

TITLE III: ADMINISTRATION / CHAPTER 33 INCOME TAX

CHAPTER 33 Municipal Income Tax Effective 2015 and Prior Tax Years For taxable years beginning with taxable year 2015 and prior

CHAPTER 33: INCOME TAX

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Statutory reference:

Municipal income taxes, see R.C. Ch. 718

§ 33.01 PURPOSE.

To provide funds for purposes of:

(A) The design and installation of storm sewers, street improvements and repairs, the acquisition of right-of-way for storm sewers and streets, debt retirement and capital improvements for the village;

(B) Parks and recreational programs for the village; and

(C) Acquiring, constructing and otherwise improving village streets, sidewalks, sewers and other capital improvements, there is hereby levied a tax on all salaries, wages, commissions and other compensation, and on net profits as hereinafter provided.

(Ord. 1171, passed 5-26-1966; Res. 1192, passed 11-28-1966; Am. Ord. 76-1, passed 1-5-1976; Am. Ord. 80-49, passed 8-18-1980; Am. Ord. 81-39, passed 9-21-1981; Am. Ord. 85-34, passed 8-5-1985; Am. Ord. 90-44, passed 7-16-1990; Am. Ord. 95-46, passed 6-19-1995; Am. Ord. 99-06, passed 5-24-1999)

§ 33.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless 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.

ADJUSTED FEDERAL TAXABLE INCOME. Federal taxable income before net operating losses and special deductions as determined under the Code, adjusted as set forth in R.C. § 718.01, including any amendments or successor provisions thereto.

ASSOCIATION. A partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons other than a pass-through entity.

BOARD OF REVIEW. The Board created by and constituted as provided in § 33.12 of this chapter.

BUSINESS. An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit by any person. **BUSINESS** conducted within the village includes the direct or indirect ownership of an interest in a pass-through entity that conducts business within the village.

BUSINESS ALLOCATION PERCENTAGE. The average percentage arrived at by applying the formula set forth in § 33.03(B)(1) of this chapter. The **BUSINESS ALLOCATION PERCENTAGE** is the percentage which may be applied to determine the portion of the entire net profits of a taxpayer to be allocated as having been made within the village within the meaning of the provisions of § 33.03.

CHAPTER. Chapter 33 of the Codified Ordinances of the village.

CODE. The Internal Revenue Code of 1986, as amended.

COMPENSATION. All remuneration and reward of every kind and nature received by an employee from his or her employer as a result of his or her employment, including salaries, wages, commissions, wage continuation payments during periods of disability or sickness, vacation pay, severance pay and all amounts withheld from gross salary, wages and commissions, such as, for example, employment taxes, income taxes, contributions to employee benefit, medical or hospital plans and union dues. For taxable years beginning on or after January 1, 2004, compensation of an employee means qualifying wages.

CORPORATION. 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 or any entity treated as a corporation for federal income tax purposes. The term **CORPORATION** does not include a limited liability company or other entity that is treated as a partnership for federal income tax purposes. For taxable years beginning on or after January 1, 2002, **CORPORATION** shall include an "electric company" and a "combined company" as defined in R.C. § 5727.01. For taxable years beginning on or after January 1, 2004, **CORPORATION** shall include a "telephone company," as defined in R.C. § 5727.01. The tax imposed under this chapter on the net profits of an electric company, telephone company or a combined company shall be subject to and in accord with R.C. Chapter 5745.

EMPLOYEE. One who works for compensation in the service of an employer.

EMPLOYER. A person, 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 compensation basis.

FISCAL YEAR. An accounting period of 12 months or less ending on any day other than December 31. A **FISCAL YEAR** will be recognized only if it has been or may be recognized as such by the Commissioner of Internal Revenue for the purpose of Federal Income Tax.

GROSS RECEIPTS. The total income from any source whatsoever.

INTANGIBLE INCOME. That income specified in R.C. § 718.01(A)(5), including any amendments or successor provisions thereto, and includes any of the following types of income: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property, including, but not limited to, investments, deposits, money, or credits as those terms are defined in R.C. Chapter 5701, including any amendments or successor provisions thereto, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. **INTANGIBLE INCOME** does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.

LIMITED LIABILITY COMPANY. A limited liability company formed under R.C. Chapter 1705 or under the laws of any other state.

NET PROFITS. A net gain from the operation of a business, profession, enterprise or other activity after provisions for all ordinary and necessary expenses, either paid or accrued in accordance with the accounting system used by the taxpayer for Federal Income Tax purposes, without deduction of taxes imposed by this chapter, federal, state and other taxes based on income; 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.

(1) For taxable years beginning on or after January 1, 2004, **NET PROFITS** means, in the case of a corporation, the corporation's federal taxable income before net operating losses and special deductions as determined under the Code, adjusted as follows:

(a) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a business or assets held for the production of income.

(b) Add an amount equal to 5% of intangible income deducted pursuant to the immediately preceding subsection, but exclude that portion of intangible income directly related to the sale, exchange, or other disposition of property described in Section 1221 of the Code.

(c) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Code;

(d) Deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Code. This deduction does not apply to the extent the income or gain is income or gain described in Section 1245 or 1250 of the Code.

(e) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.

(f) In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors allowed as a deduction in the computation of federal taxable income.

(2) For taxable years beginning on or after January 1, 2004, the **NET PROFITS** of a pass-through entity shall be computed as if the pass-through entity were a corporation, except: (i) guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member or former member shall not be allowed as a deductible expense; and (ii) amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee, amounts paid or accrued to or for health insurance for an owner or

owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction. For taxable years beginning on or after January 1, 2004, NET PROFITS means, in the case of a sole proprietorship, the profit shown by the individual on Internal Revenue Service Schedule C, Schedule E, and/or Schedule F. Net profits shall be determined in accordance with (i) the accounting method used by the taxpayer for federal income tax purposes and (ii) the Code, Treasury Regulations, federal case law interpreting these authorities and administrative authorities promulgated by the Internal Revenue Service.

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

NON-RESIDENT. An individual domiciled outside the village.

NON-RESIDENT OWNER. An individual domiciled outside the village who has a direct or indirect ownership interest in a pass-through entity that conducts business in the village and a corporation that has a direct or indirect ownership interest in a pass-through entity that conducts business in the village.

OWNER. An individual, partner, member or any other person having an ownership interest in a pass-through entity or an association.

PASS-THROUGH ENTITY. A partnership, limited liability company that is treated as a partnership for federal income tax purposes, or any other class of entity the income or profits from which are given pass-through treatment under the Code. Pass-through entity does not include S corporations.

PERSON. Every natural person, pass-through entity, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term PERSON, as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

PLACE OF BUSINESS. Any bona fide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his or her regular employees regularly in attendance. A taxpayer does not have a regular place of business outside the village solely by consigning goods to an independent factor or contractor outside the village for sale.

QUALIFYING WAGES. Wages, as defined in Section 3121(a) of the Code, without regard to any wage limitations, adjusted in accordance with R.C. § 718.03(A), including any amendments or successor provisions thereto, to (i) deduct any amount included in such wages if the amount constitutes compensation attributable to a plan or program described in Section 125 of the Code (i.e., a cafeteria plan), (ii) add any amount not included in such wages for the taxable year solely because the employee was employed by the employer prior to April 1, 1986, (iii) add any amount not included in such wages if the amount is an employee contribution or deferral described in Section 401(k) or 457 of the Code, and (iv) add any amount that constitutes supplemental unemployment compensation benefits described in Section 3402(a)(2) of the Code and that was not included in such wages. Qualifying wages includes compensation attributable to a nonqualified deferred compensation plan or program described in Section 3121(v)(2)(C) of the Code and compensation from employment arising from the sale, exchange or other disposition of a stock option, the exercise of a stock option, or the sale, exchange or other disposition of stock purchased under a stock option. QUALIFYING WAGES does not include compensation deferred before January 1, 2004, to the extent that such deferred compensation would not be treated as wages within the meaning of Section 3121(a) of the Code at the time

such deferred compensation is paid or distributed. For purposes of employer withholding under § 33.06 of this chapter, qualifying wages shall be determined in the same manner as set forth above, except that amounts included in wages under Section 3121(a) of the Code shall also be deducted to the extent that such amounts constitute payment on account of sickness or accident disability.

R.C. The Ohio Revised Code; unless otherwise identified, the number following refers to a section of the Ohio Revised Code.

RECIPROCITY CREDIT. The credit granted by a taxing municipality to its residents for income taxes paid to another taxing municipality.

RESIDENT. An individual domiciled in the village.

RESIDENT OWNER. An individual domiciled in the village who has an ownership interest in a pass-through entity.

S CORPORATION. A corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Code for its taxable year.

STATE. The State of Ohio.

TAX COMMISSIONER. The person so designated and appointed by the Mayor and approved by the Village Council or the person executing the duties of the aforesaid Commissioner.

TAXABLE INCOME. The income specified in § 33.03 as subject to the tax imposed under this chapter.

TAXABLE YEAR. The calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this chapter and, in the case of a return for the fractional part of a year, the period for which the return is required to be made. The taxable year of an individual shall be the calendar year, unless the individual has received approval for and uses a different taxable year for federal income tax purposes.

TAXING MUNICIPALITY. Any Ohio municipal corporation, other than the village, levying a municipal income tax on taxable income.

TAXPAYER. A person, whether an individual, pass-through entity, association, or any corporation or other entity, subject to the tax imposed by this chapter and required hereunder to file a return or pay such tax. TAXPAYER does not include any person that is a disregarded entity or qualifying subchapter S subsidiary for federal income tax purposes, but TAXPAYER includes any person who owns the disregarded entity or qualifying subchapter S subsidiary.

VILLAGE. The Village of Archbold, Ohio.

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966; Am. Ord. 71-41, passed 12-20-1971; Am. Res. 71-42, passed 12-20-1971; Am. Res. 90-84, passed 12-17-1990)

§ 33.03 IMPOSITION OF TAX.

(A) Annual tax. Subject to the provisions of § 16 of Ord. 1171, an annual tax for the purposes specified in § 33.01 shall be imposed on and after January 1, 2000, and in accordance with § 33.04, at the rate of 1-1/2% per annum upon the following.

(1) On all salaries, wages, bonuses, fees, commissions and other compensation earned on and after January 1, 2000, by residents and on all proceeds from lotteries, gaming, wagering or schemes of chance, including the Ohio Lottery, or other government administered lottery, received by residents. The source of such income and the place or places in or at which the services were rendered are immaterial. All such income, wherever earned or paid, is taxable.

(a) If amounts received as a drawing account exceed the commissions earned, the tax is payable on the gross amounts received.

(b) If such commissions are included in the net earnings of a trade, business, profession, enterprise or activity regularly carried on by such individual and therefore subject to tax under § 33.03(A)(3) of this chapter, they shall not again be separately taxed. In such case, such net earnings shall be taxed as provided in § 33.03(A)(3) of this chapter.

(c) Amounts received from an employer by way of expenses and not by way of compensation, and used as such by the individual receiving them, are not deemed to be compensation if the employer deducts the expense advances as such from his or her gross income for the purpose of determining his or her net profits taxable under this chapter.

(d) Domestic servants are subject to village tax under this chapter, but are not subject to withholding provisions. That is to say, the domestic will report earnings and pay the tax directly to the village.

(e) Wage continuation payments by the employer for purposes of health, rest, recuperation or other reward are deemed to have the same tax situs as the primary job assignment or job location of the employee and are taxable on the same ratio as the normal earnings of the employee for his or her primary job assignment.

(f) Contributions by a taxpayer to any retirement or pension plan such as IRA, Keogh or teachers retirement shall not be deductible for purposes of this chapter.

(g) If a taxpayer's taxable income includes income against which the taxpayer has taken a deduction for Federal Income Tax purposes as reportable on the taxpayer's form 2106, the taxpayer shall be entitled to deduct from the taxable income an amount equal to the deduction shown on such form allowable against the income, to the extent not otherwise so allowed as a deduction by the village.

(2) Subject to the limitations provided in R.C. § 718.011, on all salaries, wages, bonuses, fees, commissions and other compensation earned on and after January 1, 2000, by non-residents for work done or services performed or rendered within the village, and on all proceeds from lotteries, gaming, wagering, or schemes of chance, including the Ohio Lottery or any other government administered lottery, received by non-residents within the village, or on the basis of activity conducted within the village. The items subject to tax under this division are the same as those listed and defined in § 33.03(A)(1) (a) - (g).

(3) (a) On the net profits earned on and after January 1, 2000, of all trades, businesses, professions, other activities, enterprises or undertakings conducted, operated, engaged in, prosecuted or carried on by residents.

(b) The tax imposed under this section of this chapter is levied upon the entire net profits of the resident trade, business, profession, other activity, enterprise or undertaking, wherever earned, paid or accrued and regardless of the fact that any part of the business or professional activity may have been conducted at or through a place or places of business located outside of the village.

(c) On the portion attributable to the village of the net profits earned on or after January 1, 2000, of all non-residents from the operation, conduct, undertaking, engagement in or prosecution of a business in the village, whether or not such business is operated, conducted, undertaken, engaged in or prosecuted at an office or place of business in the village.

(4) On a resident owner's distributive share of the net profits of a pass-through entity earned during the effective period of this chapter from business conducted by the pass-

through entity regardless of where such business is conducted, subject to the relief and reciprocity provisions of § 33.14.

(5) On a nonresident owner's distributive share of the net profits of a pass-through entity attributable to the village and earned during the effective period of this chapter from business conducted in the village, whether or not such pass-through entity has an office or place of business in the village. The tax imposed on nonresident owners shall be collected and remitted pursuant to § 33.06(P).

(6) On the portion attributable to the village of the net profits earned on and after January 1, 2000, of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the village, whether or not such corporations have an office or place of business in the village.

(7) In amplification of the definition contained in § 33.02 of this chapter, but not in limitation thereof, the following additional information and requirements respecting net profits are furnished:

(a) Where necessary to properly reflect income, inventories must be used. The basis of pricing used for the purpose of the Federal Income Tax must in each instance be used.

(b) Where the books and records are kept on a "cash basis", "accrual basis", "long-term contract basis", or "installment basis" and/or the "cash basis", "accrual basis", "long-term contract basis" or "installment basis" is used in the filing of Federal Income Tax returns, the basis must be used for the purpose of this tax.

(c) All ordinary and necessary expenses of doing business, including reasonable compensation paid employees, shall be allowed for federal income tax purposes and not otherwise adjusted in determining net profits under this chapter (but no deduction may be claimed for "salary" or withdrawals of a proprietor or of the partners, members or other co-owners of a pass-through entity).

(d) Only taxes directly connected with the taxpayer's business may be claimed as a deduction. If for any reason the income from property is not subject to tax, then the tax on the property is not deductible. In any event, the following taxes are not deductible from income:

1. The tax under this chapter;
2. Any federal, state, municipal and foreign taxes based upon income;
3. Gifts, estate or inheritance taxes; and
4. Taxes for local benefits or improvements to property which tend to appreciate the value thereof.

(e) Capital gains and losses (including gains or losses from the sale, exchange or other disposition of depreciable business property, and real property used in the taxpayer's trade or business) shall not be included in determining net profits.

(f) In general, all business expense recognized and to the extent allowed as such for the purpose of determining Federal Income Tax will be recognized and allowed for determining village income tax under the provisions of this chapter, except as otherwise modified in determining net profits.

(g) In general, unearned income is not to be included in computing the tax levied hereunder. Income from intangibles by way of dividends, interest, stocks, bonds and the like, should not be included.

(h) Rentals received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which the rentals are derived (whether so rented, managed or operated by taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part. Following are the circumstances under which, in any instance, the rental of any real property shall or shall not be deemed to be a “business activity”.

1. Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates in excess of \$100 per month, it shall be prima facie evidence that the rental, ownership, management or operation of the properties is a business activity of the taxpayer, and the net income of the rental property shall be subject to tax; provided that, in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not the rental exceeds \$100 per month; provided further that, in the case of farm property, the owner shall be considered engaged in a business activity when he or she shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farms, whether or not the gross income exceeds \$100 per month; and, provided further that, the person who operates a rooming house shall be considered in business whether or not the gross income exceeds \$100 per month.

2. In determining the amount of gross monthly rental of any real property, periods during which (by reason of vacancy or any other cause) rentals are not received shall not be taken into consideration by the taxpayer.

3. Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.

4. Real property, as the term is used in this chapter, shall include commercial property, residential property, farm property and any and all other types of real estate.

5. In determining the taxable net income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed for Federal Income Tax purposes and not otherwise modified in determining net profits.

6. Residents of the village are subject to taxation upon the net profit from rentals (to the extent above specified) regardless of the location of the real property owned.

7. Non-residents are subject to such taxation only if the real property is situated within the village. Non-residents, in determining whether gross monthly rentals exceed \$100, shall take into consideration only real estate situated within the village.

(i) Income from royalties or copyrights is not to be included.

(8) The net profits and losses sustained by a taxpayer from business activities, farm operations or rental activities other than salaries, wages, commissions and other compensations, shall be aggregated for each of the taxpayer’s taxable years. If the result of the aggregation is a net profit, tax will be imposed and paid on that net profit in addition to the tax imposed on other income as provided in this chapter. If the result of the aggregation is a net loss, such net loss is not deductible from salaries, wages, commissions or other compensation, but may be carried forward to any of the succeeding five tax years to be used against an aggregate net profit. No carryback is permitted.

(B) Portions and percentages. The portion of the net profits attributable to the village of a taxpayer conducting a business, profession or other activity both within and without the

boundaries of the village shall be determined as provided in R.C. § 718.02, and in accordance with the rules and regulations adopted by the Tax Commissioner pursuant to this chapter.

(1) Net profit from a business, profession or other activity conducted both within and without the boundaries of the village shall be considered as having a taxable situs in the village for the purposes of municipal income taxation in the same proportion as the average ratio of (BUSINESS ALLOCATION PERCENTAGE FORMULA):

(a) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business, profession or other activity in the village during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business, profession or other activity during the same period, wherever situated. As used in this division (a), real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.

(b) Wages, salaries, and other compensation paid during the taxable period to persons employed in the business, profession or other activity for services performed in the village to wages, salaries, and other compensation paid during the same period to persons employed in the business, profession, or other activity, wherever their services are performed, excluding compensation that is not taxable by the village under Ohio R.C. 718.011 and § 33.03(C).

1. Wages, salaries and other compensation are computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net profits of the taxpayer.

2. Employees within the village include all employees regularly connected with or working out of a place of business maintained by the taxpayer in the village, irrespective of where the services of such employee were performed. However, if the taxpayer establishes to the satisfaction of the Tax Commissioner that because of the fact that a substantial part of its payroll was paid to employees attached to a village place of business who performed a substantial part of their services outside the village, the computation of the payroll factor according to the general rule stated above would not produce an equitable result, then the Tax Commissioner may, in his or her discretion, permit the payroll factor to be computed on the basis of the amount of compensation paid for services rendered within and without the village. On the other hand, wherever it appears that, because a substantial part of the taxpayer's payroll was paid to employees attached to places of business outside the village who performed a substantial part of their services within the village, the computation of the payroll factor according to the general rule would not properly reflect the amount of the taxpayer's business done within the village by its employees, the Tax Commissioner may require the payroll factor to be computed on the basis of the amount of compensation paid for services performed within and without the village. In any such case, where an employee performed services both within and without the village, the amount treated as compensation for services performed within the village shall be deemed to be:

a. In the case of an employee whose compensation depends directly on the volume of business secured by him or her, such as a salesman on a commission basis, the amount received by him or her for the business attributable to his or her efforts within the village;

b. In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation which the value of his or her services within the village bears to the value of all his or her services;

c. In the case of an employee compensated on a time basis, the proportion of the total amount received by him or her which the working time employed in the village bears to the total working time.

(c) Gross receipts of the business, profession or other activity from sales made in the village and services performed in the village during the taxable period to gross receipts of the business, profession or other activity during the same period from sales and services, wherever made or performed.

1. As used in division (B)(1)(c) above, "sales made in the village" means:

a. All sales of tangible personal property which is delivered within the village regardless of where title passes if shipped or delivered from a stock of goods within the village.

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

c. All sales of tangible personal property which is shipped from a place within the village to purchasers outside the village 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.

2. Receipts from work done and performed or services rendered in the village and rentals from property situated in the village, where the rental of such property is a usual or normal part of the taxpayer's business activity are also allocable to the village.

3. For the purpose of determining business allocation percentage, no account shall be given to receipts, within or without the village, of income derived from intangibles (including stocks, bonds, royalties and the like).

4. All receipts of the period covered are to be computed on the cash or accrual basis, in accordance with the method of accounting used in the computation of the taxpayer's entire net income.

5. Compensation and other receipts for work done or services performed within the village are allocable to the village and taxable under this chapter. All amounts so received, credited or charged by taxpayer in payment for such work or services are so allocable, irrespective of whether done or performed by employees or agents of taxpayer, by subcontractors, or by any other person. It is immaterial where such amounts were payable or where they were received.

6. Commissions or fees received by the taxpayer are allocated to the village if the services for which the commissions were paid were performed in the village. If the taxpayer's services for which commissions or fees were paid were performed for the taxpayer by salesmen or other agents or employees attached to or working out of a village place of business of the taxpayer, the taxpayer's services will be deemed to have been performed in the village.

7. Where a lump sum is received by the taxpayer in payment for services within and without the village, the amount attributable to services within the village is to be determined on the basis of the relative values of, or amounts of time spent in the performance of, such services within and without the village.

8. Receipts from sale of capital assets (property not held by the taxpayer for sale to customers in the regular course of business) are not business receipts. Receipts from the sale of real property held by the taxpayer as a dealer for sale to customers in the regular course of business are business receipts and are allocable to the village if the real property was situated in the village. Receipts from sales of intangibles included in business capital, held by the taxpayer as a dealer for sale to customers in the regular course of business, are business receipts and are allocable to the village if the sales were made in the village or through a regular place of business of the taxpayer in the village.

(2) The total of these three percentages divided by three is the percentage of the total net profit allocable to the village for the municipal income tax. However, if one of the factors (property, sales or payroll) is missing, the other two percentages are added and the sum is divided by two, and if two of the factors are missing the remaining percentage is the business allocation percentage. A factor is missing if it does not exist anywhere; a factor is not missing if it does not exist within the village but does exist elsewhere. After determining such business allocation percentage, the tax shall be determined by applying that percentage to the entire net profits of the taxpayer, wherever derived (thus arriving at the taxable net profit allocable to the village), and computing 1-1/2% of the resultant taxable net profit. Generally, the business allocation percentage formula will result in a fair apportionment of the taxpayer's net profits within and without the village. However, due to the peculiar circumstances of certain businesses, the formula may not produce an equitable result and, thus, not do justice to the taxpayer or the village. Accordingly, in such cases, the Tax Commissioner may substitute factors or methods of apportionment calculated to produce an equitable result.

(C) The tax provided for herein shall not be levied upon the following:

(1) Military pay or allowances of members of the armed forces of the United States or of members of their reserve components, including the Ohio National Guard, or upon the net profits of any civic, charitable, religious, fraternal, scientific, literary, educational or other organization specified in R.C. § 718.01 to the extent that such net profits are exempted from municipal income taxes under said section.

(2) Dues, contributions and similar payments received by charitable, religious, educational or literary organizations or labor unions, lodges and similar organizations.

(3) Receipts from casual entertainment, amusements, sports events and health and welfare activities conducted by bona fide charitable, religious and educational organizations and associations.

(4) Poor relief, pensions, social security, unemployment compensation and disability benefits received from private industry or local, state or federal governments, or from charitable, religious or educational organizations.

(5) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, and income of a decedent's estate during the period of administration (except such income from the operation of a business).

(6) Earnings and income of all persons under 18 years of age whether residents or non-residents.

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

(8) Interest, dividends, gains and other revenue from intangible property, except as defined in the computation of net profits under § 33.02. Intangible property includes, but is not limited to, investments, deposits, money or credits, as those terms are defined in Ohio R.C. Chapter 5701, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation.

(9) 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.

(10) Compensation and net profits the taxation of which are prohibited by the Constitution of the State or any act of the Ohio General Assembly limiting the power of a municipal corporation to impose net income taxes.

(11) An S Corporation shareholder's distributive share of net profits or losses of the S Corporation, except to the extent that the distributive share of net profits represents wages as defined in Section 3121(a) of the Code or net earnings from self-employment as defined in Section 1402(a) of the Code.

(12) Pursuant to Ohio R.C. 718.011, compensation paid to a nonresident for personal services performed by the individual in the village on 12 or fewer days in a calendar year, unless:

(a) The individual is an employee of another person, such individual's employer has its principal place of business in another taxing municipality in Ohio, and such individual is not liable to the other taxing municipality for tax on the compensation paid for the services performed in the Village; or

(b) The individual receives such compensation as a professional entertainer or professional athlete, the promoter of a professional entertainment of sporting event, or an employee of such a promoter.

(13) Items excluded from gross income for federal income tax purposes under Section 107 of the Code (dealing with parsonage and rental allowances for ministers).

(D) Operating loss carry-forward.

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

(2) The portion of a net operating loss sustained shall be allocated to the village for the purposes of the municipal income tax in the same manner as provided herein for allocating net profits to the village for the purposes of the municipal income tax.

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

(E) Consolidated returns.

(1) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Tax Commissioner. On and after January 1, 2003, the Tax Commissioner shall accept for filing a consolidated return from an affiliated group of corporations subject to the tax imposed by this chapter if the affiliated group filed for the same taxable year a consolidated return for federal income tax purposes pursuant to Section 1501 of the Code. Only corporations subject to the tax imposed by this chapter may be included in such

consolidated return filed for the village. If an affiliated group of corporations subject to the tax imposed by this chapter properly files a consolidated return in accordance with this § 33.03(E)(1) for any taxable year beginning on or after January 1, 2003, the affiliated group must file a consolidated return for each succeeding taxable year in which it files a consolidated return for federal income tax purposes unless, on or before the due date (taking into account extensions of time properly granted) of the return for a taxable year, the affiliated group obtains the permission of the Tax Commissioner to cease filing a consolidated return for that taxable year.

(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, or in case any person operates a division, branch, factory, office, laboratory or activity within the village constituting a portion only of its total business, the Tax Commissioner shall require such additional information as he or she may deem necessary to ascertain whether net profits are properly allocated to the village. If the Tax Commissioner finds net profits are not properly allocated to the village 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 other activity or by some other method, he or she shall make such allocation as he or she deems appropriate to produce a fair and proper allocation of net profits to the village for the purpose of the municipal income tax.

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966; Am. Ord. 71-41, passed 12-20-1971; Am. Ord. 74-18 (to Res. 1192), passed 3-4-1974; Am. Ord. 76-1, passed 1-5-1976; Am. Ord. 80-49, passed 8-18-1980; Am. Res. 82-41, passed 8-16-1982; Am. Ord. 85-34, passed 8-5-1985; Am. Ord. 90-44, passed 7-16-1990; Am. Res. 90-84, passed 12-17-1990; Am. Ord. 95-46, passed 6-19-1995; Am. Ord. 99-06, passed 5-24-1999; Am. Ord. 04-14, passed 4-5-2004)
§ 33.04 EFFECTIVE PERIOD.

The 1% income tax existing prior to January 1, 2000 and continuing thereafter and levied for the purposes described in division (A) of § 33.01, shall be levied, collected and paid with respect to income earned or derived on and after January 1, 1967. Commencing January 1, 2000, the existing additional 1/8% income tax imposed pursuant to Ord. 95-46 and levied for the purposes described in division (B) of § 33.01 as in effect prior to January 1, 2000, shall be revoked and shall cease to be collected and paid. The additional 1/2% income tax approved by the electors of the village at the election held on May 4, 1999, and levied for the purposes described in divisions (B) and (C) of § 33.01, shall be levied, collected and paid with respect to taxable income earned on and after January 1, 2000, until revoked.

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966; Am. Ord. 76-1, passed 1-5-1976; Am. Ord. 80-49, passed 8-18-1980; Am. Ord. 85-34, passed 8-5-1985; Am. Ord. 90-44, passed 7-16-1990; Am. Ord. 95-46, passed 6-19-1995; Am. Ord. 99-06, passed 5-24-1999)
§ 33.05 RETURN; PAYMENT OF TAX.

(A) On or before April 30, 1968, every taxpayer engaged in any business, the net profits of which are subject in whole or in part to the tax imposed by this chapter, shall make and file with the Tax Commissioner a final return on a form furnished by or obtainable from the village. Thereafter, each such taxpayer shall, on or before April 30 of each subsequent year, make and file a final return with the Tax Commissioner. A return shall be deemed filed when postmarked by the United States Postal Service or on the date delivered other than by the United States Postal Service during normal business hours to the Tax Commissioner. Like returns shall be filed at the same time and in the same manner by all persons whose taxable income received during the preceding taxable year is subject to the tax imposed by this chapter. However, where

an employee's entire compensation for the year is paid by an employer and the 1-1/2% village tax thereon has in each instance been withheld and deducted by the employer from the gross amount of the entire compensation of the employee-taxpayer, and where the employer of the employee has filed a report or return in which the employee's entire and only compensation is reported to the Tax Commissioner, and where the employer has paid the tax to the Tax Commissioner and where the employee has no taxable income other than such compensation, it shall not be necessary for such employee to file a return for any taxable year in which the conditions have prevailed.

(B) Any person who receives both compensation for services performed for any employer, in whatever form, and in addition receives taxable income from any source not subject to withholding under this chapter, must file a declaration and a final return.

(C) In all returns filed hereunder there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation received and/or net profits and other taxable income earned or derived by and during the preceding year and subject to the tax, together with the pertinent information or documentation as the Tax Commissioner may require. The return shall also show the amount of the tax imposed by this chapter on such taxable income.

(D) If the return is made for a fiscal year or for any period other than a calendar year, the return shall be made within four months from the end of the fiscal year or other period.

(E) The taxpayer making the return shall, at the time of filing, pay to the Tax Commissioner the amount of tax shown to be due and unpaid by the return. If, pursuant to the provisions of this chapter, the taxpayer has, at the time of making the final return overpaid his or her tax, the taxpayer shall show the amount of overpayment, and may in the return either request a refund, or request that the amount be applied against any subsequent liability. No refund will be made unless current year estimated tax has been filed and paid up to date.

(F) Where any portion of the tax otherwise due shall have been deducted at the source and shall have been paid to the Tax Commissioner by the person making the deduction or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of § 33.07 of this chapter, a credit equal to the amount so paid shall be deducted from the amount shown to be due and where an income tax has been paid to another municipality, credit for the amount so paid in accordance with § 33.14 shall be deducted from the amount shown to be due, and only the balance, if any, shall be due and payable at the time of the filing of the return.

(G) Except as provided in Ohio R.C. 718.051, the Tax Commissioner may extend the due date for filing the annual return upon the written request of a taxpayer until the last day of the month following the month to which an extension is granted by the Internal Revenue Service for the filing of the taxpayer's federal income tax return for the same taxable year. A taxpayer shall request an extension of the due date for filing an annual return by filing with the Tax Commissioner a copy of the taxpayer's request for an extension of time to file the taxpayer's federal income tax return for the same taxable year no later than the last day prescribed by § 33.05(A) or (D) for the filing of the annual return. A request to extend the due date for filing an annual return will be granted automatically unless the taxpayer:

- (1) Fails to timely file such request;
- (2) Fails to file a copy of the request for an extension of the due date for filing the taxpayer's federal income tax return for the same taxable year;
- (3) Owes any delinquent village income tax, penalty, interest, assessment, or other charge for the late payment or nonpayment of village income tax; or

(4) Has failed to file any required village income tax return, report, or other related document for a prior taxable year. The Tax Commissioner 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. The granting of an extension of the due date for filing a village income tax return does not extend the due date as provided in this § 33.05 for payment of the tax; hence, penalty and interest may apply to any unpaid village income tax during the period of extension. A penalty shall not be assessed if the return is filed and the full amount of tax shown on that return is paid on or before the extended due date. Interest shall be charged on the unpaid balance at the rate of ½% per month, computed monthly, for the period of the extension, with any portion of a month to be charged as a full month.

(H) When the final return reveals a balance due of less than \$1, the balance need not be paid. No refund will be paid for less than \$1.

(I) (1) Where necessary an amended return must be filed in order to report additional taxable income and pay an additional tax due, or claim a refund of tax overpaid, subject to requirements and/or limitations contained in §§ 33.11 and 33.14. The amended returns shall be on a form obtainable on request from the Tax Commissioner. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

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

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966; Am. Res. 82-41, passed 8-16-1982; Am. Ord. 99-06, passed 5-24-1999)

§ 33.06 COLLECTION AT SOURCE.

(A) Subject to the limitations of R.C. § 718.011 and § 33.03(C)(12) of this chapter, each employer within, or doing business within, the village who employs one or more persons, full time or part time, on a compensation basis shall deduct at the time of the payment of the compensation, the tax of 1-1/2% of the gross compensation due by the employer to each employee. The tax shall be deducted by the employer from:

(1) All compensation paid to employees who are non-residents for services rendered, work performed, or other activities engaged in to earn the compensation, within the village;

(2) All compensation paid to employees who are non-residents of the village but are regularly connected with or working out of a place of business maintained by the taxpayer in the village irrespective of where the services of the employees were performed;

(3) The gross amount of all compensation paid to employees who are residents regardless of the place where the services are rendered.

(B) All employers who or which maintain an office or other place of business in the village are required to make the collections and deductions in this section specified, regardless of the fact that the services on account of which any particular deduction is required as to residents of the village, were performed at a place of business of any such employer situated outside the village.

(C) In the case of employees who are non-residents, the amount to be deducted is 1-1/2% of the compensation paid with respect to personal services rendered in the village. Where a

non-resident receives compensation for personal services rendered or performed partly within and partly outside the village, the withholding employer shall deduct, withhold and remit that portion of the compensation which is earned within the village in accordance with the following rules of apportionment.

(1) If the non-resident is a salesperson, agent or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted by him or her, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the village bears to the volume of business transacted by him or her within and outside the village.

(2) The deducting and withholding of personal service compensation of all other employees (including officers of corporations) shall attach to the portion of the personal service compensation of the employee which the total number of working days employed within the village bears to the total number of working days employed within and outside the village.

(3) If it is impossible to apportion the earnings as provided above, because of the peculiar nature of the service of the employee or the unusual basis of compensation, apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly.

(4) The occasional entry into the village of a non-resident employee who performs the duties for which he or she is employed entirely outside the village, but enters the village for the purpose of reporting, receiving instructions, accounting and the like, incidental to his or her duties outside the village, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the village.

(D) An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions (whether by way of drawing account or otherwise - but see division (E) below) where the advances are in excess of commissions earned.

(E) An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid by the employer to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his or her services. Provided that, the expenses must be of the kind and in the amount recognized and allowed as deductible expenses for Federal Income Tax purposes.

(F) Commissions and fees paid to professional persons, brokers and others who are independent contractors and not employees of the payor, are not subject to withholding or collection of the tax at the source. The taxpayers who receive such commissions and fees must in all instances file returns and pay the tax pursuant to the provisions of §§ 33.03, 33.05 and 33.07 of this chapter.

(G) The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation received.

(H) Each employer shall, on or before April 30, July 31, October 31 and January 31 of each year, complete a return and pay to the Tax Commissioner the amount of taxes so deducted during the preceding calendar quarter. The returns shall be on a form or forms prescribed by or acceptable to the Tax Commissioner and shall be subject to the rules and regulations prescribed therefor by the Tax Commissioner. Such returns are considered filed on the date postmarked by the United States Postal Service or on the date delivered other than by the United States Postal Service during normal business hours to the Tax Commissioner.

(I) On or before January 31 of each year, each employer shall file a withholding return, on a form or forms prescribed by and obtainable from the Tax Commissioner, setting forth the names and addresses of all employees from whose compensation the tax was withheld during the preceding calendar year, and the amount of tax withheld from the listed employees and such other information as may be required by the rules and regulations adopted by the Tax Commissioner. Such return is considered filed on the date postmarked by the United States Postal Service or on the date delivered other than by the United States Postal Service during normal business hours to the Tax Commissioner.

(J) Each employer in collecting the tax shall be deemed to hold the same, until payment is made by the employer to the village, as a trustee for the benefit of the village and any such tax collected by the employer from his or her employees shall, until the same is paid to the village, be deemed a trust fund in the hands of the employer. Every such employer required to deduct and withhold the tax at the source is liable directly to the village for the payment of the tax, whether actually collected by the employer or not.

(K) If too much tax has been withheld, the excess shall be refunded by the employer to the employee. While the withholding agent (employer) will be expected to maintain complete records of the adjustments with the employees, any such adjustment made during any month will not need to be reflected in the withholding return or disclosed by schedules or statements thereto attached. In those cases in which too much has been withheld by an employer from an employee and remitted to the Tax Commissioner and there has been a termination of the employee-employer relationship, the taxpayer (employee) may obtain an adjustment by application to the Tax Commissioner.

(L) It shall be the responsibility, jointly and separately, of the president and treasurer of each employer required to withhold the tax on wages of its employees under this section to see that all such taxes so withheld are paid to the village in accordance with the provisions of this section. In the event taxes withheld by employers from the wages of its employees are not paid to the village in accordance with the provisions of this section, the president and treasurer of the employer shall be criminally liable under the provisions of § 33.16.

(M) For taxable years beginning on or after January 1, 2007, any employer subject to this § 33.06 may use the Ohio business gateway both to report the amount of village income tax withheld from compensation and to remit such amounts.

(N) An employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued.

(O) The failure of an employer to remit the village income tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the village income tax withheld.

(P) (1) Except as otherwise provided in this § 33.06(P), a pass-through entity that conducts business within the village and that has a nonresident owner must:

(a) Withhold village income tax at the rate specified in § 33.03(A) on the nonresident owner's distributive share of the pass-through entity's net profits attributable to the village; and

(b) Remit such tax to the village by the applicable dates provided in § 33.07.

(2) A pass-through entity subject to this § 33.06(P) that fails to collect or remit village income tax as provided in this § 33.06(P) shall be liable for the tax that it should have withheld or remitted and shall be subject to the interest and penalty provisions of § 33.10. The nonresident owner shall receive a credit against its village income tax liability in the amount of village income tax so withheld by the pass-through entity. All claims for refund of village income tax withheld by a pass-through entity pursuant to this § 33.06(P) must be made by the nonresident owner within the period set forth in § 33.14(F). A pass-through entity is not required to withhold and remit village income tax to the extent that its nonresident owners both:

(a) File village income tax returns and declarations as provided in §§ 33.05 and 33.07, respectively, that report their distributive shares of the pass-through entity's net profits attributable to the village; and

(b) Pay village income tax thereon.

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966; Am. Ord. 76-1, passed 1-5-1976; Am. Ord. 80-49, passed 8-18-1980; Am. Ord. 85-34, passed 8-5-1985; Am. Ord. 90-44, passed 7-16-1990; Am. Ord. 95-46, passed 6-19-1995; Am. Ord. 99-06, passed 5-24-1999)

§ 33.07 DECLARATIONS; INSTALLMENT PAYMENTS.

(A) An employee whose entire wages, salaries, or other compensation for any taxable year will be subjected to the withholding provisions under § 33.06, whose tax will accordingly be withheld as to his or her entire earnings for the year by his or her employer, and who during the taxable year expects to derive no other compensation or other income which is subject to tax under this chapter, need not file a declaration as provided in this section.

(B) All other taxpayers, as defined in § 33.02, subject to the taxes imposed under this chapter, and every taxpayer who anticipates any income or net profits not subject to total withholding as provided in division (A) of this section, shall file with the Tax Commissioner a declaration setting forth the estimated income and/or the estimated profit or loss from business activity together with the estimated tax due thereon as provided in this section. For taxable years beginning on or after January 1, 2005, declarations of estimated net profits from any business conducted within the village and payment of estimated village income tax thereon may be made by using the Ohio business gateway, as described in R.C. § 718.051, including amendments or successor provisions thereto.

(C) On or before April 30 of each year during the life of this chapter, every taxpayer shall file a declaration of his or her estimated income and tax for the full taxable year in which the declaration is filed, or within four months of the date the taxpayer becomes subject to the tax for the first time.

(D) Taxpayers who or which are permitted, pursuant to the provisions of § 33.05, to return and pay their tax upon a fiscal year basis, shall file their declaration within four months after the beginning of each such fiscal year.

(E) The declarations required by this § 33.07 shall be filed upon a form furnished by or obtainable from the Tax Commissioner.

(F) (1) Every individual making the declaration with respect to taxable income not subject to § 33.06 for a taxable year beginning on or after January 1, 2003 shall remit payment of the estimated annual village income tax as follows:

(a) At least 22.5% of such individual's estimated village income tax liability for the current taxable year shall be remitted on or before April 30 or the day on which the annual tax return for the prior taxable year must be filed, in accordance with § 33.06, disregarding any extension;

(b) At least 45% of such individual's estimated village income tax liability for the current taxable year shall be remitted on or before July 31;

(c) At least 67.5% of such individual's estimated village income tax liability for the current taxable year shall be remitted on or before October 31; and

(d) At least 90% of such individual's estimated village income tax liability for the current taxable year shall be remitted on or before January 31 of the following taxable year.

(2) Every person other than an individual making the declaration with respect to the taxable income from any business subject to village income tax shall remit payment of the estimated annual village income tax as follows:

(a) At least 22.5% of the taxpayer's estimated village income tax liability for the current taxable year shall be remitted on or before the day on which the annual return for the prior taxable year must be filed, in accordance with § 33.05, disregarding any extension or, in the case of a fiscal year taxpayer, the last day of the fourth month of the taxpayer's taxable year;

(b) At least 45% of the taxpayer's estimated village income tax liability for the current taxable year shall be remitted on or before June 15, or in the case of a fiscal year taxpayer, the fifteenth day of the sixth month of the taxpayer's taxable year;

(c) At least 67.5% of the taxpayer's estimated village income tax liability for the current taxable year shall be remitted on or before September 15, or in the case of a fiscal year taxpayer, the fifteenth day of the ninth month of the taxpayer's taxable year; and

(d) At least 90% of the taxpayer's estimated village income tax liability for the current taxable year shall be remitted on or before December 15, or, in the case of a fiscal year taxpayer, the fifteenth day of the twelfth month of the taxpayer's taxable year.

(3) All payments of estimated annual village income tax made pursuant to this § 33.07 shall be made after deducting:

(a) Any portion of village income tax to be deducted or withheld at the source pursuant to § 33.06;

(b) Any credits allowable under the provisions of § 33.14; and

(c) Any overpayment of the previous year's village income tax liability that the taxpayer has not elected to have refunded or previously claimed as a credit.

(G) On or before the last day of the fourth month following the end of the taxable year for which such declaration or amended declaration was filed, an annual return shall be filed, and any balance that may be due to the village shall be paid therewith in accordance with the provisions of § 33.05. Any taxpayer, however, may file an annual return on or before the last day of the first month following the end of the taxable year for which such declaration or amended declaration was filed and pay any balance due at such time in lieu of filing such declaration or amended declaration, and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax.

(H) An amended declaration must be filed when the original declaration made for a taxable year underestimates the taxpayer's taxable income by 10% or more. The unpaid balance of estimated tax shall be paid in equal installments on or before the payment dates provided in division (F) hereof. If a taxpayer fails to remit the full amount of estimated village income tax required to be paid by an applicable due date specified in this § 33.07, such underpayment of estimated village income tax shall be subject to the interest and penalty provisions of § 33.10. No penalty, interest, interest penalty, or other similar assessment or charge, however, shall be

imposed against a taxpayer for the late payment or nonpayment of estimated village income tax in either of the following circumstances:

(1) The taxpayer is a resident but was not domiciled in the village on January 1 of the calendar year; or

(2) The taxpayer has remitted, pursuant to this § 33.07 an amount at least equal to 100% of the taxpayer's village income tax liability for the preceding taxable year as shown on the return filed by the taxpayer for the preceding taxable year, provided that the return for the preceding taxable year reflected a 12-month period and the taxpayer filed a return for the preceding taxable year.

(I) Notwithstanding any provision or requirement of this chapter to the contrary, if a taxpayer resides or proposes to reside in the village or engages in business or proposes to engage in business therein for a period of less than three months or if the Tax Commissioner determines that the residence of any taxpayer in the village or the period during which any taxpayer will engage in business in the village may reasonably be expected to be less than three months, the Tax Commissioner may require any such taxpayer to file a declaration and/or a return within such time as he or she may reasonably fix and to pay or secure the payment of any tax due and/or any tax withheld or required to be withheld during the period of residence or engagement in business or the period of the residence or engagement in business estimated by the Tax Commissioner. The date or dates fixed by the Tax Commissioner for the filing of declarations and/or returns and/or for payments or security for payments of taxes pursuant to this division (J) shall be in lieu of the dates for the filing or payment specified for taxpayers generally to this chapter.

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966; Am. Ord. 03-04, passed 1-20-2003)

§ 33.08 DUTIES OF THE TAX COMMISSIONER.

(A) (1) It shall be the duty of the Tax Commissioner to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; to keep an accurate record thereof; to report all monies so received and deposit same with the Finance Director.

(2) It shall be the duty of the Tax Commissioner to enforce payment of all taxes owing the village, 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.

(B) The Tax 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 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 correction of returns.

(1) The Tax Commissioner is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Tax Commissioner that, due to certain hardship conditions, he or she is unable to pay the full amount of the tax due. The authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him or her under this chapter.

(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 §§ 33.11 and 33.16 of this chapter shall apply.

(C) If, as a result of investigation conducted by the Tax Commissioner, a return is found to be incorrect, the Tax Commissioner is authorized to assess and collect any underpayment of tax withheld at source or any underpayment of tax owing by any taxpayer with respect to taxable income and shall send to the taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any. If no return has been filed and a tax is found to be owing, the tax actually owing may be assessed and collected, together with interest and penalties thereon, if any, with or without the formality of obtaining a delinquent return from the employer or taxpayer.

(D) Should it be disclosed, either as a result of an investigation by the Tax Commissioner or through the medium of the filing of a claim or petition for refund, that an overpayment has been made, the Tax Commissioner will refund the overpayment subject to the provisions under § 33.11.

(E) Subject to the consent of the Board of Review or pursuant to regulation approved by the Board of Review, the Tax Commissioner shall have the power to compromise any liability imposed by this chapter.

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966)

§ 33.09 INVESTIGATIVE POWERS OF TAX COMMISSIONER; CONFIDENTIALITY OF INFORMATION.

(A) The Tax Commissioner, or any authorized employee, is hereby authorized to examine the books, papers, records and Federal Income Tax return of any employer or of any taxpayer or person subject to, or whom the Tax Commissioner believes is subject to the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer, or supposed taxpayer is hereby directed and required to furnish upon written request by the Tax Commissioner, or his or her duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(B) The Tax Commissioner, or any authorized employee, is hereby authorized to order any person presumed to have knowledge of the facts to appear at the office of the Tax Commissioner and to examine the person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect the income, and for this purpose may compel the production of books, papers, records and Federal Income Tax returns and the attendance of all persons before him or her, whether as parties or witnesses whenever he or she believes the persons have knowledge of the income or information pertinent to the inquiry.

(C) The refusal to produce books, papers, records and Federal Income Tax returns, or the refusal to submit to such examination, by any employer or person subject, or presumed to be subject to the tax, or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Tax Commissioner authorized hereby shall be deemed a violation of this chapter, punishable as provided in § 33.99.

(D) Tax returns, and all audits connected therewith, are confidential. Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except to municipal taxing agencies, and, except for official purposes, or except in accordance with proper judicial order. Any person divulging such information in violation of this chapter shall be subject to the penalty provisions of § 33.99. In

addition to the penalty provided in § 33.99, any employee of the village who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(E) (1) Every taxpayer shall retain all records necessary to compute his or her tax liability for a period of five years from the date his or her return is filed or the withholding taxes are paid.

(2) Employers and others subject to the tax under this chapter are required to keep the records as will enable the filing of true and accurate returns, whether of taxes withheld at source or of taxes payable upon earnings or net profits, or both, and the records are to be preserved to enable the Tax Commissioner, or any agent or employee of the Tax Commissioner, to verify the correctness of the returns filed.

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966) Penalty, see § 33.99
§ 33.10 INTEREST AND PENALTIES.

(A) All taxes imposed and all monies 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 ½% per month or fraction thereof.

(B) In addition to interest as provided in division (A), penalties based on the unpaid or unremitted amount of tax are hereby imposed as follows:

(1) For failure to file return when due: 4% per month or fraction thereof until filed, or \$5, whichever is greater.

(2) For failure to pay or remit taxes when due: ½% per month or fraction thereof until paid or remitted, or \$5, whichever is greater.

(C) A penalty shall not be assessed on an additional tax assessment made by the Tax Commissioner when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Tax Commissioner; and, provided further that, in the absence of fraud, neither penalty or interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after final determination of the federal tax liability.

(D) Upon recommendation of the Tax Commissioner, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Tax Commissioner to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest, or both.

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966; Am. Ord. 71-41, passed 12-20-1971; Am. Res. 71-42, passed 12-20-1971)

§ 33.11 COLLECTION OF UNPAID TAX AND REFUND OF OVERPAYMENT.

(A) All taxes imposed by this chapter shall be collectible together with any interest and penalties thereon, by suit, as other debts of like amounts are recoverable. Employers who or which, although obliged under this chapter to withhold and remit to the Tax Commissioner the taxes required to be withheld at the source (§ 33.06), shall fail to so withhold and/or remit, become liable to the village in a civil action to enforce the payment of the debt created by the failure.

(B) An additional assessment shall not be made after three years from the time the return was due or filed, whichever is later, except in the case of fraud, omission of a substantial portion of income subject to this tax, or failure to file a return, in which event an additional assessment shall not be made after six years from the date the return was due or the false or fraudulent return was filed, whichever is later; provided, however, in those cases in which the

Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitation, the period within which an additional assessment may be made by the Tax Commissioner shall be one year from the time of the final determination of the federal tax liability.

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

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966)

§ 33.12 BOARD OF REVIEW.

(A) A Board of Review, consisting of the Village Law Director or legal advisor, the Mayor and an individual appointed by the Mayor and approved by the Council, is hereby created. The appointment by the Mayor and approval by the Council of the third member of the Board of Review shall be made annually. 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. Such records are not public records available for inspection under R.C. § 149.43, including any amendments or successor provisions thereto. Any hearing by the Board may be conducted privately and the provisions of § 33.09 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on Appeal. Hearings requested by a taxpayer before the Board of Review are not meetings of a public body that are subject to R.C. § 121.22, including any amendments or successor provisions thereto.

(B) All rules and regulations and amendments or changes thereto, which are adopted by the Tax 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 Tax Commissioner, and, at the request of the taxpayer or Tax Commissioner, is empowered to substitute alternate methods of allocation.

(C) The Tax Commissioner, in issuing any ruling or decision for which authority has been conferred upon it by this chapter, shall at the same time notify the taxpayer of both the taxpayer's right to appeal such ruling or decision and the manner in which the taxpayer may appeal such ruling or decision. Any person dissatisfied with any ruling or decision of the Tax Commissioner which is made under the authority conferred by this chapter may appeal therefrom to the Board of Review within 30 days from the announcement of the ruling or decision by the Tax Commissioner, and the Board, on hearing, shall have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. An appeal of a ruling or decision of the Tax Commissioner must be in writing and must state why such ruling or decision is deemed incorrect or unlawful. The Board shall schedule any hearings and issue its decision within the periods prescribed by R.C. § 718.11, including any amendments or successor provisions thereto. If the taxpayer does not waive a hearing before the Board, the taxpayer may appear before the Board and be represented as provided by law. All appeals of decisions of the Board of Review shall be made in accordance with R.C. §§ 718.11 and 5717.011, including any amendments or successor provisions thereto.

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966; Am. Ord. 08-35, passed 7-7-2008)

§ 33.13 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be deposited in a special income tax fund and such funds shall, after deducting the part thereof as shall be necessary to

defray all costs of collecting the tax and the cost of administering and enforcing the provisions of this chapter, be disbursed in the following manner.

(A) As concerns the 1% income tax existing prior to January 1, 2000, and continuing thereafter and levied for the purpose described in division (A) of § 33.01, all of the net available income tax receipts received annually from that tax shall be used for the purposes of the design and installation of storm sewers, street improvements and repairs, the acquisition of right-of-way for storm sewers and streets, debt retirement and capital improvements.

(B) As concerns the ½% income tax, effective January 1, 2000, and approved by a vote of the electors on May 4, 1999, and levied for the purposes described in divisions (B) and (C) of § 33.01, one-half of the net available income tax receipts received annually from that tax shall be used for the purposes of parks and recreational programs for the village as described in division (B) of § 33.01 and one-half of the net available income tax receipts received annually from that tax shall be used for the purposes of acquiring, constructing and otherwise improving village streets, sidewalks, sewers and other capital improvements as described in division (C) of § 33.01.

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966; Am. Ord. 76-1, passed 1-5-1976; Am. Ord. 80-49, passed 8-18-1980; Am. Ord. 81-39, passed 9-21-1981; Am. Ord. 85-34, passed 8-5-1985; Am. Ord. 90-44, passed 7-16-1990; Am. Ord. 95-46, passed 6-19-1995; Am. Ord. 99-06, passed 5-24-1999)

§ 33.14 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

(A) Where a resident of the village is subject to a municipal income tax in another taxing municipality he or she shall not pay a total municipal income tax on the same income greater than the tax imposed at the higher rate.

(B) Every individual taxpayer who resides in the village who receives net profits, salaries, wages, commissions or other personal service compensation for work done or services performed or rendered outside the village, or who receives other taxable income from sources outside the village, if it be made to appear that he or she has paid a municipal income tax on such taxable income to another taxing municipality, shall be allowed a credit against the tax imposed by this chapter of the amount so paid by him or her or in his or her behalf to the other taxing municipality. The credit shall be allowed in an amount equal to the lesser of:

(1) The amount of such tax paid to such other taxing municipality or
(2) The tax assessed by this chapter on such taxable income earned or derived in such other taxing municipality or municipalities where such tax is paid. In no case shall the credit exceed the tax levied under this chapter on the resident's taxable income that is also subject to tax in another taxing municipality.

(C) (1) For taxable years beginning on or after January 1, 2003, a resident owner of a pass-through entity that does not conduct business in the village and that has paid, or has acknowledged liability for, an income tax in another taxing municipality may claim a credit equal to the lesser of the following amounts:

(a) The resident owner's proportionate share of the amount, if any, of income tax paid by the pass-through entity to another taxing municipality in the state; or

(b) The resident owner's proportionate share of the amount of village income tax that would be imposed on the pass-through entity if the pass-through entity conducted business in the village.

(2) In no case shall the credit authorized by this division (C) exceed income tax assessed under this chapter.

(D) Where applicable, the credits provided by R.C. § 718.021 (credit for qualifying losses on nonqualified deferred compensation plans) and 718.121 (credit for tax paid to first taxing municipality when village assessment comes after expiration of statute of limitations for refund claims to the first taxing municipality) shall be available to residents.

(E) Except as provide in R.C. §§ 718.021 and 718.121, when a nonresident is subject to the tax imposed by this chapter and is also subject to tax on the same income in the municipal corporation of his or her residence, he or she shall not be allowed any credit against or claim for refund for village income tax, nor will the village acknowledge or allow any claim for refund of any portion of the village income tax so levied.

(F) Notwithstanding the provision contained in § 33.11, or any other provisions inconsistent herewith, a claim for refund or credit under this section shall be made in such manner as the Tax Commissioner may by regulation provide. No such claim for refund or credit shall be allowed unless made on or before the date of filing the taxpayer's final return unless the taxpayer's employer files with the Tax Commissioner a list showing the tax withheld from the taxpayer's wages, salaries or commissions for other municipalities.

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966)

§ 33.15 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(A) This chapter shall continue effective insofar as the levy of taxes is concerned until revoked, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of the taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of the taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in §§ 33.11 and 33.16.

(B) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in §§ 33.05 and 33.06 of this chapter as though the same were continuing.

(Ord. 1171, passed 5-26-1966)

§ 33.16 VIOLATIONS.

(A) No person shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (2) Make any incomplete, false or fraudulent return;
- (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;
- (4) Fail, neglect or refuse to withhold the tax from his or her employees or remit the withholding to the Tax Commissioner;
- (5) Refuse to permit the Tax Commissioner or any duly authorized agent or employee to examine his or her books, records, papers and Federal Income Tax returns relating to the income or net profits of a taxpayer;
- (6) Fail to appear before the Tax Commissioner and to produce his or her books, records, papers or Federal Income Tax returns relating to the income or net profits of a taxpayer upon an order or subpoena of the Tax Commissioner;
- (7) Refuse to disclose to the Tax Commissioner any information with respect to the income or net profits of a taxpayer;

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

(9) Give to an employer false information as to his or her 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;

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

(11) Fail as president or treasurer of a corporation, to cause the tax withheld from the wages of the employees of the corporation pursuant to this chapter to be paid to the village in accordance with the provisions of § 33.06; and

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

(B) All prosecutions under this section must be commenced within five years from the time of the offense complained of except in the case of failure to file a return, filing a false or fraudulent return, or omission of a substantial portion of income subject to tax under this chapter, in which event the limitation of time within which prosecution must be commenced shall be ten years from the date the return was due or the date the false or fraudulent return was filed, whichever is later.

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

(D) Agents and employees charged with the duty of inspection or auditing of records of employers and taxpayers will carry proper identification, which shall be subject to examination by any person whose records are sought to be examined.

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966)

§ 33.17 INCOME TAX CREDIT PROGRAM.

(A) Overview. The village municipal income tax credit provides an incentive, allowable under R.C. § 718.15, to new or existing businesses within village limits which are creating new, full-time jobs. Qualified companies may be eligible for a refundable or non-refundable income tax credit against their village for-profit or individual income tax. The rate and term of the credit is negotiated by the village administration and ultimately approved by Council on an individual basis. To qualify a company must qualify for and enter into a Job Creation Tax Credit agreement with the State of Ohio pursuant to R.C. § 122.17. The village's maximum, allowable term of any agreement is ten years.

(B) Program requirements.

(1) In order to be considered for an income tax credit, a company must qualify for and provide proof of having entered into a Job Creation Tax Credit agreement with the State of Ohio pursuant to R.C. § 122.17.

(2) Existing companies must establish a baseline of employment and are required to maintain that baseline and the new jobs to be created for twice the term of the agreement.

(3) Businesses or companies are required to create the new jobs within three years of the date of the executed village municipal income tax agreement.

(4) The village reserves the right to recover the value, which may be pro-rated depending on circumstances, of the credit if the terms of the agreement are not met or the agreement is breached.

(5) Businesses or companies are required to provide documentation or reasonable evidence that the village is in competition with another municipality for the investment or project.

(6) Businesses or companies shall participate in an annual village municipal income tax credit review advisory council, which shall meet during March of each year to review performance measures. The Income Tax Advisory Council shall consist of the Council Finance Committee and the Mayor. The recipient shall file an annual activity report on or before December 31st of each year with the Village Administrator, who in turn shall provide a recommendation to the Income Tax Advisory Council to maintain or terminate the agreement.

(7) At least 50% of the jobs created must be filled by residents within Fulton County and its adjoining counties.

(C) Program restrictions.

(1) Companies must be located within the corporation limits of the village.

(2) Full-time equivalent, seasonal, and part time jobs are not eligible.

(3) Businesses with delinquent financial obligations to the village are not eligible.

(D) Monitoring compliance. During the period of time the business participates in the incentive program, the Income Tax Advisory Council shall audit the businesses at least annually with respect to investment and job creation/retention goals. Payroll and other business records necessary to conduct a fair review of such performance shall be made available to the village upon request. The Income Tax Advisory Council will make an annual recommendation to Village Council as to a business's compliance with the terms of the program, and recommended continuance, reduction, or termination of benefits where appropriate. Village Council retains the authority to determine the propriety of any reduction or termination of benefits.

(Ord. 10-19, passed 2-15-2010)

§ 33.99 PENALTY.

Any person who violates any provision of this chapter as set forth in § 33.16, and any person divulging information in violation of this chapter, as prohibited by § 33.09, shall be guilty of a misdemeanor and shall be fined not more than \$500, imprisoned not more than six months or both, for each offense. Each disclosure prohibited by § 33.09 shall constitute a separate offense.

(Ord. 1171, passed 5-26-1966; Am. Res. 1192, passed 11-28-1966)