

## CHAPTER 95: INCOME TAX

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### § 95.01 PURPOSE.

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the city, including the payment of interest and principal on notes and bonds which may be lawfully issued for such purposes, there shall be levied, as hereinafter provided, a tax on qualifying wages, commissions, and other compensation, on net profits, and on certain other income.  
(Ord. 3218, passed 12-16-74)

### § 95.011 POLICE PURPOSE.

.14% of the Municipal Income Tax rate shall be solely to provide funds associated with the hiring and maintenance of 14 additional permanent police officers for the Police Division.  
(Ord. 5526, passed 2-16-93)

### § 95.012 FIREFIGHTER PURPOSE.

.09% of the Municipal Income Tax rate shall be solely to provide funds associated with the hiring and maintenance of eight additional permanent firefighters for the Fire Division.  
(Ord. 5527, passed 2-16-93)

### § 95.013 FIREFIGHTER PURPOSE.

.19 % of the Municipal Income Tax rate shall be solely to provide funds associated with the hiring and maintenance of at least 19 additional permanent firefighters for the Fire Division.  
(Ord. 6091, passed 1-6-97)

### § 95.02 DEFINITIONS.

For the purposes of this chapter, the following words and phrases shall have the following meanings ascribed to them respectively.

**ADJUSTED FEDERAL TAXABLE INCOME.** A C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute adjusted federal taxable income as if the pass-through entity was a C corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code section 5745.03 or to the net profit from a sole proprietorship.

**ASSIGNMENT.** The assignment made by a resident of the city of a claim for refund due from another taxing municipality granting credit to nonresidents thereof.

**ASSOCIATION.** A partnership, limited partnership, or any other form of unincorporated enterprise, owned by two or more persons.

**BOARD OF REVIEW.** The board created by and constituted as provided in § 95.12 of this chapter.

**BUSINESS.** An enterprise, activity, profession, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation, or any other entity, including but not limited to the renting or leasing of property, real, personal, or mixed.

**CORPORATION.** A corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, foreign country, or dependency.

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**EMPLOYEE.** One who works for wages, salary, commission, or other type of compensation in the service of an employer.

**EMPLOYER.** An individual, partnership, association, corporation, governmental body, unit, or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission, or other compensation basis.

**FISCAL YEAR.** An accounting period of 12 months or less ending on any day other than December 31.

**GROSS RECEIPTS.** The total income from any source whatsoever.

**IN THE CITY.** Within the city limits of Bowling Green, Ohio, or any land owned by the city even though outside the city limits.

**INTANGIBLE INCOME.** Income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. Intangible income does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.

**NET PROFITS.** For a taxpayer other than an individual, adjusted federal taxable income and “net profit” for a taxpayer who is an individual means the individual’s profit, other than amounts described in Division (C) of section 95.03, required to be reported on Schedule C, Schedule E or Schedule F.

**NONQUALIFIED DEFERRED COMPENSATION PLAN.** A compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.

**NONRESIDENT.** An individual domiciled outside the city.

**NONRESIDENT UNINCORPORATED BUSINESS ENTITY.** An unincorporated business entity not having an office or place of business within the city.

**PASS-THROUGH ENTITY.** A partnership, S Corporation, Limited Liability Company, or any other class of entity the income or profits from which are given

pass-through treatment under the Internal Revenue Code. (R.C. § 718.14)

**PERSON.** 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 shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

**PLACE OF BUSINESS.** 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.

**QUALIFYING WAGES.** Wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with Section 718.03(A) of the Ohio Revised Code.

**RESIDENT.** An individual domiciled in the city.

**RESIDENT UNINCORPORATED BUSINESS ENTITY.** An unincorporated business entity having an office or place of business within the city.

**SCHEDULE C.** Internal Revenue Service Schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

**SCHEDULE E.** Internal Revenue Service Schedule E filed by a taxpayer pursuant to the Internal Revenue Code.

**SCHEDULE F.** Internal Revenue Service Schedule F filed by a taxpayer pursuant to the Internal Revenue Code.

**TAX COMMISSIONER.** The individual designated by this chapter, whether appointed or elected, to administer and enforce the provisions of this chapter.

**TAXABLE INCOME.** Qualifying wages, paid by an employer or employers, compensation for personal services, other income defined by statute as taxable; and adjusted federal taxable income from the operation of a business, profession, or other enterprise or activity adjusted in accordance with the provisions of this chapter; or any other income described elsewhere in this chapter.

**TAXABLE YEAR.** The corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

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**TAXING MUNICIPALITY.** Any municipal corporation levying a municipal income tax on salaries, wages, commissions, and other compensation earned by individuals, and on the net profits earned from the operation of a business, profession, or other activity.

**TAXPAYER.** A person, whether an individual, partnership, association or any corporation or other entity required hereunder to file a return or pay a tax. (Ord. 3218, passed 12-16-74; Am. Ord. 3739, passed 6-5-78)

### § 95.03 IMPOSITION OF TAX.

(A) *Taxable income.* Subject to the provisions of § 95.15 of this chapter, an annual tax for the purposes specified in §§ 95.01 and 95.012 shall be imposed on and after January 1, 1998, at the rate of 1.5% per annum for the purposes specified in §95.01, .14 % for the purposes described in § 95.011, at the rate of .09% for the purposes described in § 95.012 and at the rate of .19% for the purposes described in § 95.013 upon the following:

(1) On all qualifying wages, commissions, other compensation and other taxable income earned or received, including tips, and on proceeds of any state lottery received, during the effective period of this chapter by residents of the city.

(2) On all qualifying wages, commissions, other compensation, and other taxable income earned or received, including tips, during the effective period of this chapter by nonresidents for work done or services performed or rendered in the city.

(3)(a) On the portion attributable to the city of the net profits earned during the effective period of this chapter of all resident unincorporated businesses, professions, or other entities, derived from sales made, work done, services performed or rendered, and business or other activities conducted in the city.

(b) On the portion of the distributive share of the net profits earned during the effective period of this chapter of a resident partner or owner of a resident unincorporated business entity not attributable to the city and not levied against such unincorporated business entity by the city. However, the liability of an individual partner or owner taxable hereunder on income attributable to another taxing municipality shall be subject to any relief and reciprocity provisions of § 95.14.

(4)(a) On the portion attributable to the city of the net profits earned during the effective period of this

chapter of all nonresident unincorporated businesses, professions, or other entities, derived from sales made, work done, or services performed or rendered, and business or other activities conducted in the city, whether or not such unincorporated business entity has an office or place of business in the city.

(b) On the portion of the distributive share of the net profits earned during the effective period of this chapter of a resident partner or owner of a nonresident business entity not attributable to the city, and not levied against such business entity; provided that the liability of an individual partner or owner taxable hereunder on income attributable to another taxing municipality shall be subject to any relief and reciprocity provisions of § 95.14.

(5) On the portion attributable to the city of the net profits earned during the effective period of this chapter 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.

(B) *Businesses conducted within and without city.* The portion of the net profits attributable to the city of a taxpayer conducting business, professional or other activity both within and without the boundaries of the city shall be determined as provided in R.C. § 718.02 which is reprinted at the end of this chapter and in accordance with the rules and regulations adopted by the commissioner pursuant to this chapter.

(C) *Operating loss carry-forward.*

(1) The portion of a net operating loss sustained in any taxable year subsequent to January 1, 1957, apportioned to the city may be applied against the portion of the profit of succeeding year(s) apportioned to the city until exhausted but in no event for more than five taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.

(2) The portion of a net operating loss sustained shall be apportioned to the city in the same manner as provided herein for apportioning net profits to the city.

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

(D) *Consolidated returns.*

(1) Filing of consolidated returns may be permitted, required, or denied in accordance with rules and regulations prescribed by the tax commissioner. Commencing on January 1, 2003, consolidated returns

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will be accepted from affiliated groups of corporations that file consolidated returns for Federal Income Tax purposes for the same reporting period.

(2) In the case of a corporation that carries 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 tax commissioner shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the city. If the tax commissioner finds 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 by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the city.

(E) *Exception.* (1) The tax provided for herein shall not be levied upon the military pay or allowances of members of the armed forces of the United States, or upon the net profits of any civic, charitable, religious, fraternal or other organization specified in R.C. §718.01 to the extent that such net profits are exempted from municipal income taxes under said section. (Ord. 3218, passed 12-16-74; Am. Ord. 5526, passed 2-16-93; Am. Ord. 5527, passed 2-16-93; Am. Ord. 6091, passed 1-6-97)

(2) Compensation paid to a nonresident individual for personal services performed within Bowling Green, if the personal services are performed during twelve (12) or fewer days during the calendar year.

Compensation paid to a nonresident individual who is an employee for work or services performed in Bowling Green if the services or work is performed during twelve (12) or fewer days during the calendar year and further provided that the individual's employer is located outside of Bowling Green in another municipal corporation in Ohio and the individual pays tax on the compensation to the municipal corporation in which the employer's principal place of business is located and no portion of the tax is refunded to the individual.

The foregoing two paragraphs do not apply to professional entertainers, professional athletes, promoters for professional entertainment or sporting events and their employees.

For purposes of this section, a day is a full day or any fractional part of a day.

(3) Parsonage allowance paid to "Ministers of the Gospel" in the form of rental allowance as part of the

minister's compensation to the extent excluded from federal or Ohio income tax..

(4) The income of a public utility, when that public utility is subject to the tax levied under Section 5725.24 or 5727.30 of the Ohio Revised Code, except a municipal corporation may tax the following, subject to Chapter 5745 of the Ohio Revised Code:

(a) The income of an electric company or combined company;

(b) The income of a telephone company. "Combined company", "electric company", and "telephone company" have the same meanings as in Section 5727.01 of the Ohio Revised Code.

### § 95.04 EFFECTIVE PERIOD.

The tax shall be levied, collected, and paid with respect to the qualifying wages, bonuses, incentive payments, commissions, fees, and other compensation, and with respect to the net profits of trades, businesses, professions, or other activities, earned on and after July 1, 1971, until repealed in accordance with law. (Ord. 3218, passed 12-16-74)

### § 95.05 RETURN AND PAYMENT OF TAX

(A) (1) Each taxpayer, except as herein provided, shall, whether or not a tax is due thereon, make and file a return on or before April 15 and on or before April 15 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 on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the end of such fiscal year or period. The tax commissioner 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 qualifying wages, commissions, or other compensation of an employee, and paid by him or them to the commissioner shall be accepted, unless otherwise specified, as the return required of any employee whose sole income, subject to tax under this chapter, is such salary, wages, commissions, or other compensation.

(2) All individuals, businesses, employers, brokers, and others doing business who engage persons, either on a commission basis or as an independent contractor, and are not subject to withholding, shall indicate the total amount of earnings, payments, commissions, and bonuses to such as are residents of the city, or who do business in the city on the appropriate line of Schedule "C" of their Bowling Green Income Tax Return supported by Federal Form 1099 attached.

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(3) All contractors shall indicate the total amount of payments to any subcontractors or contract employees who did business in, or are residents of, the city on the appropriate line of Schedule "C" of their Bowling Green Income Tax Return and shall attach a list which shall indicate names, addresses, and amounts paid.

(B) The return shall be filed with the tax commissioner on a form or forms furnished by or obtainable upon request from such commissioner setting forth:

(1) (a) The aggregate amounts of qualifying wages, commissions, and other income;

(b) The gross income from business, profession, or other activity, less allowable ordinary, reasonable and necessary expenses incurred in the acquisition of such gross income;

(c) Such income shall include only income earned during the year, or portion thereof, covered by the return and subject to the tax imposed by this chapter.

(2)(a) The amount of tax imposed by this chapter on taxable income;

(b) Any credits to which the taxpayer may be entitled under the provisions of §§ 95.06, 95.07, and 95.14.

(3) Such other pertinent statements, information returns, or other information as the commissioner may require.

(C) 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.

(D) *Extension of time for filing returns.* Taxpayers granted extensions of time for filing their federal income tax returns may have an extension for filing their Bowling Green Tax Return provided that a copy of the federal extension is filed with the Commissioner on or before the original due date of the Bowling Green Tax Return.

The extended date for filing the Bowling Green return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. Statutory interest will be charged from the original due date of the return until date of actual payment.

If a taxpayer wishes to extend the time for filing the Bowling Green Tax Return to a date other than that

provided by the automatic Federal Extension, the taxpayer must file such a request in writing to the Commissioner prior to the due date of the automatic extension. The extension may be granted by the Commissioner upon the terms and conditions set forth by him or her. The extension does not extend the date for paying the tax due. The extension request may be denied if the taxpayer is delinquent in the filing of any tax returns or payments of any taxes, penalties, or interest due.

(E) (1) The taxpayer making a return shall, at the time of filing thereof, pay to the tax commissioner the balance of tax due, if any, after deducting:

(a) The amount of city income tax deducted or withheld at the source pursuant to § 95.06;

(b) Such portion of the tax as has been paid on declaration by the taxpayer pursuant to § 95.07;

(c) Any credit allowable under the provisions of § 95.14 hereof.

(2) Should the return or the records of the commissioner indicate an overpayment of the tax to which the city is entitled under the provisions of this chapter, such overpayment shall first be applied against any existing liability and the balance, if any, at the election of the taxpayer communicated to the commissioner shall be refunded or transferred against any subsequent liability. However, overpayments of less than \$1 shall not be refunded.

(F)(1) Amended returns. 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 or limitations contained in §§ 95.11 and 95.14. Such amended returns shall be on a form obtainable on request from the commissioner. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

(2) Within three months from the final determination of any federal tax liability affecting the taxpayer's city tax liability, such taxpayer shall make and file an amended city return showing income subject to the 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.

(G) Commencing with tax returns for years beginning after December 31, 1988, the net loss from a business entity may not be used to offset salaries, wages, commissions, or the net income from any other entity or

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activity. Each business loss may be carried forward to offset future income from the same entity for the same owner in accordance with § 95.03(C). Each business profit that exceeds loss carry-forward from the same entity must be included in taxable income.

(Ord. 3218, passed 12-16-74; Am. Ord. 4964, passed 12-19-88)

(H) A pass-through entity, as defined at 95.02, which is subject to the tax imposed by this Chapter, must file an annual return and report thereon the profit or loss for the entity and pay any tax due thereon to the Commissioner. This is in lieu of having the individual owners or partners file individual returns on their portion of the entity's profit or loss.

In the event that the individual owners or partners have income subject to the tax imposed by this Chapter, which income is in addition to the income or loss from the pass-through entity, then they shall file an annual return and report thereon the additional income or loss.

### § 95.06 COLLECTION AT SOURCE.

(A) (1) Each employer within or doing business within the city who employs one or more persons on a salary, wage, commission, or other compensation basis shall, at the time of payment thereof, deduct the tax at the rate specified in § 95.03(A) from the qualifying wages, commissions, or other compensation, including tips and supplemental unemployment benefits, earned by city residents, regardless of where such compensation was earned, and shall deduct the tax at the rate specified in § 95.03(A) from the qualifying wages, commissions, or other compensation earned within the city by nonresidents.

(2) Notwithstanding the provisions of division (A)(1) of this section, where such employer employs a city resident in another taxing municipality requiring such employer to deduct its tax from all employees engaged therein, such employer shall withhold for and remit to the city only the difference, if any, between the tax imposed by such other taxing municipality and the tax imposed by this chapter.

(3) Each such employer shall, on or before the last day of the month following 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 commissioner and shall be subject to the rules and regulations prescribed therefore by the commissioner. The 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.

(4) On or before February 28 following any calendar year such employer shall file with the commissioner an information return for each employee from whom the city income tax has been or should have been withheld, showing the name, address, and social security number of the employee, the total amount of compensation paid during the year, and the amount of city income tax withheld from the employee.

(B) Such employer in collecting the tax shall be deemed to hold it, until payment is made by the employer to the city, as a trustee for the benefit of the city. Any such tax collected by such employer from his employees shall, until it is paid to the city, be deemed a trust fund in the hands of the employer.

(C) The tax commissioner for good cause may require immediate returns and payments to be submitted to his office.

(D) The officer or the employee having control or supervision of or charged with the responsibility of filing the report and making payment, is personally liable for failure to file the report or pay the tax due as required by this section. The dissolution of a corporation does not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or pay the tax due.

(Ord. 3218, passed 12-16-74; Am. Ord. 4523, passed 3-4-85)

### § 95.07 DECLARATION.

(A) Every person who anticipates any taxable income which is not subject to § 95.06 hereof, or who engages in any business, profession, enterprise, or activity subject to the tax imposed by § 95.03 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 this municipality in accordance with § 95.06 hereof, such person need not file a declaration.

(B) (1) Such declaration, shall be filed on or before April 15 of each year during the life of this chapter, or within four months of the date the taxpayer becomes subject to tax for the first time.

(2) Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month after the beginning of each fiscal year or period.

(C) (1) Such declaration shall be filed upon a form furnished by or obtainable from the commissioner. Credit shall be taken for city income tax to be withheld,

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if any, from any portion of such income. In addition, credit may be taken for tax payable to other taxing municipalities in accordance with the provisions of § 95.14.

(2) The declaration shall be filed for an amount equal to the taxpayer's liability for the preceding year, in the absence of known circumstances to the contrary. The declaration shall be subsequently amended (increased or decreased) at a time when a change in the tax liability can reasonably be determined.

(D) (1) The taxpayer making the declaration shall, at the time of the filing thereof, pay to the commissioner at least twenty-two and one-half per cent (22 ½%) of the estimated annual tax due after deducting:

(a) Any portion of such tax to be deducted or withheld at the source pursuant to § 95.06;

(b) Any credits allowable under the provisions of § 95.14;

(c) Any overpayment of the previous year's tax liability which taxpayer has not elected to have refunded.

(2) At least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the taxpayer's taxable year. Provided that in case an amended declaration has been duly filed, or the taxpayer is taxable for a portion of the year only, the unpaid balance shall be paid in equal installments on or before the remaining payment dates.

(E) The declarations for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarters shall be on July 31<sup>st</sup> and October 31<sup>st</sup> of the current year and on January 31<sup>st</sup> of the subsequent year respectively. The amounts due on those dates are not to exceed forty-five per cent (45%), sixty-seven and one-half per cent (67 ½%) and ninety per cent (90%) respectively of the tax estimated to be due. (Ord. 3218, passed 12-16-74; Am. Ord. 4205, passed 4-19-82)

(F) Taxpayers reporting on a fiscal year basis shall file a Declaration on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month after the beginning of each fiscal year and thereafter at the end of the 7<sup>th</sup>, 10<sup>th</sup> and 13<sup>th</sup> months.

(G) Effective January 1, 2003, no penalty or interest will be assessed for late payment or nonpayment of estimated taxes if the taxpayer was not domiciled in Bowling Green on the 1st day of January of the current calendar year or if the taxpayer has paid estimated payments equaling one hundred per cent (100%) of the

taxpayer's tax liability for the immediately preceding tax year, provided that the immediately preceding tax year reflected a 12-month tax period and the taxpayer filed a return for the immediately preceding year.

### § 95.08 DUTIES OF THE FINANCE DIRECTOR AND COMMISSIONER.

(A) (1) It shall be the duty of the finance director 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.

(2) It shall be the duty of the commissioner to enforce payment of all taxes owing the city, to keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration or to make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

(B) (1) The tax commissioner is charged with the enforcement of the provisions of this chapter and is 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.

(2) The commissioner 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 commissioner 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. Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand, and the provisions of §§ 95.11 and 95.99 shall apply.

(C) 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 commissioner 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.

(D) Subject to the consent of the board of review or pursuant to regulation approved by the board,

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the commissioner shall have the power to compromise any interest or penalty, or both, imposed by § 95. 10. (Ord. 3218, passed 12-16-74)

### § 95.09 INVESTIGATIVE POWERS OF THE COMMISSIONER.

(A) The commissioner, 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 commissioner 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 directed and required to furnish upon written request by the commissioner, or his duly authorized agent or employee, the means, facilities, and opportunity for making such examinations and investigations as are authorized herein.

(B) The commissioner is 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 reported for taxation or any transaction tending to affect such income. For this purpose he 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, and federal income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax, or by any officer, agent, or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the commissioner authorized hereby shall be deemed a violation of this ordinance, punishable as provided in § 95.99.

(D) Any information gained as a result of any returns, investigations, verifications, or hearings before the commissioner required by this chapter or authorized by the applicable rules and regulations shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction.

(E) Every taxpayer shall retain all records necessary to compute his tax liability for a period of five years from the date his return is filed, or paid. (Ord. 3218, passed 12-16-74) Penalty, see § 95.99(B)

### § 95.10 INTEREST AND PENALTIES.

(A) 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 1.5 % per month or fraction thereof.

(B) In addition to interest as provided in division (A) hereof, penalties are hereby imposed as follows:

(1) For failure to file a return when due, pay taxes when due, or, pay taxes on declarations in accordance with §95.07: \$.50 per business day from the day due until the day received (minimum \$10).

(2) For failure to remit taxes withheld from employees when due: The greater of 3% per month or fraction thereof times the unpaid tax, or \$10 per month or fraction thereof.

(C) Exceptions. A penalty shall not be assessed on an additional tax assessment made by the commissioner when a return has been filed in good faith and the tax paid thereon within the time prescribed by the commissioner. In the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after final determination of the federal tax liability.

(D) Upon recommendation of the commissioner, the board of review may abate penalty or interest, or both, or upon an appeal from the refusal of the commissioner to recommend abatement of penalty or interest, the board may nevertheless abate penalty or interest, or both. (Ord. 3218, passed 12-16-74; Am. Ord. 4205, passed 4-19-82)

### § 95.11 COLLECTION OF UNPAID TAXES; REFUNDS OF OVERPAYMENTS.

(A) 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. Such suit shall be brought within three (3) years after the tax payment was due or the return was filed, whichever is later in accordance with ORC 718.12(A).

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(B) Taxes erroneously paid shall not be refunded unless a claim for refund is made within the time limitation specified in ORC 718.12(C). Amounts less than One Dollar (\$1.00) shall not be refundable.

(C) Amounts of less than \$1 shall not be collected or refunded.

(Ord. 3218, passed 12-16-74)

### § 95.12 BOARD OF REVIEW.

(A) The income tax board of review is created and shall consist of the city attorney as chairman and two other members appointed by the mayor who shall serve three year terms. A majority of the members of the board shall constitute a quorum. The board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the board may be conducted privately and the provisions of § 95.09 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.

(B) All rules and regulations and amendments or changes thereto which are adopted by the commissioner under the authority conferred by this chapter must be approved by the board of review before the same become effective. The board shall hear and pass on appeals from any ruling or decision of the commissioner and, at the request of the taxpayer or commissioner, is empowered to substitute alternate methods of allocation.

(C) Any person dissatisfied with any ruling or decision of the commissioner which was made under the authority conferred by Section 95.08(B)(1) and who has filed the required returns or other documents pertaining to the contested issue may appeal in writing therefrom to the board of review within thirty (30) calendar days from the issuance of such ruling or decision by the commissioner. The appeal must state the alleged errors in the Commissioners ruling or decision. The Board must schedule a hearing within forty-five (45) calendar days of receiving the appeal unless the taxpayer expressly waives the hearing and chooses instead to let the Board render its decision on the writing submitted by the Commissioner and the taxpayer. If the taxpayer does not waive the hearing, the taxpayer is entitled to appear before the Board and bring with him or her representation of his or her choosing. The Board must issue a written decision within ninety (90) days after the final hearing and send a notice of its decision by ordinary mail to the taxpayer within fifteen (15) days after issuing the decision. The records of the hearing are not open to the public nor is the hearing subject to the Ohio open meeting law.

(D) Whenever the Commissioner issues a decision that is appealable to the Board, he or she must inform the taxpayer of their right to appeal and the manner in which the appeal is to be filed.

(Ord. 3218, passed 12-16-74)

### § 95.13 ALLOCATION OF FUNDS

The funds collected under the provisions of this chapter shall be deposited with the first 1.5% to the general fund income tax account. Such funds shall be disbursed in the following order annually:

(A) Such part thereof as shall be necessary to defray all costs of administering and enforcing the provisions thereof.

(B) The balance of funds collected shall be disbursed as follows:

(1) 50% for general fund;

(2) 5% for street repair fund;

(3) 8 1/3 % for capital improvements fund;

(4) 33 1/3% for sewer and water capital improvements fund;

(5) 3 1/3 % for park, playground and recreation fund.

(C) Moneys credited to such funds may, pursuant to authorization by council, be used for the purpose of paying interest and principal on notes and bonds which may lawfully be issued for such purposes.

(D) Funds collected under the provisions of § 95.011 shall be deposited solely for the purpose of funding 14 additional permanent police officers for the Police Division.

(E) Funds collected under the provisions of § 95.012 shall be deposited solely for the purpose of funding 8 additional permanent firefighters for the Fire Division.

(E) Funds collected under the provisions of § 95.013 shall be deposited solely for the purpose of funding at least 19 additional permanent firefighters for the Fire Division.

(Ord. 3218, passed 12-16-74; Am. Ord. 5526, passed 2-16-93; Am. Ord. 5527, passed 2-16-93; Am. Ord. 6091, passed 1-6-97; Am. Ord. 7192, passed 12-15-03)

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### § 95.14 CREDIT TO RESIDENTS FOR TAX PAID TO ANOTHER MUNICIPALITY.

(A) When the taxable income of a resident of the city is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall be allowed a credit of the amount of income tax paid on such taxable income to the other municipality equal to 50% of the amount obtained by multiplying the lower of the tax rate of such other municipality, or of this municipality, by the taxable income earned in or attributable to the municipality of employment or business activity.

(B) A claim for refund or credit under this section shall be made in such manner as the commissioner may by regulation provide.

(Ord. 3218, passed 12-16-74; Am. Ord. 4963, passed 12-19-88)

(C) No credit shall be given for any school district income tax.

### § 95.15 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(A) This chapter shall continue effective insofar as the levy of taxes is concerned until repealed; and insofar as the collection of taxes levied hereunder and actions or 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 hereunder are fully paid and any and all suits and prosecutions for the collection of these taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in §§ 95.11 and 95.18 hereof.

(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 §§ 95.05 and 95.06 of this chapter as though the same were continuing.

(Ord. 3218, passed 12-16-74)

### § 95.16 PROHIBITED ACTS.

It shall be unlawful for any person to:

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

(B) Make any incomplete, false, or fraudulent return.

(C) Willfully fail, neglect, or refuse to pay the tax, penalties, or interest imposed by this chapter.

(D) Willfully fail, neglect, or refuse to withhold the tax from his employees or remit such withholding to the commissioner.

(E) Refuse to permit the commissioner 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 commissioner 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 commissioner.

(G) Refuse to disclose to the commissioner 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 commissioner 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 income tax withheld, or to knowingly give the commissioner false information.

(K) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties, or interest imposed by this chapter.

(Ord. 3218, passed 12-16-74) Penalty, see § 95.99(A)

### § 95.17 LIMITATION OF PROSECUTIONS.

Prosecutions for an offense made punishable under any provision of this chapter shall be commenced within the time period specified in ORC 718.12(B).

(Ord. 3218, passed 12-16-74)

### § 95.18 SAVINGS CLAUSE.

In the event that the wording of a regulation conflicts with the wording of an ordinance, the wording in the ordinance shall prevail.

### § 95.99 PENALTY.

(A) Any person who violates any of the provisions of § 95.16 shall be guilty of a misdemeanor in the first degree and shall be fined not more than \$1,000

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or imprisoned not more than six months, or both, for each offense.

(B) Any person divulging information in violation of § 95.09 shall, upon conviction thereof, be deemed guilty of a misdemeanor in the first degree and shall be subject to a fine or penalty of not more than \$1,000 or imprisoned for not more than six 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 § 95.09 relative to the disclosure of confidential information shall be punishable by immediate dismissal.

Revised 2/26/2008