

TITLE SEVEN - Taxation

Chap. 171. Income Tax

CHAPTER 171

Income Tax

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CROSS REFERENCES

Municipal income taxes - see Ohio R.C. Ch. 718

171.01 PURPOSE.

To provide funds for the purpose of general municipal operations, purchase and maintenance of equipment, municipal services and facilities and capital improvements of Waterville, there shall be, and is hereby, levied a tax on salaries, wages, commissions, and other compensation, and on net profits, from any transaction, venture or activity whether permanent, temporary or nonrecurring in character, as hereinafter provided.

171.02 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 indicated or requires a different meaning.

- (a) "Assignment" means the assignment made by a resident of a municipality of claim for refund due the taxpayer from another taxing municipality granting credit to nonresidents thereof.
- (b) "Association" means a partnership, limited partnership, Limited Liability Company, Sub-S Corporation or any other form of unincorporated enterprise, owned by one or more persons.
- (c) "Board of Review" means the Board created by and constituted as provided in Section 171.13.
- (d) "Business" means 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.
- (e) “Commissioner of Taxation” or “Commissioner” means the person so designated and appointed by the Municipal Administrator and approved by Council or the person executing the duties of the aforesaid Commissioner.
 - (f) “Corporation” means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency except for a Sub-S corporation.
 - (g) “Domicile” means the place where a taxpayer has his true, fixed, and permanent home, and to which, whenever the taxpayer is absent, he or she has the intention of returning. Factors to be considered when determining domicile are, but not limited to: registration of vehicles; current driver’s license; address on federal and State income tax returns; address of voter’s registration; attendance at schools by taxpayer’s family; location of the probate of the taxpayer’s estate if deceased.
 - (h) “Employee” means one who works for wages, salary, commission, or other type of compensation in the service of an employer and whose wages, salary or commissions are subject to withholding of federal income tax, social Security Tax, and/or Medicare Tax.
 - (i) “Employer” means 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.
 - (j) “Fiduciary” means a guardian, trustee, executor, administrator, or any other person acting in any fiduciary capacity for any individual, trust, or estate.
 - (k) “Fiscal year” means an accounting period of twelve months ending on any day other than December 31.
 - (l) “Gross receipts” means the total income from any source whatsoever.
 - (m) “Municipality” means the Village of Waterville, Lucas County, Ohio.
 - (n) “Net profits” means a net gain from the operation of a business, profession, enterprise, or other activity, after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, or system approved by the Commissioner, without deduction of taxes imposed by this chapter, federal, State, and other taxes based on income; and in the case of an association, without deduction of salaries paid to partners and other owners; and otherwise adjusted to the requirements of this chapter.
 - (o) “Nonresident” means an individual domiciled outside the Municipality.
 - (p) “Nonresident unincorporated business entity” means an unincorporated business entity not having an office or place of business within the Municipality
 - (q) "Pass-Through-Entity" means a partnership, limited liability company, or any other class of entity the income or profits of which are given pass-through treatment under the Internal Revenue Code. (HB 95). O.R.C. 718.14 (A) (2).
 - (r) “Pension” means income earned or received as a result of retirement from employment from an IRS qualified retirement plan and which is generally, although not exclusively, reported to the taxpayer by the payer on a Form 1099-R or similar form.

- (s) “Person” means every natural person, partnership, fiduciary, association, or corporation. Whenever used in any clause prescribing and imposing a penalty, the term “person,” as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.
- (t) “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 agents or employees.
- (u) “Reciprocity credit” means the credit granted by a municipality to its residents, and to nonresidents whose municipality of residence grants a similar credit to nonresidents thereof.
- (v) “Resident” means an individual domiciled in the Village of Waterville.
- (w) “Resident unincorporated business entity” means an unincorporated business entity having an office or place of business within the Village of Waterville.
- (x) “Salaries, wages, and other compensation” means the total compensation paid to an individual in cash or in kind on an hourly, daily, weekly, monthly, annual, or other basis, including, but not limited to the following: severance or termination pay; wage continuation payments made as a result of early retirement or employment termination; wage continuation payments made as a result of sickness or temporary disability and whether paid by the recipient’s employer or by a third party; vacation or holiday pay; tips or gratuities received; group term insurance premiums paid on an employee’s behalf; employee contributions to tax sheltered annuities, non-qualified pension plans, or into employer or third party trusts or pension plans as permitted by IRS and which may be excludable from wages for federal tax purposes; ordinary income portion of stock options or employee stock purchase plans; supplemental unemployment benefits (SUB Pay); strike pay; jury duty pay; employer or employee contributions or amounts credited to non-qualified pension plans or deferred compensation plans at the time of deferral and to the extent subject to Medicare tax; working conditions fringe benefits subject to tax by IRS; guardian, executor, conservator, trustee, or administrator fees; bonuses; ordinary income portion of lump sum distributions which become subject to federal tax because the recipient did not roll over the distribution within the time required by IRS.
- (y) “Taxable year” means the calendar year or the fiscal year on the basis of which the net profits are to be computed in accordance with this chapter and, in the case of a return for a fractional part of a year, the period for which such return is made.
- (z) “Taxing municipality” means 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.
- (aa) “Taxpayer” means a person, whether an individual, partnership, association, or any corporation or other entity subject to the tax imposed by this chapter or required hereunder to file a return or pay a tax. The singular shall include the plural, and the masculine shall include the feminine and the neuter. (1980 Code 98.02; Ord. 4-72.)

171.03 IMPOSITION OF TAX.

- (a) Subject to the provisions of Section 171.16 an annual tax for the purposes specified in Section 171.01 shall be imposed on and after January 1, 1983, at the rate of 2% per annum on the following:
- (1) On all salaries, wages, commissions, other compensation as defined in Section 171.02 (x) earned or received and from net profits from unincorporated business entities and professions and from any transaction, venture or activity whether permanent, temporary or nonrecurring in character, earned or received on and after January 1, 1983, by residents of Waterville.
 - (2) On all salaries, wages, commissions, and other compensation as defined in Section 171.02 (x) earned or received on and after January 1, 1983, by nonresidents for work done or services performed or rendered in Waterville.
 - (3) On the portion attributable to Waterville of the net profits earned on and after January 1, 1983, of all resident unincorporated businesses, professions, and other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in Waterville.
 - (4) On the portion of the distributive share of the net profits earned on and after January 1, 1983, of a resident partner or owner of a resident unincorporated business entity not attributable to Waterville and not levied against such unincorporated business entity; provided that such income of such resident partner or owner shall be subject to the relief and credit provisions of Section 171.15.
 - (5) On the portion attributable to Waterville of the net profits earned on and after January 1, 1983, of all nonresident persons, unincorporated businesses, professions, and other entities derived from sales made, work done or services performed or rendered and business or other activities conducted in Waterville, whether or not such person, unincorporated business entity, profession or other entity has an office or place of business within Waterville.
 - (6) On the net profits attributable to Waterville of all nonresident unincorporated businesses, professions or other activities derived from work done or services performed or rendered and business or other activities conducted in Waterville, whether or not such businesses have an office in Waterville.
 - (7) On the portion of the distributive share of the net profit earned by a resident individual from a limited liability corporation or company, or a similar business entity which is located outside of the Waterville.
 - (8) On that portion of the distributive share of the net profits of a resident individual, partner or owner of a nonresident unincorporated business entity.
 - (9) On the portion attributed to Waterville of the net profits earned during the effective period of this chapter of all corporations derived from sales made, work done or services performed or rendered, and business or other activities conducted in Waterville, whether or not such corporations have an office or place of business in Waterville.
- (b) On the income associated with covenants not to compete, royalties, and depreciation recapture, all to the extent subject to tax by IRS.

- (c) Tax on Business Doing Business Both Within and Without the Municipality. The portion of the net profits attributable to Waterville of a taxpayer conducting a business, profession, or other activity both within and without the boundaries of Waterville shall be determined as provided in Ohio R.C. 718.02 which is reprinted at the end of the chapter and in accordance with the rules and regulations adopted by the Commissioner pursuant to this chapter.
- (d) On the gross income derived anywhere from gaming, wagering, lotteries, or schemes of chance by residents of Waterville or by nonresidents of Waterville when the income derived from gaming, wagering, lotteries or schemes of chance is won or received from Waterville sources.
- (e) Operating Loss Carry-Forward.
- (1) The portion of a net operating loss sustained in any taxable year subsequent to January 1, 1983, allocable to Waterville, may be applied against the portion of the profit of succeeding year(s) allocable to Waterville 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) For the purposes of subsection (f) (1) hereof, the portion of a net operating loss sustained shall be allocated to Waterville in the same manner as provided herein for allocating net profits to Waterville.
 - (3) The Commissioner of Taxation shall provide by rules and regulations the manner in which such net operating loss carry-forward shall be determined.
- (f) Consolidated Returns.
- (1) Consolidated returns from affiliated groups or corporations that file consolidated returns with IRS for the same reporting period will be accepted in accordance with Rules and Regulations prescribed by the Commissioner. (ORC 718.06).
 - (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 Waterville constituting a portion only of its total business, the Commissioner of Taxation shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to Waterville. If the Commissioner of Taxation finds net profits are not properly allocated to Waterville 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 Waterville.
- (g) Business Losses. Operating losses from business or professional activity may not be used to reduce W-2 income subject to the tax. Said loss may be used against other sources of business or professional income subject to the tax.

(h) Exemptions - Sources of Income Not Taxed.

- (1) Pay or allowance of active members of the armed forces of the United States because of active duty service or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate; tax exempt tangible or intangible property or tax exempt activities and only to the extent that said income is exempt from federal income tax.
- (2) Poor relief, social security benefits, unemployment insurance benefits, except for supplemental unemployment benefits, IRS qualified retirement plan or similar payments, disability benefits received from local, state or Federal governments or charitable, religious or educational organizations. The disability benefits excludable must be of a permanent nature as determined by a physician or government entity.
- (3) Proceeds of insurance paid by reason of death of the insured, pensions, including industrial pensions which are qualified by IRS and paid as a result of retirement; disability benefits paid for total and permanent disability, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
- (4) Receipts from seasonal or casual entertainment, amusement, sports events, and health and welfare activities when bona fide charitable, religious or educational organizations and associations conduct any such and only to the extent that said income is exempt from Federal Income Tax.
- (5) Alimony received
- (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.
- (7) Interest, dividends and other revenue from intangible property as set forth in Ohio R.C. 718.01.
- (8) Amounts included in an employee W-2 Form for **moving expense reimbursement when the taxpayer is moving into Waterville. Taxpayer must furnish a copy of form 3903**
- (9) Payments made to election workers.
- (10) 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.
- (11) Salaries, wages commissions and other compensations and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of a municipality to impose net income taxes.
- (12) **The amount of unreimbursed employee business expenses (2106 Expenses) which the employee deducted as an itemized deduction on his or her federal tax return. Taxpayer must furnish a copy of the form 2106 and Schedule "A" of form 1040 as filed with IRS.**
- (13) For non-resident employees or non-resident self-employed individuals who perform work or services in Waterville for twelve (12) or fewer days during the calendar year as set forth in Ohio RC Ch 718.011, as amended from time

to time, effective January 1, 2001. This exemption does not apply to professional entertainers, professional athletes, or promoters of professional entertainment or sports events and their employees. A day is defined as a full day or any fractional part of a day.

- (14) Parsonage allowances paid to "ministers of the gospel" in the form of rental allowance as part of a minister's compensation to the extent excluded from federal or Ohio tax. O.R.C. 718.01 (F) (7)

(i) Expenses Not Deductible.

- (1) No deduction for health insurance premiums paid by self-employed taxpayers as permitted by IRS is permitted for Waterville.
- (2) No deduction for self-employment tax paid by self-employed taxpayers as permitted by IRS is permitted for Waterville.
- (3) No deduction for contributions to IRA or Keogh plans made by taxpayers as permitted by IRS is permitted for Waterville.

171.04 EFFECTIVE DATE.

The tax shall be levied, collected, and paid with respect to the salaries, wages, commissions, and other compensation, and with respect to the net profits of persons, businesses, professions, or other activities, as defined in this chapter, earned or received on and after January 1, 1983. (1980 Code 98.04; Ord. 10-82.)

171.05 ANNUAL RETURN AND PAYMENT OF TAX.

(a) Except as otherwise herein provided, each taxpayer or person who engages in business as hereinbefore defined, or whose salaries, wages, commissions, and other compensation, as defined in this chapter, are subject to the tax imposed by this chapter, shall, whether or not a tax is due thereon, make and file a return on or before April 15 of each year during the life of this chapter with the Commissioner of Taxation. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed before the fifteenth day of the fourth month from the end of such fiscal year or other period.

The Commissioner of Taxation is hereby authorized to provide by regulation, subject to the approval of the Board of Review, that the W-2 Form furnished by an employer or employers, showing the full amount of tax deducted by such employer or employers from the salaries, wages, commissions, or other compensation, required by Section 171.06 and paid by him or them to Waterville or other municipality or state, except the State of Ohio and any state having a reciprocity agreement with the State of Ohio, imposing a tax equal to or greater than Waterville income tax, on the same taxable income, shall be accepted as the return required of an employee under this chapter whose sole income subject to the tax or taxes under this chapter is such salary, wages, commissions, or other compensation.

(b) The return shall be filed with the Commissioner on a form or forms furnished by or obtainable on request from the Commissioner, or on an acceptable generic form, setting forth for the period indicated thereon:

- (1) A. The aggregate amount of salaries, wages, commissions, and other compensation earned or received; and
- B. The gross income from a business, profession, or other activity, less

- allowable expenses incurred in the acquisition of such gross income to arrive at a net profit;
- C. Such income shall include only income earned or received 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 income reported;
- B. Any estimated payments or credits to which the taxpayer may be entitled under the provisions of Section 171.07 and
- (3) Such other pertinent statements, information returns, or other data and information as the Commissioner may require.
- (c) (1) The taxpayer making a return shall, at the time of filing thereof, pay to the Commissioner the balance of tax due, if any, after deducting:
- A. The amount of municipal income tax deducted or withheld at the source pursuant to Section 171.06;
- B. Such portion of the tax as has been paid on declaration by the taxpayer pursuant to Section 171.07;
- C. Any credit allowable under the provisions of Section 171.15.
- (2) Should the return or the records of the Commissioner indicate an overpayment of the tax to which Waterville is entitled under the provisions of this chapter, such overpayment shall first be applied against any existing liability of the taxpayer, 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 \$5.00 shall not be refunded.
- (3) Every taxpayer shall retain all records necessary to compute the correct tax liability for a period of five (5) years from the date the return is filed.
- (d) Amended Return.
- (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 171.11 and 171.15. 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 tax payer's Waterville tax liability, such taxpayer shall make and file an amended Waterville return showing income subject to the Waterville tax based on such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment. (1980 Code 98.05; Ord. 21-92.)
- (e) Responsibility for Filing Annual or Amended Tax Return. The officer or employee of such employer having control or supervision or charged with the responsibility of filing the return and making the payment, shall be personally liable for failure to file the return or pay the tax 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 file a return or pay taxes due.

(f) The Return Is Considered Filed When. A tax return is considered filed if mailed on the date postmarked by the United States Postal Service or on the date delivered without mailing to the Waterville tax office.

(g) 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 Waterville tax return provided that a copy of the federal extension is filed with the Commissioner on or before the original due date of the Waterville tax return.

The extended date for filing the Waterville return will be the last day of the month following the month to which the federal income tax has been extended. **Statutory interest will be charged from the original due date of the return until date of actual payment.** (O.R.C. 718.05)

If a taxpayer wishes to extend the time for filing Waterville 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 terms and conditions set forth by him or her.

(h) The failure of any taxpayer to receive or procure a return, declaration or other required form shall not excuse the taxpayer from filing such forms or from paying the tax due.

(i) Payments received for taxes due shall be allocated first to penalties and interest due, and then to taxes due.

(j) The commissioner may charge a taxpayer a fixed fee for any check returned by a financial institution due to insufficient funds, closed accounts, or any other reason. Notice of the amount of the fee to be charged shall be posted in public view in the tax office.

171.06 COLLECTION AT SOURCE; TAXES WITHHELD BY EMPLOYER.

(a) Each employer within or doing business within Waterville 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 of two percent (2%) from the gross salaries, wages, commissions, or other compensation earned or received by Waterville residents regardless of where such compensation was earned or received, and shall deduct the tax of two percent (2%) from the salaries, wages, commissions, or other compensation earned or received within Waterville by nonresidents.

(b) Notwithstanding the provisions of subsection (a) hereof, where an employer within or doing business within the municipality who employs a Waterville 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 Waterville only the difference, if any, between every such tax imposed by such other taxing municipalities and the tax imposed by this chapter; however, employers shall withhold for and remit to Waterville no less than one-half percent (.5%) of each employee's wages, commissions, and other compensation; or shall withhold Waterville tax on 100% of the income subject to Waterville tax if the Waterville resident/employee is employed at a location where a municipal tax is not imposed.

(c) Each employer shall, on or before the last day of the month following each calendar quarter, make a return and remit to Waterville 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. Such employer shall be liable for the payment of the tax required to be deducted and withheld whether or not such taxes have in fact been withheld.

(d) Such employer in collecting such tax shall be deemed to hold the same until payment is made by such employer to Waterville as a trustee for the benefit of Waterville, and any such tax collected by such employer from his employees shall, until the same is paid to Waterville, be deemed a trust fund in the hands of such employer. (1980 Code 98.06; Ord. 10-82.)

(e) The officer or employee of such employer having control or supervision or charged with the responsibility of filing the return and making the payment, shall be personally liable for failure to file the return or pay the tax due as required herein. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer's or employee's liability for prior failure of such business to file a return or pay taxes due.

(f) On or before the last day of February following any calendar year, such employer shall file with the Commissioner an annual reconciliation return along with an information return for such employee from whom Waterville 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 municipal income tax withheld from the such employee with the municipality for which said tax was withheld identified. The information return shall also include all of the information required to be reported by the employer to IRS on a W-2 form. At the time of filing the annual reconciliation return the employer shall pay over any amounts deducted or which should have been deducted during the preceding year but which were not remitted. The annual reconciliation form shall be obtained from the Commissioner.

(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 form 1099's to the Commissioner or in lieu thereof, a list containing the same information as required by IRS on the 1099's on or before the due date for such form 1099 as established by IRS. Failure to provide the foregoing information may result in any deduction for payment by the taxpayer taken on the taxpayer's return to be disallowed.

(h) Every employer shall retain all records necessary to compute withholding taxes due Waterville for a period of five years from the date the Reconciliation Form, W-2 Forms, and 1099 Forms are filed.

(i) The Return is Considered Filed When. All returns and forms required to be filed by an employer are considered filed on the date postmarked by the United States Postal Service or on the date delivered without mailing by the taxpayer to the Waterville Tax Office.

(j) The failure of any employer to receive or procure a return, or other required form

shall not excuse the employer from preparing any information return, withholding tax returns or from filing such forms or from paying the tax due.

(k) Payments received for withholding taxes due shall be applied first to penalties and interest due, and then to taxes due.

171.07 DECLARATIONS; ESTIMATED TAX PAYMENTS.

Every person who anticipates any taxable income which is not subject to section 171.06, or who engages in any business, profession, enterprise, or activity subject to the tax imposed by Section 171.03, 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.

- (a)
 - (1) Such declaration shall be filed on or before April 15 of each year during the life of this chapter, or on or before the fifteenth day of the fourth month from the date in which 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 day of the fourth month after the beginning of each fiscal year or period.
 - (3) Such declaration shall be filed upon a form furnished by, or obtainable from the Commissioner. Credit may be taken for Waterville income tax to be withheld, if any, from any portion of such income. In addition, credit may be taken for tax paid or payable to other taxing municipalities in accordance with the provisions of Section 171.15.
 - (4) The original declaration, or any subsequent amendment thereof, may be increased or decreased on or before any subsequent quarterly payment date as provided for herein.
- (5) The taxpayer making the declaration shall, at the time of the filing thereof, pay to the Commissioner of Taxation at least twenty-two and one-half percent (22 1/2%) of the estimated annual tax after deducting:
 - a. Any portion of such tax to be deducted at the source pursuant to Section 171.06.
 - b. Any credit allowable under the provisions of Section 171.15; and
 - c. Any overpayment of previous year's tax liability which the taxpayer has not elected to have refunded.
- (6) At least a similar amount shall be paid on or before the last of the seventh (7th), tenth (10th) and thirteenth (13th) months after the beginning of the taxpayer's taxable year, provided that where an amended estimate 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.
 - (a) The declarations for the 2nd, 3rd, and 4th quarters shall be due on July 31st and October 31st of the current year and on January 31st of the subsequent year. The amounts due on those dates are not to exceed forty-five percent (45%), sixty-seven and one-half percent (67 1/2%) and ninety percent (90%) respectively of the tax estimated to be due. (O.R.C. 718.08).
 - (b) Taxpayers reporting on a fiscal year basis shall file a declaration within three

months and fifteen days after the beginning of each fiscal year and at the end of the 7th, 10th and 13th months thereafter.

(c) Effective January 1, 2003, no penalty or interest will be assessed for the late payment or nonpayment of estimated taxes, if the taxpayer was non domiciled in Waterville on the 1st day of January of the current calendar year or if the taxpayer has paid estimated payments equaling one hundred percent (100%) of the taxpayer's 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. (O.R.C. 718.08)

(d) On or before the fifteenth (15th) day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due Waterville shall be paid in accordance with the provisions of section 171.05.

(e) Notwithstanding any provision or requirement of this chapter to the contrary, if a taxpayer resides or proposes to reside in Waterville, or engages in business or proposes to engage in business therein for a period of less than three months, or if the Commissioner determines that the residence of any taxpayer in Waterville or the period during which any taxpayer will engage in business in Waterville may reasonably be expected to be less than three months, the Commissioner may require any such taxpayer to file a declaration and/or a return within such time as he may reasonably fix, and to pay or secure the payment of any tax due or to become due and/or any tax withheld or required to be withheld during the period of residence or engagement in business or the period of such residence or engagement in business estimated by the Commissioner.

The date or dates fixed by the Commissioner for the filing of declarations or returns and/or for payments or security for payments of taxes pursuant to this subsection shall be in lieu of the dates for such filing or payment specified for taxpayers generally in this chapter. (1980 Code 98.07; Ord.416.)

171.08 DUTIES OF THE COMMISSIONER OF TAXATION.

(a) It shall be the duty of the Commissioner of Taxation 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.

(b) It shall be the duty of the Commissioner to enforce payment of all taxes owing Waterville, to keep accurate records for a minimum of five 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) The Commissioner is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of the Board of Review, to adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.

(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 Commissioner may assess the amount of tax appearing to be due Waterville 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. (1980 Code 98.08; Ord. 416.) If the taxpayer fails to respond to the assessment, the tax assessed within 30 days from the receipt of the assessment shall become due and payable and collectible as are other unpaid taxes.

(e) If the Commissioner issues a decision or opinion to a taxpayer regarding a tax obligation that is subject to appeal, the Commissioner shall notify the taxpayer of the taxpayer's right to appeal the decision and of the manner in which the appeal can be made.

171.09 INVESTIGATIVE POWERS OF THE COMMISSIONER; CONFIDENTIAL INFORMATION.

(a) The Commissioner of Taxation, or any authorized employee, is hereby authorized to examine the books, papers, records, and federal/or state 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. Each such employer, supposed employer, taxpayer, or supposed taxpayer is hereby directed and required to furnish on 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 hereby authorized.

(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 returned for taxation hereunder, or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records, and federal and state 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/or 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 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 any order or subpoena of the Commissioner authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 171.99 (a).

(d) Any information gained as a result of any returns, investigations, hearings, records, or verifications required or authorized by this chapter shall be confidential except for official purposes which include the exchange of information with other tax authorities, or except in accordance with proper judicial order. Any person divulging such information in violation of this chapter, shall, upon conviction thereof, be deemed guilty of a third degree misdemeanor. Each disclosure shall constitute a separate offense.

171.10 INTEREST AND PENALTIES; OTHER COSTS

(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% per month or fraction thereof.

(b) In addition to interest as provided in (a) above, penalties based on the unpaid tax are imposed as follows:

- (1) For failure to pay taxes due, other than taxes withheld, 1% per month or fraction thereof.
- (2) For failure to remit taxes withheld from employees, 3% per month or fraction thereof.

(c) In addition to interest and penalties, if any, as set forth above, penalties for failure to file a return are hereby imposed as follows:

- (1) Ten dollars (\$10.00) for failure to file a return within thirty days of the time specified by this chapter.
- (2) An additional five dollars (\$5.00) for failure to file a return for each thirty day period or fraction thereof thereafter.

(d) Any person or entity subject to the tax paying and/or filing or withholding provisions of this chapter shall, pursuant to the provisions of Section 171.09, pay the sum of ten dollars (\$10.00) for each subpoena or examination order issued by the Commissioner.

(e) Upon the 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 and interest, the Board, for good cause shown, may nevertheless abate penalty or interest, or both. (1980 Code 98.10; Ord. 21-92.)

171.11 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 was due or the return was filed, whichever is later in accordance with O.R.C. 718.12A.

(b) Taxes erroneously paid shall not be refunded unless a claim for refund is made within the time limitation specified in Ohio R.C. 718.12C and 718.121. Amounts less than five dollars (\$5.00) shall not be refundable.

(c) 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 compensation or net profits required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense in accordance with O.R.C. 718.12(B).

(d) Amounts of less than five dollars (\$5.00) shall not be refunded or collected if the total tax due does not exceed this amount. (1980 Code 98.11(C); Ord. 416.)

171.12 VIOLATIONS.

Any person who shall:

- (a) Fail, neglect, or refuse to make any return or declaration required by this chapter; or
- (b) **Make any incomplete, false, or fraudulent return; or**
- (c) Fail, neglect, or refuse to pay the tax, penalties, or interest imposed by this chapter;
or
- (d) Fail, neglect, or refuse to withhold the tax from his employees or remit such withholding to the Commissioner; or
- (e) Refuse to permit the Commissioner or any duly authorized agent or employee to examine his books, records, papers, and federal and state income tax returns relating to the income or net profits to a taxpayer; or
- (f) Fail to appear before the Commissioner and to produce his books, records, papers, or federal and state income tax returns relating to the income or net profits of a taxpayer on order or subpoena of the Commissioner; or
- (g) Refuse to disclose to the Commissioner any information with respect to the income or net profits of a taxpayer; or
- (h) Fail to comply with the provisions of this chapter or any order or subpoena of the Commissioner authorized hereby; or
- (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; or
- (j) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and the municipal tax withheld or to knowingly give the Commissioner false information; or
- (k) **Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties, or interest imposed by this chapter shall be in violation of this Chapter and subject to a charge of a misdemeanor of the first degree for each offense.**

All prosecutions under this section must be commenced within the time specified in Ohio R.C. 718.12 (B).

171.13 BOARD OF REVIEW.

(a) A Board of Review, consisting of the Municipal Solicitor as Chairman, the Mayor as Secretary, and one member of Council is created. 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 Section 171.09 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 of Review.

(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; it is empowered to substitute alternate methods of allocation.

(c) Any person dissatisfied with any ruling or decision of the Tax Commissioner which was made under the authority conferred by this chapter and who has filed the required returns or other documents pertaining to the contested issue, may appeal therefrom in writing to the Board of Review within thirty calendar days from the issuance of such ruling or decision by the Commissioner. The appeal must state the alleged errors in the Commissioner's ruling or decision. The Board must schedule a hearing within forty-five calendar days of receiving the appeal unless the taxpayer expressly waives the hearing and chooses instead to permit the Board to render its decision on the writings submitted by the taxpayer and the Commissioner. If the taxpayer does not waive the hearing, the taxpayer is entitled to appear before the Board and bring representation of his choosing. The records of the hearing are not open to the public nor is the hearing subject to the State's open meeting law. The Board must issue its written decision within ninety calendar days after the final hearing and send a notice of its decision by ordinary mail to the taxpayer/appellant within fifteen calendar days after issuing the decision. If the Board fails to comply with the provisions of this section, the taxpayer's appeal will default in favor of the taxpayer but the default will not be on the merits of the issue.

(d) Any person dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to a court of competent jurisdiction within thirty (30) days from the announcement of such ruling or decision. (1980 Code 98.13; Ord. 416.)

171.14 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be applied for the following purposes and in the following order:

- (a) Seventy-five percent of the gross income tax receipts received annually shall be paid into the General Fund and used to pay all costs of collecting the taxes levied by this chapter and the cost of administering and enforcing the provisions of this chapter and to pay the operating expenses of Waterville.
- (b) Twenty-five percent of the gross income tax receipts shall be paid into the Capital Improvement Budget Fund and shall be set aside and used for capital improvements for Waterville, including, but not limited to, development, maintenance, or construction of sanitary sewers, storm sewers, and street improvements; for public parks, buildings, land, and playgrounds; and for equipment necessary for police, fire, public works, and other municipal departments and operations. (1980 Code 98.14; Ord. 27-90.)

171.15 TAX CREDIT; CLAIMS FOR CREDIT; FILING CLAIMS.

It is the intent of this section that a taxpayer, subject to tax in more than one municipality on the same income, who has complied with the provisions hereof shall not be required by this chapter to pay the full tax rate in both municipalities, but to grant a partial credit for taxes paid by residents to other municipalities.

Accordingly, notwithstanding any other provisions of this chapter:

- (a) Residents of the Municipality.
When a resident of Waterville is subject to and has paid, or has acknowledged liability for, a municipal income tax in another municipality on the same income taxable under this chapter, and such other municipality does not allow a credit to its

nonresidents, such Waterville residents may claim a credit for a portion of such tax paid to such other municipality, but not in excess of the tax assessed by this chapter.

- (b)
 - (1) When a resident of Waterville is subject to and has paid, or has acknowledged liability for, a municipal income tax in another municipality on the same income taxable under this chapter, a credit shall be allowed against Waterville income tax of 100% of the tax due; however, said credit shall not apply to the first .5% income tax rate levied in Waterville.
 - (2) If the tax due such other municipality has been paid to or withheld in such other municipality, a resident of Waterville may claim credit for and assign to Waterville any claim for refund to which he may be entitled from such other municipality. In the event an amount is not received by Waterville equal to such credit claimed by reason of tax payments made to or withheld in such other municipality, then the taxpayer shall be liable to Waterville for an amount by which the claimed credit exceeds the amount recovered on such assignment by Waterville, together with penalty and interest. If satisfactory evidence is offered, however, that the taxpayer is entitled to the claim covered by the assignment, such taxpayer shall not be deprived of credit therefore because of fault or neglect on the part of either municipality.
 - (3) Assignment of any claim for refund to which a Waterville resident may be entitled from another municipality shall be tentatively accepted as payment of that portion of Waterville income tax represented by such assignment, provided that an overpayment resulting from the credit allowed by reason of such assignment shall not be refunded until such assignment has been remitted to Waterville by such other municipality.
- (c) Claim for Credits. The claim provided for in (b)(1) and (2) above will not be allowed unless the same are claimed in a timely return or form acceptable to and filed with the Commissioner. In the event a taxpayer fails, neglects, or refuses to file such timely return or form, he shall not be entitled to such credit and shall be liable for the full amount of tax assessed by this chapter, together with such interest and penalties, both civil and criminal, as are prescribed in this chapter.
- (d) Filing Claims. Any claim for credit for income taxes paid another municipality on the same income tax hereunder, or claim for or assignment of any refund due to the credit provided for herein, must be filed with the Commissioner on or before December 31 of the year following that for which such credit is claimed; except that in case such claim for reciprocity refund has been assigned to the municipality of residence, such municipality of residence must file a claim for refund with the Commissioner on or before January 31 next following such December 31. Failure to file such claim for reciprocity credit or refund, or assignment thereof, within the time prescribed herein shall render such credit, claim for refund, or assignment null and void.
- (e) The tax credit provided for in (b)(1) above shall apply to taxable income earned on and after July 1, 1977.
(1980 code 98.15; Ord. 10.82.)
- (f) No credit shall be given for any tax paid to a school district.

171.16 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(a) Pursuant to Ord. 416 (approved by Council on December 19, 1962), Ord. 8-67 (approved by Council on June 26, 1967), and Ord 27-70 (approved by Council on August 31, 1970 and by the voters on November 3, 1970), an annual tax at the rate of 1-1/2% per annum shall continue effective insofar as the levy of taxes is concerned, until repealed. 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 such taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter have been fully terminated.

(b) Pursuant to Ordinance 10-82, approved by Council on August 9, 1982 and by the voters on November 2, 1982, Ordinance 8-87, approved by council on May 11, 1987 and by the voters on August 4, 1987, and Ordinance 2-92, approved by Council on February 10, 1992 and by the voters May 5, 1992, an additional tax at the rate of one-half-of-one-percent (1/2%) per annum, for a total tax at the rate of two percent (2.0%) per annum, shall be effective on and after January 1, 1993 through December 31, 1997, insofar as the levy of taxed is concerned. This section shall extend the one-half-of-one-percent (1/2%) tax levy, for a total of two percent (2%) per annum, for an additional five-year period through December 31, 2002. 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 such taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter have been fully terminated.

(c) Annual returns due for all or any part of the last effective year of this chapter shall be due on the dates provided in Sections 171.05 to 171.07 as though the same were continuing. (Ord. 8-97. Approved by voters 11-4-97.)

171.17 SAVINGS CLAUSE.

If any provision, sentence, clause, section, or part of this chapter is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall affect only that particular sentence, clause, section, or part of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal, or invalid provision, sentence, clause, section, or part thereof not been included herein.

This tax chapter, all subsequent tax ordinances, and all preceding tax ordinances, including all amendments thereto, shall continue to be effective insofar as the collection of taxes levied thereunder until all said taxes, and all penalties and interest thereon, are fully paid, and any and all suits and prosecutions for the collection of said taxes, penalties, and interest, or for the punishment or violation of said ordinances shall have been fully terminated.

171.99 PENALTY.

(a) Whoever violates any provision of this chapter for which no penalty is otherwise provided shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both, for each offense.

(b) Whoever violates Section 171.09(d) shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both. Each disclosure shall constitute a separate offense. In addition, any employee of Waterville who violates Section 171.09(d) shall be subject to immediate dismissal from the municipal service. (1980 Code 98.99; Ord. 416.)

APPENDIX A

Ohio R.C. 718.02 Determination of Income Subject to Tax.

(a) In the taxation of income which is subject to municipal income taxes, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of a municipal corporation shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the municipal corporation, then only such portion shall be considered as having a taxable sites in such municipal corporation for purposes of municipal income taxation. In the absence of such records, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having taxable sites in such municipal corporation for purposes of municipal income taxation in the same proportion as the average ratio of:

- (1) The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in such municipal corporation during the taxable period to the average net book value 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 the preceding paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

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

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.

(b) As used in division (A) of this section, "sales made in a municipal corporation" means:

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

HISTORY:127 v 91. Eff 9-17-57.