

TITLE NINE - Taxation
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CROSS REFERENCES

Power to levy income tax - see Ohio Const., Art. XII,
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Municipal income taxes - see Ohio R.C. Ch. 718

PURPOSE

171.0101 PURPOSE OF LEVY OF INCOME TAX.

To provide funds for the purposes of general municipal functions of the City, there shall be and is hereby levied a tax on all salaries, wages, commissions and other compensations, and on net profits as hereinafter provided.(Ord. 81-67. Passed 8-28-67.)

DEFINITIONS

171.0301 DEFINITIONS.

For the purposes of this Chapter, the terms, phrases, words and their derivatives shall have the meanings given in the following sections. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

(Ord. 81-67. Passed 8-28-67.)

171.0302 ADMINISTRATOR.

"Administrator" means the individual appointed by the Mayor to administer and enforce the provisions of the City Income Tax.

(Ord. 81-67. Passed 8-28-67.)

171.0303 ASSOCIATION.

"Association" means any partnership, limited partnership, limited liability company, limited liability partnership, subchapter S corporation as defined in the Federal Tax Code 26 U.S.C. 1361 or any other form of unincorporated enterprise, owned by two (2) or more persons. (Ord. 26-96. Passed 4-8-96.)

171.0304 BOARD OF REVIEW.

"Board of Review" means the Board created by and constituted as provided in Section 171.2501.(Ord. 81-67. Passed 8-28-67.)

171.0305 BUSINESS.

"Business" means any enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, excluding, however, all nonprofit corporations which are exempt from the payment of Federal Income Tax.(Ord. 81-67. Passed 8-28-67.)

171.0306 CORPORATION.

"Corporation" means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory or foreign country or dependency.

(Ord. 81-67. Passed 8-28-67.)

171.0307 EMPLOYEE.

"Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.

(Ord. 81-67. Passed 8-28-67.)

171.0308 EMPLOYER.

"Employer" means an individual, partnership, association, corporation, government body, unit or agency, or any other entity, whether or not organized

for profit, that employs one (1) or more persons on a salary, wage, commission or other basis of compensation. (Ord. 81-67. Passed 8-28-67.)

171.0309 FISCAL YEAR.

"Fiscal year" means an accounting period of twelve (12) months or less ending on any day other than December 31.
(Ord. 81-67. Passed 8-28-67.)

171.0310 GROSS RECEIPTS.

"Gross receipts" means the total income from any source whatever.
(Ord. 81-67. Passed 8-28-67.)

171.0311 NET PROFITS.

"Net profits" means a net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal Income Tax purposes without deduction of taxes imposed by this Chapter, Federal, State and other taxes based on income; in the case of an association, without deduction of salaries paid to partners and other owners.
(Ord. 81-67. Passed 8-28-67.)

171.0312 NONRESIDENT.

"Nonresident" means an individual domiciled outside the City.
(Ord. 81-67. Passed 8-28-67.)

171.0313 NONRESIDENT UNINCORPORATED BUSINESS ENTITY.

"Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the City. (Ord. 81-67. Passed 8-28-67.)

171.0314 PERSON.

"Person" means every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person", as applied to any unincorporated entity, means the partners or members thereof, and as applied to corporations, the officers thereof.
(Ord. 81-67. Passed 8-28-67.)

171.0315 PLACE OF BUSINESS.

"Place of business" means any bona fide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance. (Ord. 81-67. Passed 8-28-67.)

171.0316 RESIDENT.

"Resident" means an individual domiciled in the City of Rocky River.
(Ord. 81-67. Passed 8-28-67.)

171.0317 RESIDENT UNINCORPORATED BUSINESS ENTITY.

"Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City.(Ord. 81-67. Passed 8-28-67.)

171.0318 TAXABLE INCOME.

"Taxable income" means wages, salaries, other income, lottery winnings and other compensation paid by an employer or employers before any deduction and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this Chapter. (Ord. 27-96. Passed 4-8-96.)

171.0319 TAXABLE YEAR.

"Taxable year" means the calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this Chapter, and in the case of a return for a fractional part of a year, the period for which such return is required to be made. (Ord. 81-67. Passed 8-28-67.)

171.0320 TAXPAYER.

"Taxpayer" means a person, whether an individual, partnership, association or any corporation or other entity, required hereunder to file a return or pay a tax. (Ord. 81-67. Passed 8-28-67.)

171.0321 JOINT ECONOMIC DEVELOPMENT DISTRICT

Districts created under Ohio Revised Code Sections 715.69 to 715.81, as amended from time to time. (Ord. 28-96. Passed 4-8-96.)

IMPOSITION OF INCOME TAX**171.0501 RATE AND INCOME TAXABLE.**

An annual tax for the purposes specified in Section 171.0101 hereof shall be imposed on and after July 1, 1977, at the rate of one and one-half percent (1-1/2%) per annum upon the following:

- (a)(1) On all salaries, wages, commissions, other income, lottery winnings and other compensation earned on and after July 1, 1977, by residents of the City. Lottery losses are not deductible against lottery winnings.
- (b)(2) On all salaries, wages, commissions, other income, lottery winnings and other compensation earned on and after July 1, 1977, by nonresidents of the City for work done or services performed or rendered within the City.

(c)(1) On the portion attributable to the City on the net profits earned on or after July 1, 1977, of all resident unincorporated business entities, associations, professions or other activities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City.

(2) On the portion of the distributive share of the net profits earned on and after July 1, 1977, of a resident partner or owner of a resident unincorporated business entity or association not attributable to the City and not levied against such unincorporated business entity by the City.

(d)(1) On the portion attributable to the City of the net profits earned on or after July 1, 1977, of all nonresident unincorporated business entities, associations, professions or other activities, derived from sales made, work done, services performed or rendered and business and other activities conducted in the City, whether or not such unincorporated business entity has an office or place of business in the City.

(2) On the portion of the distributive share of the net profits earned on or after July 1, 1977, of a resident partner or owner of a nonresident unincorporated business entity or association not attributable to the City and not levied against such unincorporated business entity by the City.

(Ord. 29-96. Passed 4-8-96.)

(e) On the portion attributable to the City of the net profits earned on and after July 1, 1977, of all corporations derived from sales made, work done, services performed or rendered, and business or other activities conducted in the City, whether or not such corporations have an office or place of business in the City. (Ord. 5-77. Passed 3-28-77.)

171.0502 EFFECTIVE PERIOD.

Such tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of businesses, professions or other activities earned on and after July 1, 1977. (Ord. 5-77. Passed 3-28-77.)

DETERMINATION OF ALLOCATION OF TAX

171.0701 METHOD OF DETERMINATION.

In the taxation of income which is subject to the City Income Taxes, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of the City shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the City, then only such portion shall be considered as having a taxable status in the City for the purposes of

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municipal income taxation. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the City, in the absence of actual records thereof, shall be determined as follows:

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

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

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

- (2) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed.
- (3) Gross receipts of the business or profession from sales made and services performed during the taxable period in the City to gross receipts of the business or profession during the same period from sales and service, wherever made or performed.

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

(Ord. 81-67. Passed 8-28-67.)

171.0702 SALES MADE IN CITY.

As used in Section 171.0701 (a)(3), sales made in the City mean:

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

- (c) All sales of tangible personal property which is shipped from a place within the City to purchasers outside of the City regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(Ord. 81-67. Passed 8-28-67.)

171.0703 TOTAL ALLOCATION.

Add together the percentages determined in accordance with Section 171.0701(a)(1), (2) and (3), or such of the aforesaid percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving the total in order to obtain the business allocation percentage referred to in Section 171.0701.

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

(Ord. 81-67. Passed 8-28-67.)

171.0704 RENTALS AND TENANT NOTIFICATION.

(a) Rental income received by a taxpayer shall be included in the computation of net profits from business activities under Section 171.0501 (c), (d) and (e) only if and to the extent that the rental ownership, management or operations of the real estate from which such rentals are derived (whether so rented, managed or operated by a taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.

(b) Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates in excess of Two Hundred Dollars (\$200.00) per month, it shall be prima-facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental property shall be subject to tax; provided that in the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds Two Hundred Dollars (\$200.00) per month. Further, the person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds Two Hundred Dollars (\$200.00) per month.

(Ord. 81-67. Passed 8-28-67.)

(c) On or before July 1, 2003, and subject to Subsection (f) below, all property owners of rental or leased residential property shall file with the Director of Finance a report showing the names, social security numbers and addresses of each such tenant who occupies residential premises within the corporate limits of the City as of July 1, 2003.

(d) Beginning July 1, 2003, and thereafter, and subject to Subsection (f) below, within thirty days after a new tenant occupies residential rental property of any kind within the City, all property owners of rental or leased residential property shall file with the Director of Finance a report showing the names, social security numbers and addresses of each tenant who occupies a residential premises within the corporate limits of the City.

(e) Beginning July 1, 2003, and thereafter, within thirty days after a tenant vacates a rental or leased residential property located within the City, all property owners of rental or leased residential property shall file with the Director of Finance a report showing the date of vacating from the rental or leased residential property and identifying such vacating tenant.

(f) Any tenant whose social security number is required to be reported by his or her landlord to the Director of Finance, pursuant to the Subsections above, may report such social security number directly to the Director of Finance in those circumstances where said tenant desires, for any reason whatsoever, not to reveal his or her social security number to his or her landlord. Any said tenant shall submit the required information on a timely basis as set forth in the Subsections above.

(g) Those owners of rental or leased residential property whose tenants and/or lessees avail themselves of the procedure set forth in Subsection (f) hereof are hereby exempted from the requirement of reporting social security numbers to the City.

(Ord. No. 97-03. Passed 6/23/03.)

171.0705 OPERATING LOSS-CARRY FORWARD.

(a) The portion of a net operating loss sustained in any taxable year subsequent to October 1, 1967, allocable to the City may be applied against the portion of the profit of succeeding tax years allocable to the City until exhausted but in no event for more than five (5) taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

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

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

(Ord. 81-67. Passed 8-28-67.)

EXEMPTIONS

171.0901 SOURCES OF INCOME NOT TAXED.

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

(a) Pay or allowance of active members of the Armed Forces of the United States or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.

(b) Poor relief, unemployment insurance benefits, old age pensions or similar payments including disability benefits received from local, State or Federal governments or charitable, religious or educational organizations.

(c) Proceeds of insurance paid by reason of the death of the insured; pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.

(d) Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such conducted by bona fide charitable, religious or educational organizations and associations.

(e) Alimony received.

(f) Personal earnings of any natural person under eighteen (18) years of age.

(g) Compensation for personal injuries or for damages to property by way of insurance or otherwise.

(Ord. 81-67. Passed 8-28-67.)

(h) Interest, dividends and other revenue from intangible property subject to the Ohio intangible property tax or specifically exempted therefrom.

(Ord. 87-79. Passed 9-10-79.)

(i) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio from which the City is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business).

(j) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the States or their political subdivisions to impose net income taxes on income derived from interstate commerce.

(k) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes.

(Ord. 81-67. Passed 8-28-67.)

RETURN

171.1101 WHEN RETURN REQUIRED TO BE MADE.

Each taxpayer, except as herein provided, shall, whether or not a tax is due thereon, make and file a return on or before April 30 of the year following the effective date of this Chapter, and on or before April 30 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four (4) months from the end of such fiscal year or period. The Administrator is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by such employer or employers from the salaries, wages, commissions or other compensation of an employee, and paid by him or them to the Administrator shall be accepted as the return required of any employee whose sole income, subject to tax under this Chapter, is such salary, wages, commissions or other compensation.

(Ord. 81-67. Passed 8-28-67.)

171.1102 FORM AND CONTENT OF RETURN.

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

(a) The aggregate amounts of salaries, wages, commissions, other income, lottery winnings and other compensation earned and gross income from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to such tax.

(b) The amount of the tax imposed by this Chapter on such earnings and profits, and

(c) Such other pertinent statements, information returns or other information as the Administrator may require.

(Ord. 31-96. Passed 4-8-96.)

171.1103 EXTENSION OF TIME FOR FILING RETURNS.

The Administrator may extend the time for filing of the annual return upon the request of the taxpayer for a period of not to exceed six (6) months, or one (1) month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal Income Tax Return. The Administrator may

require a tentative return, accompanied by payment of the amount of tax shown to be due thereof by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.(Ord. 81-67. Passed 8-28-67.)

171.1104 CONSOLIDATED RETURNS.

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

(b) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the City constituting a portion only of its total business, the Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City. If the Administrator finds that 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 such division, branch, factory, office, laboratory or activity or deems appropriate to produce a fair and proper allocation of net profits to the City.

(Ord. 81-67. Passed 8-28-67.)

171.1105 AMENDED RETURNS.

(a) Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements, limitations, or both, contained in Sections 171.1701, 171.1702 and 171.1703 and Sections 171.1901, 171.1902 and 171.1903 hereof. Such amended return shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

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

(Ord. 81-67. Passed 8-28-67.)

PAYMENT OF TAX

171.1301 PAYMENT OF TAX ON FILING OF RETURN.

Effective from and after January 1, 1972:

(a) The taxpayer making a return, shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown as due thereon. Provided, however, that where any portion of the tax so due has been deducted at the source pursuant

to the provisions of Section 171.1302 or where any portion of the tax has been paid by the taxpayer pursuant to the provisions of Section 171.1303, or whether an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 171.1902, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing such return.

(b) A taxpayer who has overpaid the amount of tax to which the City of Rocky River is entitled under the provisions of this Chapter may have such overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, such overpayment, or part thereof, shall be refunded, provided that no additional taxes or refunds of less than One Dollar (\$1.00) shall be collected or refunded. (Ord. 89-71. Passed 11-29-71.)

171.1302 COLLECTION AT SOURCE.

(a) In accordance with the rules and regulations prescribed by the Administrator, each employer within or doing business within the City shall deduct at the time of the payment of such salary, wages, commissions or other compensation, the tax as set forth in Section 171.0501, of the gross salaries, wages, commissions or other compensation due by the employer to the employee and shall, on or before the last day of the month following the close of each calendar quarter make a return and pay to the Administrator the amount of taxes so deducted, subject to the provisions of subsections (c), (d), and (e) hereof. Such returns 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. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.
(Ord. 37-82. Passed 4-26-82.)

(b) Such employer in collecting such 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.

(c) Such employer who deducts the tax in an amount of One Hundred Dollars (\$100.00) or more on the first or second month of a calendar quarter shall, on or

before the twentieth day of the following month, pay to the Administrator the amount of taxes so deducted.

(d) Such employer who makes such payments on a monthly basis for the first two months of a calendar quarter shall pay such tax deducted for the third month of a calendar quarter at the regular time for filing the employer's quarterly return of income tax withheld.

(e) Such payments shall be on a form or forms furnished by or obtainable from the Administrator upon request, setting forth the amount of tax deducted for the month. A receipted copy of such form shall be returned to the employer to be attached to and filed with the employer's quarterly return of income tax withheld.

(f) No person shall be required to withhold the tax on wages or other compensation paid domestic servants employed by him exclusively in or about such person's residence, even though such residence is in the City, but such employee shall be subject to all of the requirements of this Chapter. (Ord. 2-74. Passed 1-14-74.)

171.1303 DECLARATIONS OF INCOME NOT COLLECTED AT SOURCE.

Every person who anticipates any taxable income which is not subject to Section 171.1302 hereof, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 171.0501 hereof shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any. However, if a person's income is wholly from wages from which the tax will be withheld and remitted to the City in accordance with Section 171.1302 hereof, such person need not file a declaration. (Ord. 81-67. Passed 8-28-67.)

171.1304 FILING OF DECLARATION.

(a) The declaration required by Section 171.1303 shall be filed on or before April 30 of each year during the effective period set forth in Section 171.0502 or within four (4) months of the date the taxpayer becomes subject to tax for the first time.

(b) Those taxpayers reporting on a fiscal year basis shall file a declaration within four (4) months after the beginning of each fiscal year or period. (Ord. 81-67. Passed 8-28-67.)

171.1305 FORM OF DECLARATION.

(a) The declaration required by Section 171.1303 shall be filed upon a form furnished by, or obtainable from, the Administrator. However, credit shall be taken for City tax to be withheld from any portion of such income. In accordance with the provisions of Section 171.1901 or 171.1902, credit may be taken for tax

to be paid or to be withheld and remitted to another taxing municipality.

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

(Ord. 81-67. Passed 8-28-67.)

171.1306 PAYMENT TO ACCOMPANY DECLARATION.

Such declaration of estimated tax to be paid to the City shall be accompanied by a payment of at least one-fourth (1/4) of the estimated annual tax and at least a similar amount shall be paid on or about the last day of the sixth, ninth and thirteenth months after the beginning of the taxable year. However, in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(Ord. 2-74. Passed 1-14-74.)

171.1307 ANNUAL RETURN.

On or before the last day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City shall be paid therewith in accordance with the provisions of Section 171.1301.

(Ord. 81-67. Passed 8-28-67.)

INTEREST AND PENALTIES

171.1501 INTEREST ON UNPAID TAX.

All taxes imposed and all moneys withheld or required to be withheld by employers under the provisions of this Chapter and remaining unpaid after they become due shall bear interest at the rate of one and one-half percent (1-1/2%) per month or fraction thereof. (Ord. 48-80. Passed 6-9-80.)

171.1502 PENALTIES ON UNPAID TAX.

In addition to interest as provided in Section 171.1501, penalties based on the unpaid tax are hereby imposed as follows:

(a) For failure to pay taxes due other than taxes withheld:

One and one-half percent (1-1/2%) per month or fraction thereof.

Minimum penalty for failure to file annual returns when due Twenty-five Dollars (\$25.00).

(Ord. 48-80. Passed 6-9-80.)

(b) For failure to remit taxes withheld from Employees:

Ten percent (10%) per month or fraction thereof.

(Ord. 2-74. Passed 1-14-74.)

171.1503 EXCEPTIONS.

A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereof within the time prescribed by the Administrator; and provided that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, providing an amended return is filed and the additional tax is paid within three (3) months after a final determination of the Federal tax liability.

(Ord. 81-67. Passed 8-28-67.)

171.1504 ABATEMENT OF INTEREST AND PENALTY.

Upon recommendation of the Administrator, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Administrator to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest, or both, for good cause shown. (Ord. 81-67. Passed 8-28-67.)

171.1505 VIOLATIONS.

Any person who shall:

- (a) Fail, neglect or refuse to make any return or declaration required by this Chapter; or
- (b) Make any incomplete, false or fraudulent return;
- (c) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this Chapter;
- (d) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator;
- (e) Refuse to permit the Administrator, or any duly authorized agent or employee to examine his books, records, papers and Federal income tax returns relating to the income or net profits of a taxpayer;
- (f) Fail to appear before the Administrator and to produce his books, records, papers or Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator;
- (g) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer;
- (h) Fail to comply with the provisions of this Chapter or any order or subpoena of the Administrator authorized hereby;

(i) Give to an employer false information as to his true name, correct social security number and residence address or fail to promptly notify an employer of any change in residence address and date thereof;

(j) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and City tax withheld, or to knowingly give the Administrator false information; or

(k) Attempt to do anything whatever to evade the payment of the whole or any part of the tax, penalties or interest imposed by this Chapter; or

(l) Fail to file a report of tenant as required by Section 171.0704 above; shall be guilty of a misdemeanor and shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned not more than six (6) months or both, for each offense.

(Ord. No. 98-03. Passed 6/23/03.)

171.1506 LIMITATION ON PROSECUTION.

All prosecutions under this Chapter must be commenced within the time limitations specified in Ohio R.C. 718.06(B).

171.1507 FAILURE TO PROCURE FORMS NOT EXCUSE.

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

(Ord. 81-67. Passed 8-28-67.)

COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

171.1701 UNPAID TAXES RECOVERABLE AS OTHER DEBTS.

All taxes imposed by this Chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, of omission of a substantial portion of income subject to this tax, or of failure to file a return, an additional assessment shall not be made after three (3) years from the time the return was due or filed, whichever is later. However, in those cases in which a Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which an additional assessment may be made by the Administrator shall be one (1) year from the time of the final determination of the Federal tax liability.

(Ord. 81-67. Passed 8-28-67.)

171.1702 REFUNDS OF TAXES ERRONEOUSLY PAID.

Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date which such payment was made or the return was due, or within three (3) months after the final determination of the Federal tax liability, whichever is later. (Ord. 81-67. Passed 8-28-67.)

171.1703 AMOUNTS OF LESS THAN ONE DOLLAR.

Amounts of less than One Dollar (\$1.00) shall not be collected or refunded. (Ord. 81-67. Passed 8-28-67.)

TAXPAYER RELIEF AND RECIPROCITY PROVISIONS

171.1901 NONRESIDENT TAXPAYERS.

(EDITOR'S NOTE: The provisions of Section 171.1901 were repealed by Ordinance 89-71, passed November 29, 1971, effective from and after after January 1, 1972.)

171.1902 CITY RESIDENT SUBJECT TO INCOME TAX IN OTHER MUNICIPALITY.

When a resident of the City of Rocky River is subject to a municipal income tax in another municipality or joint economic development district on the same income taxable under this Chapter, a maximum credit of one hundred percent (100%) of the tax, up to a tax rate of one percent (1%) paid to that municipality shall be allowed against Rocky River income tax of the amount of the net tax for which he is liable under the ordinance of such other municipality but such credit shall not exceed the amount of the tax due hereunder. Provided, however, that a resident of Rocky River shall not be entitled to such credit in the event he shall fail, neglect or refuse to timely file a return or form as is prescribed by the Administrator and required by this Chapter.

In the event a Rocky River resident is entitled to a credit under the ordinance of another municipality, or is entitled to credit for taxes paid another municipality, such Rocky River resident is required to file a return or form in such a manner as prescribed by the Administrator.

In the event such Rocky River resident fails, neglects or refuses to file such return or form as is prescribed by the Administrator he shall not be entitled to such credit and shall be considered in violation of this Chapter for failure to file a return and make payment of taxes due hereunder. (Ord. 33-96. Passed 4-8-96.)

171.1903 CLAIM FOR CREDIT.

Effective from and after January 1, 1972:

Any claim for credit for income taxes paid another municipality on the same

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December 31 of the year following that for which such credit is claimed. Failure to file such claim for credit within the time prescribed herein shall render such credit null and void. (Ord. 89-71. Passed 11-27-71.)

DISBURSEMENT OF RECEIPTS OF TAX COLLECTION

171.2101 DISBURSEMENT OF FUNDS COLLECTED.

The funds collected under the provisions of this Chapter shall be disbursed in the following manner:

(a) First, such part thereof as shall be necessary to defray all expenses of collecting the tax and of administering and enforcing the provisions of this Chapter shall be paid.

(b) The balance remaining after payment of the expenses referred to in subsection (a) hereof shall be deposited in the General Fund for municipal purposes.
(Ord. 81-67. Passed 8-28-67.)

DUTIES AND AUTHORITY OF THE ADMINISTRATOR

171.2301 DUTY TO RECEIVE TAX IMPOSED.

It shall be the duty of the Administrator to receive the tax imposed by this Chapter in the manner prescribed herein from the taxpayers, to keep an accurate record thereof and to report all moneys so received. (Ord. 81-67. Passed 8-28-67.)

171.2302 DUTY TO ENFORCE COLLECTION.

It shall be the duty of the Administrator to enforce payment of all taxes owing to the City, to keep accurate records for a minimum of five (5) years showing the amount due from each taxpayer required to file a declaration and make any return, or both, including taxes withheld, and to show the dates and amounts of payments thereof. (Ord. 81-67. Passed 8-28-67.)

171.2303 AUTHORITY TO MAKE AND ENFORCE REGULATIONS.

The Administrator is hereby charged with the enforcement of the provisions of this Chapter, and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this Chapter, including provisions for the reexamination and correction of returns.
(Ord. 81-67. Passed 8-28-67.)

171.2304 AUTHORITY TO ARRANGE INSTALLMENT PAYMENTS.

The Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he is

unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under this Chapter.

171.2305 AUTHORITY TO DETERMINE AMOUNT OF TAX DUE.

In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due the City from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined together with interest and penalties thereon, if any.
(Ord. 81-67. Passed 8-28-67.)

171.2306 AUTHORITY TO MAKE INVESTIGATIONS.

The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and Federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Administrator believes is subject to the provisions of this Chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this Chapter.

Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Administrator, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.
(Ord. 81-67. Passed 8-28-67.)

171.2307 AUTHORITY TO COMPEL PRODUCTIONS OF RECORDS.

The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and Federal income tax returns and the attendance of all persons before him whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.
(Ord. 81-67. Passed 8-28-67.)

171.2308 REFUSAL TO PRODUCE RECORDS.

The refusal to produce books, papers, records and Federal income tax returns, or the refusal to submit to such examination by any employer or persons subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this Chapter or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of this Chapter, punishable as provided in Section 171.1505. (Ord. 81-67. Passed 8-28-67.)

171.2309 CONFIDENTIAL NATURE OF INFORMATION OBTAINED.

Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this Chapter shall be confidential except for official purposes, or except in accordance with proper judicial order. Any person divulging such information in violation of this section shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the City who violates the provisions of this section relative to the disclosures of confidential information shall be guilty of an offense punishable by immediate dismissal. (Ord. 81-67. Passed 8-28-67.)

171.2310 TAXPAYER REQUIRED TO RETAIN RECORDS.

Every taxpayer shall retain all records necessary to compute his tax liability for a period of five (5) years from the date his return is filed, or the withholding taxes are paid.
(Ord. 81-67. Passed 8-28-67.)

171.2311 AUTHORITY TO CONTRACT FOR CENTRAL COLLECTION FACILITIES.

The Administrator may and he is authorized hereby to enter into an agreement, subject to approval of Council, on behalf of the City with any other municipal corporation to permit such other municipal corporation to act as agent for the City for the purpose of administering the income tax laws of the City and of providing a central collection facility for the collection of the income tax on behalf of the City.(Ord. 81-67. Passed 8-28-67.)

BOARD OF REVIEW**171.2501 BOARD OF REVIEW ESTABLISHED.**

A Board of Review, consisting of the Director of Finance, the Director of Law and a person appointed by the Mayor, is hereby established. The person appointed by the Mayor shall be a qualified elector of the City, and may be a member of Council. Such person being appointed by the Mayor, however, shall not be the Administrator. In the event that either the Director of Finance or Director of Law is appointed as the Administrator, then he shall not serve on the Board of Review and the Mayor shall appoint another person to serve in his stead. Such person being so appointed by the Mayor shall be a qualified elector of the City and may be a member of Council. The term of any person appointed to serve on the Board of Review shall be for one (1) year, to expire on December 31 each year.

The Board shall select each year for a one-year term, one of its members to serve as chairman and one to serve as secretary. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions.

Any hearings by the Board shall be conducted in public unless the hearing concerns an appeal by a taxpayer, in which event the hearing, if requested in writing by the taxpayer, shall be conducted privately. The provisions of Section 171.2309 hereof, with reference to the confidential character of information required to be disclosed by this Chapter, shall apply to such matters as may be heard before the Board on appeal.
(Ord. 59-68. Passed 4-22-68.)

171.2502 DUTY TO APPROVE REGULATIONS AND TO HEAR APPEALS.

All rules and regulations and amendments or changes thereto which are adopted by the Administrator under the authority conferred by this Chapter, and any installment payments arranged under Section 171.2304, must be approved by the Board of Review before the same becomes effective. The Board shall hear and pass on appeals from any ruling or decision of the Administrator and, at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.
(Ord. 81-67. Passed 8-28-67.)

171.2503 RIGHT OF APPEAL.

Any person dissatisfied with any ruling or decision of the Administrator, which is made under the authority conferred by this Chapter, may appeal therefrom to the Board of Review within thirty (30) days from the announcement of such ruling or decision by the Administrator, and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. (Ord. 81-67. Passed 8-28-67.)

OTHER PROVISIONS

171.2701 DECLARATION OF LEGISLATIVE INTENT.

If any sentence, clause, section or part of this Chapter, or any tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this Chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this Chapter. It is hereby declared to be the intention of Council that this Chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein. (Ord. 81-67. Passed 8-28-67.)

171.2702 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER 171.

(a) This Chapter shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions and proceedings for collecting any tax so levied or enforcing any provisions of this Chapter are concerned, it shall continue effective until all of the taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this Chapter shall have been fully terminated, subject to the limitations contained in Sections 171.1701, 171.1702, 171.1703, 171.1505, 171.1506 and 171.1507.

(b) Annual returns due for all or any part of the last effective year of this Chapter shall be due on the date provided in Sections 171.1101 and 171.1302 of this Chapter as though the same were continuing.

(Ord. 81-67. Passed 8-28-67.)

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