

TITLE NINE – Taxation
Chap. 181. Income Tax

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181.01 DEFINITIONS

As used in this chapter, the following words shall have the meaning ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning:

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

“Association” means a partnership, limited partnership, limited liability company, or any other form of unincorporated enterprise.

“Board of Review” means the Board created by and constituted as provided in Section 181.14.

“Business” means an enterprise, activity, profession or undertaking of any nature, conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, limited partnership, corporation, association or any other entity, including but not limited to the renting and/or leasing of real estate and/or personal property.

“City” means the City of Clyde, Ohio.

“Corporation” means a corporation, including S Corporations as defined in the federal tax code, 26 U.S.C. 1361, or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, foreign country or dependency.

“Domicile” means the permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

“Employee” means an individual who works for income, qualifying wages, salary, commission or other type of compensation in the service of and under the control of an employer.

(f) “Employer” means an individual, partnership, limited partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on an income, salary, wage, commission or other compensation basis.

“Fiscal year” means an accounting period of twelve (12) months or less ending on any day other than December 31.

“Generic Form” means an electronic or paper form designed for reporting estimated municipal income taxes, and/OR annual municipal income tax liability, and/or separate requests for refunds, that contain all the information required on Clyde’s regular tax return and estimated payment forms, and are in a similar format that will allow processing of the generic forms without altering Martin Ferry’s procedures for processing forms.

“Gross receipts” means the total revenue derived from sales, work done, or service rendered.

“Income” means All monies and compensation in any form, subject to limitations imposed by ORC 718 and by Sec. 181.02(I), derived from any source whatsoever, including but not limited to:

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

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

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

“Income Tax Administrator”, or “Director” means the individual designated by this chapter, whether appointed or elected, to administer and enforce the provisions of this chapter.

“Net profits” means, for taxable years prior to 2004, the net gain from the operation of a business, profession or enterprise after provision for all cost and expense incurred in the conduct thereof, including reasonable allowance for depreciation, depletion, amortization and reasonable additions to reserve for bad debts, either paid or accrued in accordance with recognized principles of accounting applicable to the method of accounting regularly employed (i.e., either cash or accrual) and without deduction of Federal taxes based on income, and without deducting taxes imposed by this chapter. (For taxable years 2004 and later, see “adjusted federal taxable income”.)

“Non-resident” means an individual domiciled outside the City of Clyde.

“Nonresident unincorporated business entity” means an unincorporated business entity not having an office or place of business within the City.

“Other entity” means any person or unincorporated body not previously named or defined and includes fiduciaries located within the City of Clyde.

“Pass-Through Entity” means 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. Unless otherwise specified, pass-through entities shall be deemed “associations” for treatment of tax purposes.

“Person” means every natural person, partnership, limited partnership, corporation, fiduciary or association. Whenever used in any clause

prescribing and imposing a penalty, the term “person” as applied to any association, shall mean the partners or members thereof, and as applied to corporation, the officers thereof.

“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.

“Qualifying wage” means Wages as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. “Qualifying wage” represents employees’ income from which municipal tax shall be deducted by the employer, and any wages not considered a part of “qualifying wage” shall not be taxed by the Municipality. This definition is effective January 1, 2004, for taxable years 2004 and later.

“Resident” means an individual domiciled in the City of Clyde.

“Resident unincorporated business entity” means an unincorporated business entity having an office or place of business within the City.

“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. The taxable year of an individual shall be a calendar year.

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

181.02 IMPOSITION OF TAX.

To provide funds for the purpose of general municipal operations, maintenance of equipment, new equipment, extension, enlargement and improvement of municipal services and facilities and capital improvements of the City of Clyde, there be and hereby is levied a tax upon the earnings at the rate of one percent (1%), in addition to the one-half of one percent (.5%) tax imposed in Section 181.025, upon the following:

- (a) On all income, qualifying wages, commissions and other compensation earned and/or received on and after January 1, 1997, by resident individuals of the City of Clyde. For clarification “income” includes, but is not limited to:
 - (1) lottery, gambling and sports winnings, and games of chance. This provision is effective for tax year 2008 and subsequent tax years.
 - A. If the taxpayer is considered a professional gambler for federal income tax purposes, related deductions as permitted by the

Internal Revenue Code shall be allowed against gambling and sports winnings.

- B. If the taxpayer is not considered a professional gambler for federal income tax purposes, a deduction equal to the amount of up to one hundred thousand dollars (\$100,000) of income combined from lottery, gambling and sports winnings, and games of chance, or a deduction of one hundred thousand dollars (\$100,000), whichever is less, shall be allowed, provided that in no case shall the deduction exceed the income amount of combined lottery, gambling and sports winnings, and games of chance. If said income is payable to the taxpayer in more than one year, the deduction applies only in the first year in which the income is received.
 - (2) For further clarification, "income" includes third-party sick pay to the extent allowed by the Internal Revenue Code.
- (b) On all income, qualifying wages, commissions and other compensation earned and/or received on and after January 1, 1997, by non-resident individuals of the City of Clyde, for work done or services performed or rendered in the City of Clyde. Separation pay, termination pay, reduction-in-force pay, and other compensation paid as a result of an employee leaving the service of an employer shall be allocable only to Clyde. However:
 - (1) The City shall not tax the compensation of a non-resident individual if all of the following apply:
 - A. The compensation is paid for personal services performed by the individual in the City on twelve or fewer days during the calendar year, in which case the individual shall be considered an "occasional entrant" for purposes of the City income tax. A day is a full day or any fractional part of a day.
 - B. In the case of an individual who is an employee, the principal place of business of the individual's employer is located outside the City and the individual pays tax on compensation described in subsection (b) to the municipality, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual.
 - C. The individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the City.
 - (2) Beginning with the thirteenth day an individual deemed to have been an occasional entrant to the City performs services within the City, the employer of said individual shall begin withholding the City income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to the City in accordance with the requirements of this ordinance. Since the individual can no longer be considered to have been an occasional entrant, the

employer is further required to remit taxes on income earned in the City by the individual for the first twelve days.

- (3) If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the City.
- (c) On the net profits attributable to Clyde, earned on and after January 1, 1997, of all resident unincorporated businesses, professions and other activities derived from work done or services rendered or performed and business or other activities conducted in the City of Clyde.
- (d) On the portion of the distributive share of the net profits earned and/or received on and after January 1, 1997 of a resident individual, partner or owner of a resident unincorporated business entity attributable to Clyde and not levied against such unincorporated business entity.
- (e) On the net profits attributable to Clyde earned on and after January 1, 1997, of all non-resident unincorporated businesses, professions or other activities, derived from work done or services performed or rendered and business or other activities conducted in the City of Clyde.
- (f) On the portion of the distributive share of the net profits earned and/or received on and after January 1, 1997, of a resident individual, partner or owner of a non-resident unincorporated business entity not attributable to Clyde and not levied against such unincorporated business entity.
- (g) On the net profits earned on and after January 1, 1997, of all corporations derived from work done or services performed or rendered and business or other activities conducted in the City of Clyde.
- (h) The portion of the net profits attributable to the City of Clyde of a taxpayer conducting a business, profession or other activity both within and without the boundaries of the City of Clyde shall be determined as provided in Section 718.02 of the Revised Code of Ohio and in accordance with the Rules and Regulations adopted by the Council of the City of Clyde pursuant to this chapter. The formula for determining the allocation percentage is as follows:
 - (1) Net profit from a business or profession conducted both within and without the boundaries of the City of Clyde shall be considered as having a taxable situs in the City of Clyde for purposes of income taxation in the same proportion as the average ratio of:
 - A. The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City of Clyde during the taxable period to the average original cost of all of 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 this 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.

- B. Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City of Clyde to wages, salaries and other compensation paid during the same period to person employed in the business or profession, wherever their services were performed. Wages, salaries, and other compensation shall be included to the extent that they represent qualifying wages.
 - C. Gross receipts of the business or profession from sales made and services performed during the taxable period in the City of Clyde to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.
 - (2) 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. However, if the 3-factor apportionment formula (ORC 718.02) does produce an equitable result, the “books and records” method or other method may be substituted at the discretion of the Director.
 - (3) As used in Division (1) of this subsection, “Sales made in the City of Clyde” means:
 - A. All sales of tangible personal property which is delivered within the City of Clyde regardless of where title passes if shipped or delivered from a stock of goods within such City.
 - B. All sales of tangible personal property which is delivered within the City of Clyde regardless of where title passes even though transported from a point outside such City if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales with the City of Clyde 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 of Clyde to purchasers outside such 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.
 - (i) Consolidated Returns.
 - (1) Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the City. However, once the affiliated group has elected to file a consolidated return or a separate return with the Municipality, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the City.
 - (2) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, the Income Tax

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

- (j) (1) The portion of a net operating loss sustained in any taxable year allocable to the City may be applied against the portion of the net profit of succeeding years allocable 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 new operating loss sustained shall be allocated to the Village in the same manner as provided herein for allocating net profits to the City.
- (k) Each taxpayer may offset business losses only against business net profits from any business conducted in the City or in any municipality that does not levy an income tax on net profits therefrom.

(l) Exemptions.

The provisions of this chapter shall not be construed as levying a tax upon the following:

- (1) The Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the National Guard.
- (2) Unemployment compensation, payments from pension plans or similar payments, including disability payments received from private industry, or local, state, or federal governments, or from charitable, religious or educational organizations, and the proceeds of sick, accident, or liability insurance policies. The disability benefits excludable must be of a permanent nature as determined by a physician or government entity.
- (3) Income, dues, and contributions received by religious, fraternal, charitable, scientific, literary, educational institutions or organizations, labor unions and similar organizations.
- (4) Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from casual entertainment, amusements, sports events, and health and welfare activities conducted by bona fide charitable, religious or educational organizations and associations, and only to the extent that the said receipts are income that is exempt from Federal Income Tax.
- (5) Any association, organization, corporation, club or trust which is exempt from federal taxes on income by reason of its purpose(s), but

only to the extent that the said income is exempt from federal income tax.

- (6) Compensation for personal injuries or for damages to property by way of insurance or otherwise, but this exclusion does not apply to compensation paid for lost salaries or wages or to compensation from punitive damages.
- (7) Earnings and income of all persons under eighteen (18) years of age whether residents or non-residents of the City.
- (8) Compensation paid to a precinct election official, to the extent that such compensation does not exceed \$1,000 annually.
- (9) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation. The minister must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination, and must have authority to perform all sacraments of the church.
- (10) Expenses reported on Federal Form 2106, subject to audit and approval by the City of Clyde's income tax office. They must exceed 2% of income taxable to the City before the remaining expenses are eligible for deduction, and the expenses must be allocated in the same manner in which the related income is allocated.
- (11) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, items of income already taxed by the state from which the Municipality 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).
- (12) The income of a public utility when that public utility is subject to the tax levied under Section 5727.24 or 5727.30 of the Ohio Revised Code. However, subject to Section 5745 of the Ohio Revised Code, starting January 1, 2002 this exemption does not apply to the income of an electric company or combined company, and starting January 1, 2004 it does not apply to the income of a telephone company, as both are defined in Section 5727.01 of the Revised code.
- (13) Income, salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce, and/or is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of a municipality to impose net income taxes.

181.025 ADDITIONAL ONE-HALF PERCENT TAX.

Effective July 1, 1996, the existing one-half percent (1/2%) tax on income to be used for the general municipal operations of the City, shall be renewed and shall be

levied and collected on income as defined in and in the manner now prescribed by the existing income tax ordinance, Ordinance No. 1986-29 as renewed by initiative on November 6, 1990, and in accordance with all other ordinances, resolutions and regulations now in effect governing the administration and collection of such income tax; provided, however, that the present respective allocations of income tax revenue between the General and Capital Improvement Funds as set forth in Section 9 of said existing Ordinance No. 1986-29 as renewed shall not be applicable to such one-half percent (1/2%) tax, it being intended that same shall be collected and made available for all proper General Fund appropriations.

181.03 EFFECTIVE DATE.

Said tax shall be levied, collected and paid with respect to income, salaries, wages, commission and other compensation earned and/or received on and after January 1, 1997, and with respect to the net profit of businesses, professions and other activities earned on and after January 1, 1997. Provided, however, that where the fiscal year of the business, profession or other activities differs from the calendar year, and said business, profession or other activity has been reporting on such a fiscal year basis prior to January 1, 1997, it shall continue to do so.

181.04 RETURN AND PAYMENT OF TAX.

- (a) Except as herein provided, each taxpayer whose income, salaries, wages, commissions and other compensation or profits are subject to the tax imposed by this chapter shall, on or before April 15 in each year, make and file a final return with the Income Tax Administrator. However, when the final return is made for a fiscal year or other period different from the calendar year, the return shall be made within 105 days from the end of the fiscal year or other period. Requesting exemption from this filing requirement shall be initiated by a taxpayer completing and submitting the income tax Exemption certificate. Approval of the request by the Income Tax Administrator shall mean the exemption has been granted.
- (b) The return shall be filed with the Income Tax Administrator on a form or forms furnished by or obtainable upon request from the Income Tax Administrator or on an acceptable generic form as defined in this chapter, setting forth:
 - (1) The aggregate amounts of income, salaries, wages, commissions and other compensation earned and/or received, and gross receipts from any business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income, earned during the preceding year and subject to the tax.
 - (2) The amount of the tax imposed by this chapter on such earnings and profits.
 - (3) Such other pertinent statements, information returns or other information as the Income Tax Administrator may require, including but not limited to a statement that the figures used in the return are

the figures used in the return for Federal income tax, and are adjusted to set forth only such income as is taxable under the provisions of this chapter, copies of all W-2 forms, 1099 Miscellaneous Income Forms, page one of form 1040, Page One and Two of Form 1120, 1120S (including (K-1), 2106 (including Schedule A), 1065, Schedule C (including cost of goods manufactured and/or sold), Schedule E, schedule F and any other Federal Schedules, if applicable.

- (c)
 - (1) The taxpayer making the return shall, at the time of the filing thereof, pay to the City Treasurer the amount of taxes shown as due thereon. However, where any portion of the tax shall have been paid by such taxpayer or credit is given for the amount so paid, the amount shall be deducted from the total amount shown to be due and only the balance, if any, shall be due and payable at the time of filing the final return.
 - (2) A taxpayer who has overpaid the amount of tax to which the City is entitled under the provisions of this ordinance 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 five dollars (\$5.00) shall be collected or refunded.
- (d) The taxpayer shall make the extension request by filing a copy of the taxpayer's request for a federal filing extension with the Income Tax Administrator by the City's original due date for the annual return. For individuals, the extended due date shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. For businesses, the extended due date shall be the last day of the month to which the due date of the federal income tax return has been extended, if the return is filed through the Ohio Business Gateway. If not filed through the Ohio Business gateway the extended due date is the last day of the month following the month to which the due date of the federal income tax return has been extended. The Income Tax Administrator may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon on or before the original due date. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended. The extension request may be made by filing a copy of the taxpayer's request for a federal filing extension, or by filing a written request. The Income Tax Administrator may deny the extension if the taxpayer fails to file the request timely, fails to file a copy of the federal extension request, or if the taxpayer's income tax account with the City is delinquent in any way.
- (e) Amended returns.
 - (1) 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 and/or limitations contained

in Sections 10 and 12. Such amended return shall be on a form obtainable on request from the Income Tax Administrator. A taxpayer may not change the method of accounting (i.e., cash or accrual) or apportionment of net profits after the due date for filing his annual return.

- (2) Within three months from the final determination of any Federal tax liability affecting the taxpayer's Clyde tax liability, such taxpayer shall make and file an amended Clyde return showing income subject to the Clyde 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.
- (f) Any business, profession, association or corporation reporting a net loss is subject to the filing requirements of this ordinance.
- (g) A loss from the operation of a business may not be used to offset the income on a taxpayer's W-2 Form.
- (h) Business losses attributable to a taxing municipality other than Clyde cannot be used to offset business profits attributable to Clyde.
- (i) The officer(s) or employee(s) having control or supervision or charged with the responsibility of withholding the tax and making the payment thereof for their employer, shall be personally liable for failure to withhold or pay the tax, penalties, or interest due as required herein. The dissolution, bankruptcy or reorganization or other fundamental change of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to withhold the tax or pay taxes, penalties, or interest due.

181.05 COLLECTION AT SOURCE

- (a) In accordance with this chapter and the rules and regulations prescribed by the Director, each employer within or doing business within this City shall deduct, at the time of the payment of income, salaries, wages, commissions or other compensation, the tax of one and one-half percent (1.5%) of the income, salaries, wages, commissions or other compensation due by such employer to such employee and shall make a return and pay to the Director the amount of taxes so deducted. Effective January 1, 2008, the taxes withheld shall be deposited in accordance with the following schedule:
 - (1) If the taxes withheld by an employer for the City during the previous tax year averaged less than one thousand dollars (\$1,000.00) per month, payments may be made quarterly on or before the last day of the month following the end of the quarter.
 - (2) If the taxes withheld by an employer for the City during the previous tax year averaged one thousand dollars (\$1,000.00) or more per month, the employer shall make a return and pay to the Tax Administrator the amount of taxes so deducted on a monthly basis, due on or before the last day of the month following the month for which the taxes were withheld.

- (b) Such return shall be on a form or forms prescribed by or acceptable to the Director and shall be subject to the rules and regulations prescribed therefore by the Director. Such employer shall be liable for the payment of taxes hereby required to be deducted and withheld, whether or not such taxes have in fact been so deducted and withheld.
- (c) The employer, in collecting the tax, shall be deemed to hold the same as trustee for the benefit of the City until payment is made by such employer to the City, and any such tax collected by such employer from his employees shall, until same is paid to the City, be deemed a trust fund in the hands of such employer.
- (d) The officer(s) or employee(s) of such employer having control or supervision or charged with the responsibility of withholding the tax and making the payment, shall be personally liable for failure to withhold and/or pay the tax, penalties, or interest due as required herein. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to withhold the tax or pay taxes, penalties, or interest due.
- (e) On or before February 28 of each year, each employer shall file a withholding return setting for the names, addresses, and social security numbers of all employees from whose compensation the tax was withheld during the preceding calendar year and the amount of tax withheld from his employees and such other information as may be required by the Income Tax Administrator. All payments not subject to withholding shall be reported on a form required by the Director.
- (f) All employers that provide any contractual service within the City, and who employ subcontractors in conjunction with that service, shall provide the City the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax withholding requirements under this ordinance.
- (g) All individuals, businesses, employers, brokers or others who are required under the Internal Revenue Code to furnish forms 1099 to IRS for individuals or businesses to whom or which they have non-employee compensation shall furnish copies of the said forms 1099 to the City Auditor or in lieu thereof, a list containing the same information as required by IRS on the forms 1099 on or before the due date for such forms 1099 as established by Internal Revenue Service.

181.06 DECLARATIONS

Every taxpayer who anticipates any taxable income which is not subject to Section 181.05 and/or from which tax will not be fully withheld, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 181.02, may voluntarily 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. The following provides recommended guidelines for those taxpayers filing declarations and estimated payments:

- (a) Such declaration should be filed on or before April 15th of each year during the life of this chapter, or within one hundred five (105) days of the date the taxpayer becomes subject to tax for the first time. Those taxpayers reporting on a fiscal year basis should file a declaration within one hundred five (105) days after the beginning of each fiscal year or period.
- (b) Such declaration should be filed upon a form prescribed by the Tax Director, or on an acceptable generic form as defined in this chapter.
- (c)
 - (1) If the taxpayer is an individual, at least a similar amount should be paid on or before the last day of the seventh (7th), tenth (10th), and thirteenth (13th) months after the beginning of the taxpayer's taxable year.
 - (2) If the taxpayer is a corporation or association, at least a similar amount should be paid on or before the fifteenth day of the sixth, ninth, and twelfth months of the taxable year (i.e., calendar or fiscal).

181. 07ADMINISTRATION; DUTIES OF THE INCOME TAX ADMINISTRATOR.

- (a) It shall be the duty of the Income Tax 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 monies so received. All cashiers handling tax monies shall be subject directly to the Director and shall give daily accounting to the Director.
- (b) It shall be the duty of the Director to enforce payment of all taxes owing the City of Clyde, to keep accurate records for a minimum of six (6) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.
- (c) Said Director is hereby charged with the enforcement of the provisions of this chapter and to enforce the rules and regulations of Council of the City of Clyde, Ohio relating to any matter or thing pertaining to the collection of City income taxes and the administration and enforcement of the provisions of this chapter, including provisions for the examination and correction of returns and payments. Taxpayers are hereby required to comply with said rules and regulations.
- (d) 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 Director may determine the amount of tax appearing to be due the City of Clyde 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. Such determination may be modified or amended based upon information or data subsequently secured by or made available to the Income Tax Administrator. If the taxpayer fails to respond to the assessment within 30 calendar days, the tax, penalties, and interest assessed shall become due and payable and collectible as are other unpaid taxes. This does not apply to routine audit adjustments.

- (e) The Income Tax Administrator shall have the power to abate, in whole or in part, any interest or penalty, or both, imposed by this chapter.
- (f) The Income Tax Administrator or his or her duly authorized agent or employee 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 Income Tax Administrator or his or her duly authorized agent or employee 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 the 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 Sections 181.10 and 181.13 shall apply.
- (g) An Office of Taxation is hereby created within the Department of Finance of the City of Clyde. Such Office of Taxation shall have such deputies, clerks and other employees as may be from time to time determined by the City Manager and shall receive such salary as may be determined by the City Council. The Director shall recommend all appointments of personnel and purchase all equipment, supplies and material for the Office of Taxation subject to the approval of the City Manager and according to law. The Office of Taxation shall be charged with the administration and operation of this chapter, under the direction of the Director. The Director shall prescribe the form and method of accounts and reports for said department as well as the forms for taxpayers' returns and declarations, and shall be charged with the internal examination and audit all such accounts and shall exhibit accurate records showing the amount received from each taxpayer and the date of said receipt. All of the above duties shall be performed in conjunction with the Department of Finance in accordance with the letter's tax collection responsibilities as dictated by the Chart of the City of Clyde. The Director shall also make written report to Council annually of all monies collected hereunder during the preceding year.

**181. 08 INVESTIGATIVE POWERS OF THE INCOME TAX ADMINISTRATOR;
PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.**

- (a) The Director or his duly authorized agent or employee, is hereby authorized to examine the books, papers, records, and Federal and State income tax returns of any employer, or of any taxpayer or person subject to the tax, or believed to be 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. Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish to the Director or his duly authorized agent or employee, within thirty **(30)** days following a written request by the Director or his duly authorized agent or employee, the means, facilities, and opportunity for making such examination and investigations as are hereby authorized.

- (b) The Director, or his duly authorized agent or employee, is hereby authorized to examine any person, employer or employee under oath, concerning any income which was or should have been returned for taxation, and for this purpose may compel the production of books, Federal and State income tax records, papers and records and the attendance of all persons before him whether as parties or witnesses, wherever he believes such persons have knowledge of such income.
- (c) The refusal to produce books, papers, records and Federal and State income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person comply with the provisions of this Section or with any order or subpoena of the Director authorized hereby shall be deemed a violations of this chapter, punishable as provided in Section 181.13 hereof.
- (d) Tax returns, investigations, hearings and all audit papers and information connected therewith are confidential and shall be carefully preserved so that they shall not be available for inspection by anyone other than the proper agents of the City of Clyde for official purposes.
- (e) Any information gained as a result of the filing of any tax returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official tax purposes and except in accordance with proper judicial order. Any person divulging such information shall upon conviction thereof be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both. Each disclosure shall constitute a separate offense. In addition to the above penalties, any employee of the City of Clyde who violates the provisions of this section relative to disclosures of confidential information shall be immediately dismissed from the service of the City.
- (f) Every taxpayer shall retain all records necessary to compute his tax liability for a period of six years from the date his return is filed or the taxes required to be withheld are paid.

181.09 INTEREST AND PENALTIES.

- (a) All taxes imposed by this chapter, including taxes withheld or required to be withheld from wages by an employer and remaining unpaid after they have become due, shall bear interest on the amount of the unpaid tax at the rate of one percent per month (1%), or fraction of a month thereof. The rate of one percent (1%) is effective for tax year 2008 and subsequent tax years.
- (b) In addition to interest as provided in subsection (a) hereof, effective for tax year 2008 and subsequent tax years penalties based on the unpaid tax are hereby imposed as follows:

- (1) For failure to pay taxes due, other than taxes withheld: one percent per month (1%) or fraction of a month thereof of the unpaid tax, with a minimum charge of twenty-five dollars (\$25.00).
 - (2) For failure to remit taxes withheld from employees: minimum penalty of fifty dollars (\$50.00) or three percent per month (3.0%) or fraction of a month thereof, whichever is greater.
- (c) Any taxpayer failing to file a return, even if no tax or no additional tax is due, or file an extension request by the filing deadline shall be assessed a penalty of twenty-five dollars (\$25.00).
- (d) Upon recommendation of the Director, the Board of Review may abate interest or penalties, or both, and upon appeal from the refusal of the Director to so recommend, the board may nevertheless abate interest or penalty or both.

181.10 COLLECTION OF UNPAID TAXES.

- (a) All taxes imposed and administered by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. All actions to recover municipal income taxes and penalties and interest thereon shall be brought within three years after the tax was due or the return was filed, whichever is later. However, In the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover Municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later. In those cases in which the Commissioner of the Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations the period within which an additional assessment may be made by the Tax Commissioner shall be extended one year from the time of the final determination of the Federal tax liability.
- (b) Payments received shall be allocated first to penalties due, then to interest due, and then to taxes due, beginning with the oldest delinquent liability.

181.11 REFUNDS.

- (a) Taxes erroneously paid shall not be refunded unless a claim for a refund is made within three years from the date on which such payment was made or the return was due, or within three months after final determination of the Federal tax liability, whichever is later. However, the following shall apply regarding refunds of tax withheld from non-qualified deferred compensation plans (NDCP):
- (1) A taxpayer may be eligible for a refund if the taxpayer has suffered a loss from a NDCP. The loss will be considered sustained only in the taxable year in which the taxpayer receives the final distribution of

- money and property pursuant to the NDCP. Full loss is sustained if no distribution of money and property will be made by the NDCP.
- (2) A taxpayer who receives income as a result of payments from a NDCP, and that income is less than the amount of income deferred to the NDCP and upon which municipal tax was withheld, then a refund will be issued on the amount representing the difference between the deferred income that was taxed and the income received from the NDCP. If different tax rates applied to the tax years in which deferrals, a weighted average of the different tax rates will be used to compute the refund amount.
 - (3) Refunds shall be allowed only if the loss is attributable to the bankruptcy of the employer who had established the NDCP, or the employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified compensation.
- (b) Income tax that has been deposited with the City of Clyde, but should have been deposited with another municipality, is allowable by the City of Clyde as a refund but is subject to the three-year limitation on refunds. Income tax that should have been deposited with the City of Clyde, but was deposited with another municipality, shall be subject to recovery by the City of Clyde. The City of Clyde will allow a non-refundable credit for any amount owed the City of Clyde that is in excess of the amount to be refunded by the other municipality, as long as the tax rate of the other municipality is the same or higher than the City of Clyde's tax rate. If the City of Clyde's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the City of Clyde.
 - (c) Overpayments of withheld tax that have resulted due to incorrect withholding of an employee by an employer, and are not due as a result of excess withholding requested by the employee, shall be refunded to the employer. It shall be the responsibility of the employer, and not the City, to refund such overpayment to the employee. However, nothing in this subparagraph shall affect the right of a nonresident employee to apply directly to the City for refund of income tax withheld for days worked out of Clyde.
 - (d) Claims for refunds shall be made on forms prescribed by and obtainable from the Director, or on an acceptable generic form as defined in this chapter.
 - (e) Amounts of less than five dollars (\$5.00) shall not be refunded or collected.

181.12 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

Every individual taxpayer who resides in the City of Clyde but who receives net profits, salaries, wages, commission or other personal service compensation for work done, or services performed or rendered outside of said City, if it be made to appear that he has paid a municipal income tax on such net profits, salaries, wages, commissions or other compensation to another municipality, shall be allowed a credit against the tax imposed by this chapter of the amount so paid by him or in his behalf to such other

municipality. The credit shall not exceed the tax assessed by this chapter on such net profit, salary, wages, commissions or compensation earned in such other municipality or municipalities where such tax is paid.

181. 13 VIOLATIONS AND PENALTIES.

- (a) The following shall be considered violations of this chapter:
 - (1) Failing, neglecting or refusing to make any return or declaration required by this chapter; or
 - (2) Making any incomplete, false or fraudulent return; or
 - (3) Failing, neglecting or refusing to pay the tax, penalties or interest imposed by this chapter; or
 - (4) Failing, neglecting or refusing to withhold the tax from employees or to remit such withholding to the Director; or
 - (5) Refusing to permit the Director or any duly authorized agent or employee to examine books, records, papers, and Federal and State income tax returns relating to the income or net profits of a taxpayer; or
 - (6) Failing to appear before the Director and to produce books, records, Federal and State income tax returns and papers relating to the income, or net profits of a taxpayer under order or subpoena of the Director; or
 - (7) Refusing to disclose to the Director any information with respect to the income or net profits of a taxpayer; or
 - (8) Failing to comply with the provisions of this chapter or any order or subpoena of the Director authorized hereby; or
 - (9) Attempting to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.
- (b) Any person who violates any of the provisions of subsection (a) above shall be guilty of a fourth-degree misdemeanor and shall be fined not more than two hundred fifty dollars (\$250.00) and/or imprisoned not more than 30 days for each offense.
- (c) The failure of any employer or taxpayer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return or declaration, from filing such form, or from paying the tax.
- (d) Prosecutions for an offense made punishable under this Ordinance shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of the income or net profits required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense.

181.14 BOARD OF REVIEW.

- (a) A Board of Review, consisting of three electors of the City of Clyde, one to be appointed by the City Council, one to be appointed by the City Manager, and the third to be selected by the two so appointed, is created by this chapter. No member shall be appointed to the Board of Review who holds other public office or appointment. The members of the Board of Review shall serve without pay.
- (b) A majority of the members of the Board of Review shall constitute a quorum. The Board of Review shall adopt its own procedural rules and shall keep a record of its transactions.
- (c) All hearings of the Board shall be conducted privately and the provisions of Section 181.08 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 of Review on appeal.
- (d) Any person dissatisfied with any ruling or decision of the Income Tax Administrator which is made under the authority conferred by this chapter and the Rules and Regulations related thereto, and who has filed the required returns or other documents pertaining to the contested issue, may appeal there from to the Board of Review within thirty (30) days from the announcement of such ruling or decision by the Director. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board of Review shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. The Board must schedule a hearing within ninety (90) calendar days of receiving the appeal. 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 15 days after issuing the decision.
- (e) Any person dissatisfied with any ruling or decision of the Board of Review may appeal there from to a court of competent jurisdiction within thirty (30) days from the announcement of such ruling or decision. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.
- (f) The Board of Review, as created, shall serve during the life of this chapter.
- (g) The appeal procedures established herein to the Board of Review shall be non-exclusive appeal, and nothing herein provided shall be construed to prohibit an appeal to the courts under Chapter 2506 of the Ohio Revised Code, or under any other provision of state or local law. R96

181.15 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be deposited in the Income Tax Fund and said funds collected for the tax period shall be disbursed in the following order, to-wit:

- (a) Such part thereof as shall be necessary to defray all costs of collecting the taxes, the cost of administering, and enforcing the provisions, hereof.

- (b) Such part thereof as shall be necessary to defray all costs of maintaining, operating and providing street lighting for the citizens of Clyde.
- (c) Not more than fifty-five percent (55%) of the net available income tax receipts received annually may be used to defray operating expenses of the City.
- (d) At least forty-five percent (45%) of the net available income tax receipts received annually shall be set aside and used for capital improvements for the City including, but not limited to, development and contractions of storm sewers and street improvements; for public buildings, parks and playgrounds; and for equipment necessary for the police, fire, street, traffic and safety departments.

181. 16 APPLICABILITY.

This chapter shall not apply to any person, firm, corporation, or to any property as to whom or which it is beyond the power of the City Council of the City of Clyde to impose the tax herein provided for.

181. 17 SAVINGS CLAUSE.

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 sentence, clause, 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 the Council of the City of Clyde that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

181.18 EFFECTIVE PERIOD; COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

- (a) This chapter shall be in effect through December 31, 2011.
- (b) Prior ordinances, insofar as the collection of municipal income taxes levied under such previous income tax ordinances, and actions or proceedings for collecting any tax so levied, or enforcing any provisions of said prior ordinances are concerned, shall continue effective until all of said taxes levied in the aforesaid periods are fully paid and any an all suites and prosecutions for the collection of said taxes or for the punishment of violations of said previous ordinances shall have been fully terminated.
- (c) Insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of said taxes levied hereunder in the aforesaid periods are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of

violations of this chapter shall have been fully terminated, subject to the limitations contained in Section 181.10 and Section 181.13 hereof.

- (d) Annual returns due for all or any part of the last effective year of this ordinance shall be due on the date provided in Section 181.04 and Section 181.05 of this ordinance as though the same were continuing.