

CHAPTER 181
Income Tax

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CROSS REFERENCES

Power to levy income tax - see Ohio Const., Art. XVIII, Sec. 3
Municipal income taxes - see Ohio R.C. Ch. 718

181.01 PURPOSE.

To provide funds for the purpose of general municipal operations, maintenance, new equipment, extension, and enlargement of municipal services and facilities, development and improvement of municipal parks and recreation facilities, and capital improvements of the City of Tallmadge there shall be and is hereby levied a tax of two percent (2%) per annum on salaries, wages, commissions, income, and other compensation, and on net profits as hereinafter provided.

(Ord. 13-2007. Passed 1-25-07.)

181.02 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 indicates or requires a different meaning. The singular shall include the plural, and the masculine shall include the feminine and the neuter. Unless otherwise expressly provided in this Chapter, the definition of any term will be the same as such term is used in a comparable context in the Internal Revenue Code of 1986, as amended.

(a) "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.

(b) "Association" means a partnership, limited partnership, limited liability company, 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 181.13.

(d) "Business" means an enterprise activity, profession, or undertaking of any nature conducted for profit, whether by an individual, partnership, limited partnership, corporation, association or any other entity.

(e) "City" means the City of Tallmadge, Ohio.

(f) "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.

(g) "Domicile" means the permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

(h) "Employee" means an individual whose earnings are subject to the withholding of Federal Income Tax or Social Security Tax, and/or an individual who works for income, qualifying wages, salary, commissions or other types of compensation in the services and under the control of any employer.

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

(j) "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 Tallmadge's regular tax return, estimated payment, and refund request forms, and are in a similar format that will allow processing of the generic forms without altering Tallmadge's procedures for processing forms.

(k) "Gross receipts" means the total revenue derived from sales, work done, or service rendered.

(l) "Income" means all monies, subject to limitations imposed by ORC Chapter 718, derived from any source whatsoever, including but not limited to:

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

(2) 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 Tallmadge.

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

(m) "Joint Economic Development District" means a district created under Ohio R.C. 715.70 through 715.83, as amended from time to time.

(n) "Net Profits" for a taxpayer other than an individual means the "adjusted federal taxable income" as defined in Ohio R.C. §718.01.

(o) "Net Profits" for a taxpayer who is an individual means the individual's profit, other than amounts exempted under Ohio R.C. §718.01(F) and are required to be reported on IRS Schedules C, E, or F.

(p) "Nonresident" means an individual domiciled outside the City of Tallmadge.

(q) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the City of Tallmadge.

(r) "Person" means every natural person, partnership, limited partnership, corporation, fiduciary or association. Whenever used in any section, phrase, or clauses 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.

(s) "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 employees regularly in attendance.

(t) "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.

(u) "Resident" means an individual domiciled in the City of Tallmadge.

(v) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City.

(w) "Tax year" means the calendar year, or the fiscal year upon the basis of which 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.

(x) "Tax Administrator", as designated by Article VI of The Charter of the City of Tallmadge, means the Director of Finance who administers and enforces the provisions of this Chapter.

(y) "Taxable Income", excluding wage or other compensation exempted under "qualifying wages and exemptions described in Section 181.03(e), means salaries, wages, commissions, or any other compensation paid by an employer before any deductions and/or the net profits from the operation of a business, profession, or other enterprise or activity, including rental property. The term "other compensation" includes all forms of earned income, including, but not limited to, tips, tax shelter plans, gifts of any type for services rendered, vacation and holiday pay, wage continuation benefits, director's fees, jury duty fees, stock options granted in connection with the performance of service and not designated as capital gains, property in lieu of cash, sick pay, bonuses, severance pay and any payments for covenants not to compete or the like when accrued, incentive payments in whatever form, company closing benefits,

supplemental unemployment benefits, earnings designated as deferred compensation or compensation paid by an employer in whatever form for services rendered, employer paid premiums for group-term insurance in excess of fifty thousand dollars (\$50,000), strike benefits, depreciation recapture, ordinary income shown on Federal Form 4797, and a resident partner's or stockholder's distributive share of a nonresident partnership or S-corporation net profits (whether received as wages paid or a draw from a drawing or capital account and whether received or accrued). "Taxable income" also includes income reported on federal tax returns from gaming, wagering, lotteries (including the Ohio or any other State lottery), and schemes of chance effective during the year in which such income from gaming, wagering, lotteries, or schemes of chance is received.

(z) "Taxpayer" means a person, whether an individual, partnership, limited partnership, corporation, association or other entity, required hereunder to file a return and/or to pay a tax hereunder.
(Ord. 13-2007. Passed 1-25-07.)

181.03 IMPOSITION OF TAX.

(a) Subject to the provisions of Section 181.16, an annual tax for the purposes specified in Section 181.01 hereof shall be imposed at the rate of two percent (2%) per annum commencing March 1, 2004 upon the following:

(1) On all income earned and/or received during the effective period of this Chapter by residents of the City of Tallmadge. For further clarification "income" includes, but is not limited to, lottery, gambling winnings, sports winnings, games of skill, and games of chance. No deductions shall be permitted against income from lottery, gambling winnings, sports winnings, games of skill, and games of chance.

(2) On all income earned and/or received during the effective period of this Chapter by nonresident individuals for work done or services performed in the City of Tallmadge. Income earned and/or received as holiday, sick, and/or vacation pay is taxable to the City of Tallmadge. 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 the City of Tallmadge. However, the City of Tallmadge shall not tax the compensation of an individual if all of the following apply:

A. The individual does not reside in the City of Tallmadge.

B. The compensation is paid for personal services performed by the individual in the City of Tallmadge on twelve or fewer days during the calendar year. A day is a full day or any fractional part of a day.

C. 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 of Tallmadge and the individual pays tax on compensation described in subsection (b) hereof to the City, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual.

D. 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 of Tallmadge.

(3) On the portion attributable to the City of Tallmadge of the net profits earned during the effective period of this Chapter of all resident and nonresident corporations, unincorporated businesses, professions, or other entities, derived from sales made, work done, services performed or rendered, and business or other activities conducted in the City of Tallmadge, whether or not such corporations have an office or place of business in the City of Tallmadge.

(4) On the portion of the distributive share of the net profits earned and/or received during the effective period of this Chapter of resident partners, resident S-corporation shareholders or owners of resident and nonresident unincorporated business entities and S-corporations not attributable to the City of Tallmadge and not levied against such business entity. Provided, however, that the liability of an individual partner or owner taxable hereunder shall be subject to the provisions of Section 181.15 hereof.

(b) The portion of the net profits attributable to the City of Tallmadge of a taxpayer conducting a business, profession or other activity both within and without the boundaries of the City of Tallmadge 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 Tax Administrator pursuant to this Chapter.

(c) Business or Rental Loss.

(1) A business or rental loss is not allowed as an offset against Federal Form W-2 income.

(2) A business or rental loss may only be applied in the year in which it is incurred.

(3) Excluding rentals, a taxpayer's net profits and losses from businesses operating within Tallmadge may be combined to determine the profit or loss attributable to operations within Tallmadge.

(4) A taxpayer's net profits and losses from rentals within Tallmadge may be combined to determine the profit or loss attributable to rental operations within Tallmadge.

(d) 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 of Tallmadge. However, once the affiliated group has elected to file a consolidated return or a separate return with the City of Tallmadge, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the City of Tallmadge.

(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 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 of Tallmadge. If the Tax Administrator finds net profits are not properly allocated to the City of Tallmadge 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 of Tallmadge.

(e) Exemptions.

(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) 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 the said income is exempt from federal income tax.

(3) Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from seasonal or casual entertainment, amusement, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations and only to the extent that the said income is exempt from Federal Income Tax.

(4) Social security benefits, unemployment compensation (excluding supplemental 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 a permanent nature as determined by a physician or government entity.

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

(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) Gains from involuntary conversions, cancellation of indebtedness, items of income already taxed by the State of Ohio 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).

(8) Compensation paid to a precinct election official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually.

(9) Income of all individuals under eighteen years of age, whether residents or nonresidents.

(10) Alimony received.

(11) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained clergy's compensation. The clergy must be duly ordained, commissioned, or licensed by a religious body constituting a religious denomination, and must have authority to perform all sacraments of the religious body.

(12) 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.

(Ord. 13-2007. Passed 1-25-07.)

181.04 EFFECTIVE DATE.

Said tax shall be levied, collected, and paid with respect to the salaries, qualifying wages, commissions, income, and other compensation, and with respect to the net profits of businesses, professions, or other activities earned from and after March 1, 2004.

(Ord. 13-2007. Passed 1-25-07.)

181.05 RETURN AND PAYMENT OF TAX.

(a) Each taxpayer shall, whether or not a tax be due thereon, make and file a return or an exemption form, as appropriate, on or before April 15 of the year following the effective date of this Chapter and on or before April 15 of each year thereafter. When the return is made for a fiscal year or period different from the calendar year, the return shall be filed on or before the 15th day of the fourth month from the end of such fiscal year or period.

(1) Retirees having no income considered taxable for Tallmadge income tax purposes may file, with the Tax Administrator, a written request for exemption from these filing requirements, and shall be exempt if the request is granted by the Tax Administrator. The request may be submitted by indicating, on the taxpayer's annual tax return, the retirement date and the entity from which retired.

(2) The exemption shall be in effect until such time as the retiree receives income taxable to Tallmadge, at which time the retiree shall be required to comply with all applicable provisions of this Chapter.

(b) The return shall be filed with the Tax Administrator on a form or forms prescribed by the Tax Administrator or obtainable upon request from the 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 the gross receipt, earned during the preceding year and subject to the tax;

(2) The amount of the tax imposed by this subsection on earnings and profits; and

(3) Any other pertinent statements, information returns or other information as the Tax Administrator may require, including a statement that the figures used in the return are the figures used in the return for federal income tax, adjusted to set forth only that income as is taxable under the provisions of this

subsection, and including but not limited to 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, 1065, Schedule C (including cost of goods manufactured and/or sold), Schedule E, Schedule F and any other Federal Schedules, if applicable.

(c) The Tax Administrator may extend the time for filing of the annual return upon the written request of the taxpayer.

(1) In the case of 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.

(2) In the case of 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 annual return is filed through the Ohio Business Gateway. If not filed through the Ohio Business gateway the extended due date remains the last day of the month following the month to which the due date of the federal income tax return has been extended.

(3) The Tax Administrator may deny the extension if the extension request is not filed by the original annual return due date, or if the taxpayer's income tax account with the City of Tallmadge is delinquent in any way.

(4) The Tax Administrator may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. If the estimated tax is not paid at this time, such tax will be subject to interest and penalty as provided in Section 181.10 from the date it was normally due.

(d) Payment and Refunds.

(1) The taxpayer making a return shall, at the time of the filing thereof, pay to the Tax Administrator the balance of tax due, if any.

(2) Expenses reported on federal form 2106 are deductible, but are subject to review and audit by the Tax Administrator. The 2106 expenses must be apportioned to municipalities in the same manner to which the related income is apportioned.

(3) Should the return, or the records of the Tax Administrator, indicate an overpayment of the tax to which the City of Tallmadge is entitled under the provisions of this Chapter, such overpayment shall first be applied against any existing liability, then the balance, if any, at the election of the taxpayer communicated to the Tax Administrator, shall be refunded or transferred against any subsequent liability or contributed to any special funds selected by the

taxpayer as regulated by the Tax Administrator. However, no additional taxes or overpayments of less than five dollars (\$5.00) shall be collected or refunded.

(e) An individual, association, corporation, or other entity engaged in the business of construction work and who will perform construction work in the City of Tallmadge shall obtain a tax account number, issued by the Tax Administrator prior to beginning construction work. The Tax Administrator shall also issue a Certificate of Registration, which the contractor shall file with the Building Department. Failure to possess a valid Certificate shall be cause for suspension of work by the Building Department and/or the Tax Administrator prior to the construction work commencing and/or during the performance of the construction work. Proof of possession of a valid Certificate shall be necessary to commence or resume suspended construction work. The Certificate of Registration may be revoked by the Tax Administrator for failure by the contractor to remain current in the filing of required payment of taxes, reporting withholding, and for failure to otherwise comply with this Chapter. All employers that provide any contractual service within the City, and who employ subcontractors in conjunction with that service shall, prior to commencement of the service, provide the City the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax employer requirements under this Chapter.

(f) Any business, profession, association, corporation, or other entities reporting a net loss is subject to the filing requirements of this Chapter.

(g) The officer(s) or employee(s) of such employer having control or supervision or charged with the responsibility of making the return and/or payment (including any tax, penalties, or interest due as required herein), shall be personally liable for failure to do so. 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 make the return and/or pay taxes, penalties, or interest due.

(h) 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 limitations contained in Sections 181.11 and 181.15. The amended returns shall be on a form obtainable on request from the 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 the original return.

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

final determination of federal tax liability and pay any additional tax shown due thereon or make claim for refund of any overpayment.
(Ord. 13-2007. Passed 1-25-07.)

181.06 COLLECTION AT SOURCE.

(a) Each employer within or doing business within the City of Tallmadge who employs one or more persons shall, at the time of the payment thereto, without regard to any alleged credit, deduction, or exemption available under local, state, or federal statute, deduct the amount of tax due based upon the rate in effect at that time from the qualifying wages, commissions, income, or other compensation earned by the City of Tallmadge residents, regardless of where such compensation was earned, and shall deduct the amount of tax due based upon the rate in effect at the time of payment from the qualifying wages, commissions, income, or other compensation earned within the City of Tallmadge by nonresidents. For purposes of calculating taxes to be withheld from nonresident employees, the employer shall determine the amount of gross wages and other compensation allocable to the City of Tallmadge pursuant to Ohio R.C. 718.02. The employer shall consistently allocate the employer's gross income in the same manner. This determination shall be prima facie evidence of where the taxpayer-employee's compensation was earned and may be rebutted only upon submission of tax returns filed in other jurisdictions or such other evidence satisfactory to the Tax Administrator. The withheld tax shall be remitted as follows:

(1) Quarterly payments of tax withheld are required if the total amount of tax withheld by an employer in the prior calendar year averaged less than one hundred dollars (\$100.00) per month.

(2) Monthly payments of tax withheld are required if the average amount of tax withheld by an employer in the prior calendar year is equal to or greater than one hundred dollars (\$100.00) per month, but does not exceed one thousand dollars (\$1,000.00) per month.

(3) Semimonthly payments of tax withheld are required if the average amount of tax withheld by an employer in the prior calendar year exceeds one thousand dollars (\$1000.00) per month. At the discretion of the taxpayer, payments may be submitted more frequently than semimonthly.
(Ord. 13-2007. Passed 1-25-07.)

(b) Every employer, in collecting said tax, shall be deemed to hold the same, until payment is made by such employer to the City of Tallmadge as a Trustee for the benefit of the City of Tallmadge. Any such tax collected by such employer from its employees shall, until the same is paid to the City of Tallmadge, be deemed a trust fund in the hands of such employer.

(1) Subject to rules of the Tax Administrator, every employer required to deduct and withhold any amount under this chapter shall make payment by electronic funds transfer or by election to pay through the Ohio Business Gateway (OBG), subject to subsection (b)(4) below.

(2) The payment of taxes by electronic funds transfer or through the OBG does not affect an employer's obligation to file the returns as required under this chapter. The Tax Administrator may adopt rules governing the format for filing the returns under this section by employers who remit undeposited taxes by electronic funds transfer or through the OBG. The rules may permit the filing of returns at less frequent intervals than required hereunder if the Tax Administrator determines that remittance by electronic funds transfer or through the OBG warrants less frequent filing of returns.

(3) The Tax Administrator shall adopt rules governing the remittance of taxes by electronic funds transfer as required under this chapter. The rules shall govern the modes of electronic funds transfer and under what circumstances each mode is acceptable, the content and format of electronic funds transfers, the coordination by payment of electronic funds transfer, and the filing of associated tax reports and returns, and any other related matter that in the discretion of the Tax Administrator, facilitates payment by electronic funds transfer.

(4) The Tax Administrator may grant an exemption to an employer from the duty to make payment by electronic funds transfer based upon a demonstration of substantial hardship to the employer. Additionally, the Tax Administrator may establish a priority of electronic payors based upon the number of employees or the utilization third party payroll administrators in order to phase in this requirement.

(5) The Tax Administrator may implement a means of acknowledging, upon request of a taxpayer, receipt of tax remittances made by electronic funds transfer, and may adapt rules governing acknowledgments. The cost of acknowledging receipt of electronic remittances shall be paid by the person requesting acknowledgment.
(Ord. 17-2008. Passed 2-14-08.)

(c) Such returns shall be on a form or forms prescribed by or acceptable to the Tax Administrator and shall be subject to the rules and regulations prescribed therefore by the Tax Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

(d) The officer or employee having control or supervision, or charged with the responsibility of withholding the tax, filing the return and/or making the payment, shall be personally liable for the 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.

(e) (1) On or before February 28 of each year, each employer shall file a withholding return setting forth the name, address, and social security number 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 Tax administrator.

(2) On or before February 28 of each year all individuals, businesses, employers, brokers or others who engage persons, either on a fee or commission basis or as independent contractors and not employees (i.e., those who are not subject to withholding) must provide the Tax Administrator with copies of all 1099 Miscellaneous Income Forms and/or a list of names, addresses, Social Security numbers and a total amount of earnings, payments, bonuses, commissions and/or fees paid to each person.
(Ord. 13-2007. Passed 1-25-07.)

181.07 DECLARATIONS.

(a) Every person who anticipates any taxable income, which is not subject to Section 181.06 hereof, or who engages in any business, profession, enterprise, or activity subject to the tax imposed by Section 181.03 hereof, shall file a declaration setting forth the estimated taxable income or the estimated profit or loss from such business activity together with the estimated tax due thereon. The declaration must be filed only if the estimated tax not withheld in whole or in part exceeds four hundred dollars (\$400.00).

(b) (1) Such declaration shall be filed on or before April 15 of each year or within four (4) months of the date the taxpayer first becomes subject to the tax or within three (3) months of having a tax liability which exceeds four hundred dollars (\$400.00).

(2) Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the 15th day of the fourth month after the beginning of each fiscal year.

(c) (1) Such declaration shall be filed on a form obtainable from the Tax Administrator. Credit shall be taken for the City of Tallmadge income tax to be withheld, if any, from any portion of such taxable income. In addition, credit may be taken for tax payable to other taxing municipalities in accordance with the provisions of Section 181.15 hereof.

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

(d) The taxpayer making the declaration shall, at the time of filing thereof, pay to the Tax Administrator at least twenty-five percent (25%) of the estimated annual tax due after deducting:

(1) Any portion of such tax withheld at the source pursuant to Section 181.06 hereof;

(2) Any credits allowable under the provisions of Section 181.15 hereof;
and

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

(e) If the taxpayer is an individual, at least a similar amount to that paid in accordance with paragraph (d) shall 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. In the case where an amended declaration has been filed, the unpaid balance shall be paid in equal installments on or before the remaining payment dates.

(f) If the taxpayer is a corporation or association, at least a similar amount to that paid in accordance with paragraph (d) shall be paid on or before the fifteenth day of the sixth, ninth, and twelfth months of the taxable year. In the case where an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(g) No penalties or interest shall be assessed, for not filing a declaration, on any resident taxpayer who was not domiciled in the City on the first day of January in the year in which they became subject to estimated payments, nor shall penalties or interest be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period and the taxpayer filed a return for that year, nor shall penalties or interest be assessed on estimated payments if the taxpayer has remitted an amount equal to ninety percent of the final tax liability for the tax year due on or before April 15th of the current year.

(Ord. 114-2008. Passed 12-11-08.)

181.08 DUTIES OF THE ADMINISTRATOR.

(a) (1) It shall be the duty of the Tax Administrator to collect and 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 money so received.

(2) It shall be the duty of the Tax Administrator to enforce payment of all taxes owed to the City of Tallmadge, to keep accurate records for a minimum of six (6) years showing the amount due from each taxpayer required to make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

(b) The Tax Administrator is hereby charged with the enforcement of the provisions of this Chapter, and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this Chapter, including provisions for the re-examination and corrections of returns. Taxpayers are required to comply with the requirements of this Chapter and any rules and regulations.

(1) The Tax Administrator is authorized to arrange for the payment of unpaid taxes, interest, and penalties on a schedule of installment payments when the taxpayer has proved to the Tax Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due.

(2) (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 181.11 and 181.12 shall apply.

(c) In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Administrator may determine the amount of tax appearing to be due the City of Tallmadge 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. If the taxpayer fails to respond to the assessment within thirty days, the tax, penalties, and interest assessed shall become due and payable and collectible as are other unpaid taxes, penalty, and interest. Failure to substantiate the taxpayer's return and absent such proof, the determination of the Tax Administrator shall be final, subject to the provisions of Section 181.13.

(d) Subject to review by the Board of Review or pursuant to regulation approved by said Board, the Tax Administrator shall have the power to compromise any interest or penalty, or both, as set forth in Section 181.10. (Ord. 13-2007. Passed 1-25-07.)

181.09 INVESTIGATIVE POWERS OF THE ADMINISTRATOR - PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

(a) The Tax Administrator, or any authorized 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, or who the Tax Administrator believes is subject to the provisions of this Chapter, for the purpose of verifying the accuracy of any return made, or if no return was made, to ascertain the tax due under this Chapter. Every such employer, supposed employer, taxpayer, or supposed taxpayer is hereby directed and required to furnish within ten days of the mailing of a written request by the Tax Administrator, or a duly authorized agent or employee, the means, facilities, and opportunity for making such examinations and investigations as are hereby authorized.

(b) The Tax Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before the Tax Administrator or a duly authorized employee and may examine such person under oath concerning any income which was or should have been reported for taxation or any transaction tending to affect such income, 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 it is believed such persons have knowledge of such income or information pertinent to such inquiry.

(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 or by any officer, agent, or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this section or with an order of subpoena of the Tax Administrator authorized hereby shall be deemed a violation of this Chapter, punishable as provided in Section 181.12 hereof.

(d) (1) Any information gained as the result of any returns, investigations, hearings, or verifications required or authorized by this Chapter shall be confidential and no disclosure thereof shall be made, except to Municipal, State, or Federal Agencies for official tax purposes, 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 misdemeanor of the first degree and shall be subject to a fine or penalty of not more than one thousand dollars (\$1,000) or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense.

(2) In addition to the above penalty any employee or appointed official of the City of Tallmadge who violates the provisions of this section relative to the

disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(Ord. 13-2007. Passed 1-25-07.)

181.10 INTEREST AND PENALTIES.

(a) All taxes imposed and all money withheld or required to be withheld by employers under the provisions of this Chapter and remaining unpaid after they become due shall bear interest at the rate of one and one-half percent (1 1/2%) per month or fraction thereof and, effective for tax year 2007 and subsequent years one and one-half percent (1 1/2%) or fraction thereof, compounded monthly.

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

(1) For failure to pay taxes due, other than taxes withheld: One and one-half percent (1 1/2 %) per month, or fraction of a month thereof, compounded monthly.

(2) Any person required to withhold the tax who fails to withhold such tax, or pay such tax or attempts in any manner to evade such tax or the payment thereof, shall be liable for the amount of tax withheld plus a penalty equal to one hundred percent (100%) of the amount due if the tax is not paid within thirty days from the date due. No other penalty under this section shall be applied to any offense to which this penalty is applied.

(3) For failure to remit taxes withheld from employees: Five percent (5%) per month, or fraction of a month thereof, compounded monthly.

(4) Any person who fails, neglects, or refuses to make any return or declaration required by this Chapter shall be subject to the levy and imposition of a twenty-five dollar (\$25.00) late fee.

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

(d) Either the Tax Administrator hereunder or the Board of Review may abate penalty or interest, or other fees, for good cause shown.

(Ord. 13-2007. Passed 1-25-07.)

181.11 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENT.

(a) All taxes imposed by this Chapter shall be collectible, together with any interest and penalties. All additional assessments shall be made and 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 a Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations, the period within which all additional assessment may be made by the Tax Administrator shall be one (1) year from the time of the final determination of the federal tax liability.

(b) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date that such payment was made or the return was due or within three (3) months after final determination of the federal tax liability, whichever is later. In addition, 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.

(c) Income tax that has been deposited with the City of Tallmadge, but should have been deposited with another municipality, is allowable by the City of Tallmadge as a refund but is subject to the three-year limitation on refunds. Income tax that should have been deposited with the City of Tallmadge, but was deposited with another municipality, shall be subject to recovery by the City of Tallmadge. The City of Tallmadge will allow a non-refundable credit for any amount owed the City of Tallmadge 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 Tallmadge tax rate. If the City of Tallmadge tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the City of Tallmadge.

(Ord. 13-2007. Passed 1-25-07.)

181.12 VIOLATIONS; PENALTIES.

(a) No person shall:

(1) Fail, neglect, or refuse to make or file any return or declaration required by this Chapter; or

(2) Make any incomplete, false, or fraudulent return; or

(3) Fail, neglect, or refuse to pay the tax, penalties, or interest imposed by this Chapter; or

(4) Fail, neglect, or refuse to withhold the tax from his employees or remit such withholding to the Tax Administrator; or

(5) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his records, books, papers, and Federal and State income tax returns relating to the income or net profits of a taxpayer; or

(6) Fail to appear before the Tax Administrator and to produce his books, records, papers, or Federal and State income tax returns relating to the income or net profits of a taxpayer upon order of subpoena of the Tax Administrator; or

(7) Refuse to disclose to the Tax Administrator any information with respect to the income or net profits of a taxpayer; or

(8) Fail to comply with the provisions of this Chapter or any order or subpoena of the Tax Administrator authorized hereby; or

(9) 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

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

(11) Attempt to do anything whatever to avoid or evade 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 above shall be guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than six (6) months, or both, for each offense.

(c) Prosecution for an offense made punishable under this section or any other provision of this Chapter shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of taxable income, prosecution may be commenced within six (6) years after the commission of the offense.

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

(Ord. 13-2007. Passed 1-25-07.)

181.13 BOARD OF REVIEW.

(a) The Board of Review consists of three individuals each to be appointed by the Mayor. The members of such Board shall serve for a three (3) year term such that one member's term shall expire each year. Any member is eligible for reappointment to the Board of Review. No compensation shall be paid to the members unless otherwise provided by Council. All members of the Board of Review shall be resident citizens of Tallmadge. Any Board member may be removed from office due to misfeasance, nonfeasance, malfeasance, or nonattendance to duty, and removal shall be made by the Mayor. Removal shall become effective upon receipt of notice either personally or by certified mail.

(b) A majority of the members of the Board shall constitute a quorum. The Board shall elect a Chair, Vice-Chair, and Secretary from its membership. The Board shall adopt its own procedural rules and shall keep a record of its transactions. The Board shall follow Robert's Rules of Order, except as its own adopted procedures differ.

(c) Any person dissatisfied with any ruling or decision of the Tax Administrator, which is made under the authority conferred by this Chapter, and who has filed the required returns or other documents pertaining to the contested issue, may make a written appeal therefrom to the Board of Review within thirty (30) days from the date such ruling or decision is mailed by the Tax Administrator to the taxpayer's last known address. The request shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall only hear and pass on written appeals from any ruling or decision of the Tax Administrator.

(d) Any hearing by the Board shall be conducted privately within forty-five (45) days of the filing of the appeal and the provisions of Section 181.09 hereof with reference to the confidential character of information required to be disclosed by this Chapter shall apply to such matters as may be heard before the Board of Review. The Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any such ruling or decision, or any part thereof. The taxpayer has the option to be represented at any conference or appeal by an attorney, a Certified Public Accountant, or officer or full-time employee of the taxpayer's organization.

(e) The Board shall issue a final decision on the appeal within ninety (90) days after the Board's final hearing and send a copy of its final decision by ordinary mail to all the parties within fifteen (15) days.

(f) Any person dissatisfied with any ruling or decision of the Board of Review on his or her appeal may appeal therefrom to a court of competent jurisdiction within thirty (30) days from the entry of the final order of the Board. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Review may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

(g) All rules and regulations and amendments or changes thereto, which are adopted by the Tax Administrator under the authority conferred by this Chapter, must be approved by the Board of Review before the same become effective. After approval, such rules, regulations, amendments, and changes shall be filed with the Clerk of Council and shall be open to public inspection.

(h) The Board of Review shall have the authority to absolve, upon recommendation of the Tax Administrator, delinquent income tax revenues deemed to be uncollectable.

(Ord. 13-2007. Passed 1-25-07.)

181.14 ALLOCATION OF FUNDS.

(a) The funds collected under the provisions of this Chapter shall be paid into the General Fund of this municipality and applied for the following purposes:

(1) At least ten percent (10%) of the gross funds collected each year shall be appropriated to Capital Improvements, including storm sewers, street paving, including curbs and gutters, sidewalks, street and road surfacing and resurfacing, development of public water supply and location of source thereof, and for the acquisition of lands and buildings, including the construction thereof, park and recreation program for the acquisition, maintenance, development and improvement of the Parks and Recreation facilities and programs of the City for the use of the residents of the City of Tallmadge, including equipment, furniture and fixtures having an estimated life or usefulness of five years or more as defined by Ohio Uniform Bond Law. Expenditures for such capital improvements may include the necessary costs of engineering and other costs of the City, including the payment of principal and interest on debt issued on capital projects.

(2) Any remaining money shall be used for the General Operation of the City, including all department, commission, and board functions and for the costs of implementing, collecting, and enforcing the tax levied by this Chapter. (Ord. 13-2007. Passed 1-25-07.)

181.15 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY OR JEDD.

(a) When a resident of this municipality is subject to a municipal income tax in another municipality or in a joint economic development district, he shall not pay a total municipal income tax on the same taxable income greater than the tax imposed at the higher rate. Credit shall be given for municipal taxes withheld or paid to another municipality or joint economic development district. Such credit shall be limited to the amount of taxes, which would have been paid at the Tallmadge tax rate and applies to each Federal Form W-2 or taxpayer's taxable income separately. Credit for taxes shall not be granted against tax liability on income not actually taxed.

(b) Every individual taxpayer who resides in this municipality who receives net profits, salaries, wages, commissions, or other forms of income received from sources outside of this municipality, if it be made to appear that he has paid a municipal income tax on the same income taxable under this Chapter to another municipality or joint economic development district, shall be allowed a credit against the tax imposed by this Chapter in the amount so paid by him or on his behalf to such other municipality or joint economic development district. The credit shall not exceed the tax assessed by this Chapter on such taxable income earned in such other municipality or municipalities or joint economic development districts where such tax is paid.

(c) A claim for refund or credit under this section shall be made in such manner as the Tax Administrator may by regulation provide.
(Ord. 13-2007. Passed 1-25-07.)

181.16 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 clause, sentence, section, or part of this Chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this Chapter. It is hereby declared to be the intention of the Council of the City of Tallmadge that this Chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

(Ord. 13-2007. Passed 1-25-07.)

181.17 COLLECTION AFTER TERMINATION OF LEVY OF TAX.

(a) This Chapter shall continue in effect insofar as the levy of taxes is concerned until the same has been repealed. Insofar as the collection of taxes levied or enforcing any provision of this Chapter are concerned, it shall continue in effect until all of such taxes levied in the aforesaid period are fully paid and all suits and prosecutions for the collection of such taxes, or for the punishment of violations of this Chapter, shall have been fully terminated. The provisions of Section 181.17 (a) are subject to the limitations contained in Sections 181.11 and 181.12.

(b) 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 181.05 through 181.06, as though the same were continuing.

(Ord. 13-2007. Passed 1-25-07.)

181.18 AMENDMENT BY COUNCIL.

Council may determine that the terms and conditions of the income tax law require amendment. Council may amend this Chapter as to terms and conditions contained herein, but may not amend the rate of taxation without submitting such question to the electorate for approval.

(Ord. 13-2007. Passed 1-25-07.)

181.19 SCOPE.

This Chapter is not intended nor will it affect any provisions of the preceding income tax ordinances when the provisions thereof are applicable to income earned on or before March 1, 2004.

(Ord. 13-2007. Passed 1-25-07.)

CODIFIED ORDINANCES OF TALLMADGE