 net operating loss carryforward"; "small employer"; "audit"; and "publicly traded partnership." Further, any other term used in this Chapter that is not otherwise defined in this Chapter and that is defined in Chapter 718 of the Ohio Revised Code shall have the same meaning as is ascribed to it in Chapter 718 of the Ohio Revised Code.
- C. Any term used in this Chapter that is not otherwise defined in this Chapter or by reference to Section 718.01 of the Ohio Revised Code shall have the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the Ohio Revised Code, unless a different meaning is clearly required. If a term used in this Chapter that is not otherwise defined in this Chapter or by reference to Section 718.01 of the Ohio Revised Code is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Ohio Revised Code and the use is not consistent, then the use of the term in the laws

of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Ohio Revised Code.

- D. For purposes of this Chapter, references in Chapter 718 of the Ohio Revised Code to “a municipal corporation” shall mean the City, except as and if the context clearly indicates or requires a different meaning.
- E. 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, and except as and if the meaning ascribed in this Section to a word conflicts with the meaning ascribed to that same word in Section 718.01 of the Ohio Revised Code, in which case the meaning ascribed to that word by Section 718.01 of the Ohio Revised Code shall control.
1. "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.
 2. “City” means the City of Dayton, Ohio.
 3. "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.
 4. "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. The determination of a taxpayer’s domicile for purposes of this Chapter shall be made in conformance with Section 718.012 of the Ohio Revised Code.
 5. “Exempt income” for purposes of this Chapter includes all municipal taxable income of an individual who is under 16 years of age.
 6. "Fiscal year" means an accounting period of twelve (12) months or less ending on any day other than December 31.
 7. "Joint Economic Development District" means districts created under the Ohio Revised Code Sections 715.70 through 715.83, as amended from time to time.
 8. “Nonqualified deferred compensation plan” means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code. Any amount attributable to a nonqualified deferred compensation plan is part of qualifying wages.
 9. “Pass-through entity” for purposes of this Chapter does not include an S corporation.

10. "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.
 11. "Pension" means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Neither "pension" nor any other item of "exempt income" includes any amount that constitutes "qualifying wages," including but not limited to deferred compensation or any amount attributable to a nonqualified deferred compensation plan or program described in Section 3121(v)(2)(C) of the Internal Revenue Code, or successor provision thereto in effect from time to time.
 12. "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.
 13. "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.
 14. "Schedule A" means the Internal Revenue Service Schedule "A" filed by a taxpayer with his federal income tax return.
 15. "Taxable income" has the same meaning as municipal taxable income. As set forth in Section 718.01(A)(1)(a) and (B)(3) of the Ohio Revised Code, the municipal taxable income of a taxpayer that is not an individual is the net profit of that taxpayer.
 16. "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.
 17. "Taxing jurisdiction" means a taxing municipality, joint economic development district, state (other than Ohio), or a political subdivision of a state other than Ohio.
- F. 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 municipal taxable income earned or received by a resident, as set forth in Section 718.01(A)(1)(b)(i) of the Ohio Revised Code, from wherever derived.
 2. On all municipal taxable income earned or received by a nonresident, as set forth in Section 718.01(A)(1)(c) of the Ohio Revised Code, and derived from a source or sources within the City, subject in the case of qualifying wages to the limitations set forth in Ohio Revised Code Sections 718.01(C)(16) and (17) and 718.011. For purposes of this Section 36.102(A)(2), lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards are treated as derived from a source within the City if the nonresident was within the City

when he or she purchased the ticket or otherwise entered into the game or event that entitled the nonresident to such winnings. 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 the portion of the net profit of a person other than an individual derived from business conducted in the City, as set forth in Section 718.01(A)(1)(a) and (B)(3) of the Ohio Revised Code, whether or not such taxpayer has an office or place of business in the City. The tax imposed by this Section 36.102(A)(3) on the net profit of an electric company, combined company or telephone company shall be subject to, and shall accord with, Ohio Revised Code Chapter 5745.

B. Businesses both In and Outside the City. The portion of the net profit 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.

C. Net Operating Loss (NOL) and Business Expenses.

1. A deduction for a net operating loss shall be allowed as provided in Section 718.01(A) and (B) in determining a taxpayer's municipal taxable income.
2. No taxpayer may combine a net operating loss or passive activity loss with qualifying wages to reduce qualifying wages.
3. As provided in Section 718.01(A)(2), 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.

D. Consolidated Returns.

1. As provided in Section 718.06 of the Ohio Revised Code, a taxpayer that is a member of an affiliated group of corporations may elect, or may be required, to file a consolidated City income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to City income tax in that taxable year and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election to file a consolidated City income tax return shall be binding for the period set forth in Section 718.06 of the Ohio Revised Code, and the municipal taxable income reported on the consolidated City

income tax return and apportioned to the City shall be determined in compliance with Ohio Revised Code Section 718.06.

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 profit is properly allocated to the City. If the Tax Administrator finds the net profit is 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 profit to fairly and reasonably reflect the proper allocation of net profit to the City.

36.102.7 - IMPOSITION OF TAX; RATE.

- A. Pursuant to § 189 of the Charter of the City of Dayton, a tax is hereby imposed and levied for the period commencing January 1, 2017, and ending December 31, 2024.
- B. The tax is an annual tax levied on the income of every person residing in or earning or receiving income in the city and shall be measured by municipal taxable income as that term is defined in Section 718.01(A) of the Ohio Revised Code.
- C. The tax is levied in accordance with the limitations specified in Chapter 718 of the Ohio Revised Code, and this Ordinance incorporates the provisions of Chapter 718 of the Ohio Revised Code.
- D. The rate of the tax shall be one-quarter of one percent.
- E. A credit pursuant to Section 718.04(D) of the Ohio Revised Code will be allowed against the tax. In the case of a resident, the resident may claim a credit against the tax in an amount equal to the lesser of: (i) the amount of such tax paid to another taxing municipality or joint economic development district or (ii) the city income tax on such income taxable under this section. In no case shall the credit exceed the tax assessed under this section on the resident's taxable income that is also subject to tax in another taxing municipality or joint economic development district. In the case of a resident owner of a pass-through entity that does not conduct business in the city, the resident owner may claim a credit equal to the lesser of: (i) the resident owner's proportionate share of the amount, if any, of income tax paid by the pass-through entity to another taxing municipality in the state or (ii) 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. In no case shall the credit exceed the city income tax assessed under this section on the taxable income that is also subject to tax in another taxing municipality.
- F. Generally, the purpose of the tax is to provide for essential municipal services and necessary capital improvements as set forth in Section 36.100 of the Revised Code of General Ordinances. To the extent available, however, revenue from the tax will be used to fund pre-kindergarten education for residents of the city.

36.103 EFFECTIVE PERIOD AND RATE.

The City income tax shall be levied at the annual rate of 2.25% on taxable income as provided in Section 36.102.

36.104 RETURN AND PAYMENT OF TAX.

- A. This Section 36.104 and Sections 718.05, 718.051, and 718.052 of the Ohio Revised Code shall control the date by which the annual City income tax return for such taxable year must be filed, the form and content of that return, the date by which City income tax for that taxable year must be paid, and any extension of the date by which the annual City income tax must be filed. This Section 36.104 and Sections 718.12 and 718.41 of the Ohio Revised Code shall control for purposes of determining the circumstances under which a taxpayer must file an amended City income tax return. To the extent that the provisions of this Section 36.104 and the express provisions of the foregoing Sections of the Ohio Revised Code are in conflict, the foregoing Sections of the Ohio Revised Code shall control.
- B. Each taxpayer who earns or receives municipal taxable income 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 or by such other date specified by Section 718.05 of the Ohio Revised Code. A City income tax return shall be deemed filed when received by the Tax Administrator; provided, however, that where the City income tax return is delivered by the United States mail to the Tax Administrator after the due date for that return, the postmark stamped on the cover in which the City income tax return is mailed shall be deemed to be the date of delivery of the City income tax return. In the event there is more than one date on such cover, the date of postmark means the earliest date imprinted by the postal service on such cover. Notwithstanding anything in this Chapter to the contrary, the return of an employer or employers, agent of an employer, or other payer that shows the amount of City income tax deducted by the employer or employers, agent of an employer, or other payer from the qualifying wages of an employee and paid by the employer or employers, agent of an employer, or other payer 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.
- C. 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.
- D. 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 profit of which is subject to tax under this Chapter may file its City income tax return by using the Ohio business gateway.
- E. 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 profit 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.
- F. Any taxpayer that has requested an extension for filing a federal income tax return shall automatically receive 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(B). The extended due date of the City income tax return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates. An extension of time to file a City income tax return is not an extension of the time to pay any City income tax due unless the Tax Administrator grants an extension of the date by which City income tax must be paid in respect of a given taxable year.
1. Where an automatic extension of the due date for filing the annual City income tax return is not available, the Tax Administrator may deny a taxpayer's request for an extension of such due date 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.
 2. 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. Where an automatic extension of the due date for filing the annual City income tax return is not available, 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.

G. 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 taxing municipality or State (other than Ohio).
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 less than \$10.00 shall be assessed, collected or refunded.

H. 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, after the due date for filing the original City income tax return, file an amended City income tax return to (i) change its method of accounting, (ii) change its method of apportionment of net profit, or (iii) elect to file a consolidated City income tax return.
2. Within sixty (60) days after 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.

- I. 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, Agent of an Employer or Other Payer. Each employer, agent of an employer, or other payer located within, or doing business within, the City shall, unless excused by Sections 718.011 or 718.03(D) or (F) of the Ohio Revised Code, withhold from each employee an amount equal to the product of (i) the qualifying wages of the employee that are earned by the

employee in the City and (ii) the City income tax rate set forth in Section 36.103. Each such employer, agent of an employer, or other payer shall deduct and withhold the City income tax from such qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively (i) pays the qualifying wages to such employee or (ii) credits the qualifying wages under Internal Revenue Code Section 3121, or any amendment or successor provision thereto in effect from time to time, to the benefit of such employee. For all periods beginning on or after January 1, 2016, this Section 36.105 and Section 718.03 of the Ohio Revised Code govern the obligation of an employer, agent of an employer, or other payer to withhold and remit to the City the City income tax owed on the qualifying wages of an employee that are earned by the employee in the City and to prepare and file with the City such returns and reports as required by this Section 36.105 or Section 718.03 of the Ohio Revised Code by the dates specified in this Section 36.105 or Section 718.03 of the Ohio Revised Code, as applicable. To the extent that the provisions of this Section 35.105 and the express provisions of Section 718.03 of the Ohio Revised Code are in conflict, Section 718.03 of the Ohio Revised Code shall control. 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.

- B. Each such employer, agent of an employer, or other payer shall, on or before the fifteenth (15th) day following the end of each calendar quarter, make a return and remit to the City the tax hereby required to be withheld. Such return shall be on a form or forms prescribed by or acceptable to the Administrator and shall be subject to the rules and regulations prescribed therefore by the Administrator. Any employer, agent of an employer, or other payer who withheld, or was required to withhold, more than \$2,399 of City income tax during the immediately preceding calendar year or who withheld, or was required to withhold, more than \$200 of City income tax during any month in the preceding calendar quarter shall, on or before the fifteenth (15th) day of each month, make a return and remit to the City the tax hereby required to be withheld for the immediately preceding month. Any employer, agent of an employer, or other payer who withheld, or was required to withhold, more than \$11,999 of City income tax during the preceding calendar year or who withheld, or was required to withhold, more than \$1,000 of City income tax during any month in the preceding calendar year shall, on or before the applicable date set forth in Ohio Revised Code Section 718.03(B)(2)(a)(ii), make a return and remit to the City the tax hereby required to be withheld for the immediately preceding semimonthly period. As provided in Ohio Revised Code Section 718.051 and in the rules and regulations, any employer, agent of employer, or other payer 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. Any employer, agent of an employer, or other payer that is required to make payments electronically for the purpose of paying federal taxes withheld on payments to employees under Section 6302 of the Internal Revenue Code, 26 C.F.R. 31.6302-1, or any other federal statute or regulation, shall make payment by electronic funds transfer to the Tax Administrator of the City income tax hereby required to be deducted and withheld on payments of qualifying wages. Such payment of City income tax by electronic funds transfer does not affect an employer's, agents, or other payer's obligation to file any return required by this Section 36.105 or Section 718.03 of the Ohio Revised Code.
- C. An employer, agent of an employer, or other payer 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 either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.

- D. An employee is not relieved from liability for City income tax by the failure of the employer, agent of an employer, or other payer to withhold the tax as required by this Section 36.105 or by the employer's, agent's, or other payer's exemption from the requirement to withhold City income tax.
1. The failure of an employer, agent of an employer, or other payer 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, agent, or other payer in connection with the failure to remit the tax withheld. No refund of City income tax withheld on the qualifying wages of an employee shall be paid to that employee unless the employer, agent, or other payer has remitted the City income tax to the City.
- E. Employer, Agent of an Employer, or Other Payer Considered as Trustee. Each employer, agent of an employer, or other payer, in collecting City income tax, shall be deemed to hold the same, until payment is made by such employer, agent, or other payer to the City, as a trustee for the benefit of the City, and any such tax collected by such employer, agent, or other payer from employees shall, until the same is paid to the City, be deemed a trust fund in the hands of such employer, agent, or other payer. Each employer, agent of an employer, or other payer 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 36.105 and Ohio Revised Code Section 718.03. 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 and Ohio Revised Code Section 718.03, any and all officers or employees of an employer, agent of an employer, or other payer who have control or direct supervision of or who are charged with the responsibility for withholding City income tax or filing the return and making payment of such taxes as required by this Section 36.105 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 of an employer, agent of an employer, or other payer does not discharge such officer's or employee's liability for a failure of the employer, agent of an employer, or other payer to file returns in respect of City income tax withheld from qualifying wages or to pay such tax.
- G. Withholding Reconciliation Return; List of Employees. On before the last day of February each year, each employer, agent of an employer, or other payer shall file a withholding tax reconciliation return with the Tax Administrator showing (i) the sum total of all qualifying wages paid to all employees during the immediately preceding calendar, (ii) the portion of such qualifying wages, if any, that was not subject to City income tax withholding along with an explanation for same, (iii) the portion of such qualifying wages that was subject to City income tax withholding, and (iv) the amount of City income tax that was withheld in respect of such qualifying wages and remitted to the Tax Administrator. Such return shall also include information for the immediately preceding calendar year concerning each employee from whom City income tax was withheld, showing in respect of each such employee (i) the name, address, zip code and social security number of each such employee, (ii) the total amount of qualifying wages paid during the immediately preceding year to each such employee, and (iii) the amount of City income tax withheld in respect of such qualifying wages paid to each such employee. If the total tax withheld from any employee includes tax withheld and remitted to another taxing municipality, the amount of such withholding to the other taxing municipality shall be separately shown on the withholding tax reconciliation return to be filed with the City. An employer, agent of an employer, or other payer with more than 100 employees shall provide the information required by this Section 36.105(H) 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 shall 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(I) 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(I) were made.
- I. Any person who shall employ or contract for the services of any professional entertainer(s), public figure(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), public figure(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, agent of an employer, or other payer 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), public figure(s), or professional athlete(s) for services performed in the City by the professional entertainer, public figure(s), or professional athlete(s). For purposes of this Section 36.105(J), the terms “professional athlete,” “professional entertainer,” and “public figure” have the same meanings ascribed to such terms by Ohio Revised Code Section 718.011.
1. Any person who rents facilities located in the City that are made available to any professional entertainer(s), public figure(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, agent of an employer, or other payer 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), public figure(s), or professional athlete(s) for services performed in the City by the professional entertainer, public figure(s), or professional athlete(s).
- J. 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; provided, however, that where such return, form, or other information is delivered by the United States mail to the Tax Administrator after the due date for that return, form, or other information, the postmark stamped on the cover in which the return, form, or other information is mailed shall be deemed to be the date of delivery of such return, form, or other information. In the event there is more than one date on such cover, the date of postmark means the earliest date imprinted by the postal service on such cover.

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 profit from such business activity together with the estimated City income 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. This Section 36.106 and Section 718.08 of the Ohio Revised Code govern the obligation of a taxpayer to declare its estimated City income tax liability for a given taxable year and to pay those estimated taxes. Section 718.08 of the Ohio Revised Code shall control to the extent there is any conflict between this Section 36.106 and the express provisions of Section 718.08 of the Ohio Revised Code.

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 (15th) day of the fourth (4th) 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 (15th) day of the fourth (4th) 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 profit 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 all taxpayers, 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 (15th) day of the sixth, ninth and twelfth months after the beginning of the taxable year.
4. 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.
5. The declaration and accompanying required payment is considered filed on the date received by the Tax Administrator; provided, however, that where the City income tax return is delivered by the United States mail to the Tax Administrator after the due date for that declaration, the postmark stamped on the cover in which the declaration is mailed shall be deemed to be the date of delivery of the declaration. In the event there is more than one date on such cover, the date of postmark means the earliest date imprinted by the postal service on such cover.

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. 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 the fifteenth (15th) day of the twelfth (12th) month after the beginning of the taxable year, 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 such date 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. 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. In discharging the duties authorized by Sections 36.107 and 36.108, the Tax Administrator shall adhere to Sections 718.13, 718.18, 718.19, 718.23, 718.24, 718.25, 718.26, 718.27, 718.28, 718.30, 718.31, 718.36, 718.38, 718.39 and 718.99 of the Ohio Revised Code. The foregoing provisions of the Ohio Revised Code shall control to the extent there is any conflict between either Section 36.107 or Section 37.108 and the express provisions of the foregoing Sections of the Ohio Revised Code.
1. 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, in the manner set forth in Ohio Revised Code Section 718.18. Within 60 days after receipt of service of the final assessment, the taxpayer may protest the ruling in that assessment by filing an appeal with the Board of Tax Review in the manner provided in Section 36.112.
- 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, agent of an employer, or other payer 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 Section 36.112 shall then apply to any appeal of such assessment.
- F. When an employer, agent of an employer, or other payer 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(E), the Tax Administrator shall not authorize an extension of time for the payment of City income tax due for more than 24 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, agent of any employer, or other payer, a 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 (or agent or other payer), supposed employer (or agent or other payer), 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, agent of any employer, or other payer, 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 and other related City income tax information to the Internal Revenue Service, the Ohio Tax Commissioner, and the tax administrators of other taxing municipalities.
- F. Any person divulging information described in Section 36.108(E) shall be guilty of a misdemeanor of the first degree punishable by a maximum fine of one thousand dollars (\$1,000.00) 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 36.108 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. For taxable years beginning on or after January 1, 2016, this Section 36.109 and Section 718.27 of the Ohio Revised Code govern the imposition of interest and penalties for the failure of a taxpayer, employer, agent of an employer, or other payer to comply with the requirements of this Chapter to file any return or report or to withhold or make payments of City income tax. Section 718.27 of the Ohio Revised Code shall control to the extent there is any conflict between this Section 36.109 and the express provisions of Section 718.27 of the Ohio Revised Code.
- B. Interest shall be imposed at the rate described in Section 718.27(A), per annum, on all City income tax, estimated City income tax, and withholding of City income tax that remains unpaid after the payment of such tax is due.
- C. In addition to interest as provided in Section 36.109(B), penalties are hereby imposed, as provided by Section 718.27(C) of the Ohio Revised Code, as follows based on the City income tax remaining unpaid after it becomes due:
 - 1. For failure to pay City income tax when due and for failure to make estimated payments of City income tax when due, fifteen percent (15%) of the amount not timely paid.
 - 2. For failure to remit when due City income taxes withheld or required to be withheld from payments of qualifying wages to employees, fifty percent (50%) of the amount of such City income tax not timely paid.
 - 3. For failure by a taxpayer, employer, agent of an employer, or other payer to file a return required under this Chapter, other than a return for estimated City income tax, by the due date or by the date resulting from extension of the original due date, twenty-five dollars (\$25) for each failure to timely file each such return for each month, or any fraction of a month, during which the return remains unfiled, regardless of the liability shown on each such return. The penalty imposed by this Section 36.109(C)(3) shall not exceed one hundred fifty dollars (\$150) for each failure to file a timely return required under this Chapter, and the penalty provided by this Section 36.109(C) shall be imposed regardless of cause.
 - 4. Interest but no penalty shall be assessed where an extension of the due date for the City income tax return is automatically obtained or is otherwise granted, as set forth in Section 36.104(F), and the City income tax is paid within the period as extended.
- D. Exceptions. A penalty shall not be imposed 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(B); 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 City income tax is paid within sixty (60) days after the final determination of the taxpayer's federal income tax liability.

- E. Computed penalties of up to ten dollars (\$10) shall not be assessed.
- F. 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.
- G. In addition to the interest and penalties provided in this Section 36.109, the City may collect from a taxpayer, employer, agent of an employer, or other payer the post-judgment collection costs and fees, including attorney's fees, incurred by the City to collect on the judgment of City income tax, interest and penalties owed by such taxpayer, employer, agent, or other payer.

36.110 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.

- A. This Section 36.110 and Sections 718.12, 718.18 and 718.19 of the Ohio Revised Code govern the procedures applicable to the following proceedings and the periods of time during which the following proceedings may be brought: (1) a civil action to recover City income taxes, penalties, and interest may be brought by the City; (2) a prosecution for an offense made punishable under this Chapter may be brought by the City; and (3) a request for refund of City income taxes may be brought by a taxpayer, an employer, agent of an employer, or other payer. Sections 718.12 and 718.19 of the Ohio Revised Code shall control to the extent there is any conflict between this Section 36.110 and the express provisions of Sections 718.12, 718.18 and 718.19 of the Ohio Revised Code.
- B. The City income tax imposed by this Chapter shall be collectible, together with any interest and penalties thereon and the post-judgment costs, including attorney's fees, incurred to collect such tax, interest and penalties, by suit as other debts of like amount are recoverable. Such suit shall, as provided by Section 718.12(A) of the Ohio Revised Code, be brought within the later of: (1) three years after the City income tax was due or the return was filed, whichever is later; or (2) one year after the conclusion of the qualifying deferral period set forth in Section 718.12(A) of the Ohio Revised Code. No additional assessment of City income tax, interest, or penalties 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. As set forth in Section 718.12(B) of the Ohio Revised Code, 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 income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense.
- C. Taxes erroneously paid shall not be refunded unless a claim for refund is made within the period specified by Section 718.19(B) of the Ohio Revised Code, which period is three (3) years from the date on which such erroneous payment was made or the return was due, or within sixty (60) days 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 twenty (20) 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.

- D. 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 Section 718.27(A)(5).

36.111 VIOLATIONS AND PENALTIES.

- A. Any person, taxpayer, employer, agent of an employer, or other payer 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 profit or, in the case of a person responsible for information pertaining to his employer's income or net profit, such person's employer's income or net profit; 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. Fail to maintain proper records of his employees' residence addresses, total qualifying wages paid and City income tax withheld, or to knowingly give the Tax Administrator false information in respect of the foregoing; 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 person, taxpayer, employer, agent of an employer, or other payer to receive or procure a City income tax return, declaration or other required form shall not excuse such person, taxpayer, employer, agent, or other payer from making any information return or City income tax return or declaration, from filing such return or from paying City income tax.

36.112 BOARD OF TAX REVIEW.

- A. This Section 36.112 and Section 718.11 of the Ohio Revised Code govern the establishment, membership, conduct, procedures, and operation of the Board of Tax Review. Section 718.11 of the Ohio Revised Code shall control to the extent there is any conflict between this Section 36.112 and the express provisions of Section 718.11 of the Ohio Revised Code.
- B. A Board of Tax Review, consisting of three (3) members, is hereby created and shall be maintained to hear: (1) appeals by taxpayers of assessments issued by the Tax Administrator (which for purposes of this Section 36.112 include the denial by the Tax Administrator of a refund claim); and (2) 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.
- C. Two (2) of the members of the Board of Tax Review shall be appointed by the City Commission, but such appointees may not be employees or elected officials of, or contractors with, the City at any time during their term on the Board or in the five (5) years immediately preceding the date of appointment to the Board. The term for the members of the Board of Tax Review appointed by the City Commission shall be two (2) years, and there is no limit on the number of terms that a member of the Board may serve if the member is reappointed by the City Commission. The third (3rd) member of the Board of Tax Review shall be appointed by the City Manager; this member of the Board may be an employee of the City, but this member may not be the Director of Finance or equivalent officer, the Tax Administrator, any employee directly involved in City tax matters, or any direct subordinate of any of the foregoing employees of the City. The member of the Board of Tax Review appointed by the City Manager shall serve at the discretion of the City Manager. The removal of members of the Board of Tax Review, the replacement of members of the Board who are removed or who resign (whether by operation of law or otherwise), and the temporary replacement of members of the Board who are temporarily unable to serve on the Board shall be governed by Section 718.11(A) of the Ohio Revised Code.

- D. 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.
- E. 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(B). 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 and shall be published and posted on the internet as described in Sections 718.07 and 718.30 of the Ohio Revised Code. The Board shall hear and pass on appeals from any assessment issued by the Tax Administrator, and, at the request of the taxpayer or Tax Administrator, is empowered to substitute alternate methods of apportionment.
- F. Whenever the Tax Administrator issues an assessment 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 of the taxpayer's right to appeal the assessment, the manner in which the taxpayer may appeal the assessment, and the address to which the appeal should be directed.
- G. Any person who has been issued an assessment may appeal the assessment to the Board of Tax Review by filing a request with the Board. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty (60) days after the taxpayer receives the assessment. Such appeal is considered filed on the date received by the Board of Tax Review. The Tax Administrator's delivery of an assessment shall be made in accordance with Section 718.18 of the Ohio Revised Code and is entitled to the presumption of service upon, and receipt by, the taxpayer at the time set forth in Section 718.18 of the Ohio Revised Code.
- H. The Board of Tax Review shall schedule a hearing to be held within sixty (60) days after receiving an appeal of the Tax Administrator's assessment, unless the taxpayer requests additional time to prepare for or 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. The Board may allow the hearing to be continued as jointly agreed by the parties. In such a case, the hearing must be completed within one hundred twenty (120) days after the first day of the hearing unless the parties agree otherwise.
- I. The Board may affirm, reverse or modify the Tax Administrator's assessment or any part of that assessment. The Board shall issue a final determination on the appeal within ninety (90) days after the Board's final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the final determination. The

taxpayer or the Tax Administrator may appeal the final determination 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 RESERVED.

36.114 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

- A. Residents. When a resident, either directly or through an ownership interest in a pass-through entity, is subject to and has paid, or has acknowledged liability for, an income tax in another taxing jurisdiction on the same income taxable under this Chapter, regardless of whether such other taxing jurisdiction 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 on such income to such other taxing jurisdiction 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 jurisdiction.
- B. Where applicable, the credits provided in Ohio Revised Code Chapter 718, including but not limited to Ohio Revised Code Section 718.121, shall be available to residents.
- C. Nonresidents. Except as required by Ohio Revised Code Chapter 718, 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.
- D. Claim for Credit. The credit provided for in Section 36.114(A) will not be allowed unless the same is 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.
- E. 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, taxpayer, employer, agent of an employer, or other payer, 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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