

MUNICIPALITY OF SEBRING

TITLE SEVEN – Taxation Chap. 171. Income Tax

CHAPTER 171 Income Tax

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171.01 PURPOSE

To provide funds for the purposes of general municipal operations, maintenance, new equipment and capital improvements of the Municipality of Sebring, there shall be and is hereby levied a tax on income, salaries, **QUALIFYING** wages, commissions and other compensation and on net profits as hereinafter provided in ordinance 865-65, passed 11-29-65, and as subsequently amended from time to time.

171.02 DEFINITIONS

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

(a) **Administrator** means the Finance Director or Deputy Finance Director or any other competent person who may act as Administrator and shall enforce the provisions of

this chapter, after appointment by the Village Manager and upon approval by Council.

ADJUSTED FEDERAL TAXABLE INCOME MEANS A “C” CORPORATION’S FEDERAL TAXABLE INCOME BEFORE NET OPERATING LOSSES AND SPECIAL DEDUCTIONS AS DETERMINED UNDER THE INTERNAL REVENUE CODE, BUT INCLUDING SUBSEQUENT ADJUSTMENTS FROM REQUIRED ADDITIONS AND DEDUCTIONS. PASS-THROUGH ENTITIES MUST COMPUTE “ADJUSTED FEDERAL TAXABLE INCOME” AS IF THE PASS-THROUGH ENTITY WAS A “C” CORPORATION. THIS DEFINITION DOES NOT APPLY TO ANY TAXPAYER REQUIRED TO FILE A RETURN UNDER OHIO REVISED CODE (ORC) SECTION 5745.03 OR TO THE NET PROFIT FROM A SOLE PROPRIETORSHIP. THIS DEFINITION IS EFFECTIVE FOR TAX YEARS BEGINNING ON OR AFTER JANUARY 1, 2004.

- (b) **Association** means a partnership, limited partnership, limited liability company, Chapter S Corporation as defined in the federal tax code, 26 U.S.C. 1361, or any other form of unincorporated enterprise ~~owned by two or more persons~~.
- (c) **Board of Review** means the Board created by and constituted as provided in Section 171.13.
- (d) **Business** means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other activity.
- (e) **Corporation** means a corporation or joint stock association organized under the laws of the United States, the State of Ohio or any other state, territory or foreign country or dependency, but not including Chapter S Corporations.
- (f) **Domicile** means the permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.
- (g) **Employee** means one who works for **INCOME**, wages, salary, commission or other type of compensation in the service of an employer.
- (h) **Employer** means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other compensation basis.
- (i) **Fiscal year** means an accounting period of twelve months or less ending on any day other than December 31.

(+) **Gross receipts** means the revenue derived from sales, work done, or service rendered, before any deductions, exceptions, or credits are claimed.

(+) **Income** - Shall include all monies derived from any source whatsoever, including but not limited to:

(A) All salaries, wages, commissions, other compensation and other income from whatever source received by residents of the Municipality of Sebring.

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

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

MUNICIPALITY MEANS THE VILLAGE OF SEBRING, OHIO.

(+) **Net profits, FOR TAXABLE YEARS PRIOR TO 2004**, means the net gain from the operation of a business, profession or enterprise after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes. Net profits shall include any amount or value received, realized, or recognized in a sale or other disposition of tangible personal property or real property used in business, in excess of book value. **(FOR TAXABLE YEARS 2004 AND LATER, SEE “ADJUSTED FEDERAL TAXABLE INCOME”.)**

(+) **Nonresident** means an individual domiciled outside the Municipality of Sebring.

(+) **Nonresident unincorporated business entity** means an unincorporated business entity, not having an office or place of business within the Municipality of Sebring.

(+) **Person** means every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term “person”, as applied to any unincorporated entity, means the partners or members thereof, and as applied to corporations, the officers thereof.

(+) **Place of business** means any bona fide office (other than a mere statutory office) factory, warehouse or other space which is regularly occupied and used by the taxpayer in carrying on any business activity individually or through on or more of his regular employees regularly in attendance.

“QUALIFYING WAGE” MEANS WAGES AS DEFINED IN SECTION 3121(A) OF THE INTERNAL REVENUE CODE, WITHOUT REGARD TO ANY WAGE LIMITATIONS, BUT INCLUDING SUBSEQUENT ADJUSTMENTS FROM REQUIRED ADDITIONS AND DEDUCTIONS. “QUALIFYING WAGE” REPRESENTS EMPLOYEES’ INCOME FROM

WHICH MUNICIPAL TAX SHALL BE DEDUCTED BY THE EMPLOYER, AND ANY WAGES NOT CONSIDERED A PART OF "QUALIFYING WAGE" SHALL NOT BE TAXED BY THE MUNICIPALITY OF SEBRING. THIS DEFINITION IS EFFECTIVE JANUARY 1, 2004, FOR TAXABLE YEARS 2004 AND LATER.

- (q) **Resident** means an individual domiciled in the Municipality of Sebring.
- (r) **Resident unincorporated business entity** means an unincorporated business entity having an office or place of business within the Municipality of Sebring.
- (s) **Taxable income** means Income minus the deductions and credits allowed by this Chapter.
- (t) **Taxable year** means the calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this chapter and, in case of a return for fractional part of a year, the period for which such return is required to be made.
- (u) **Taxpayer** means a person, whether an individual, partnership, association or any corporation, organization, or other entity, required hereunder to file a return or pay a tax.

(v) The singular shall include the plural, and the masculine shall include the feminine and the neuter.

171.03 IMPOSITION OF TAX

Subject to the provisions of Section 171.16, an annual tax for the purposes specified in Section 171.01 shall be imposed on and after January 1, 2007, at the rate of two percent (2%) per year upon the following:

- (a) On all **INCOME**, ~~salaries~~, **QUALIFYING** wages, commissions, other compensation and other income received during the effective period of this chapter by residents of the Municipality. The term "other income" includes but is not limited to income earned, received, or derived from gaming, wagering, lotteries, including the Ohio State Lottery, or schemes of chance. All of which shall not be taxed as business income unless the individual subject to this tax has a federal gamblers permit effective during the tax year in which income from gaming, wagering, lotteries or schemes of chance is received.
- (b) On all **INCOME**, ~~salaries~~, **QUALIFYING** wages, commissions, other compensation and other income receive during the effective period of this chapter by nonresidents for work done or services performed or rendered in the Municipality.
- (c) (1) On the portion attributable to the Municipality of the net profits earned during the effective period of this chapter of all resident unincorporated businesses, professions or other entities, derived from sales made, work done, services

- performed or rendered and business or other activities conducted in the Municipality.
- (2) On the portion of the distributive share of the net profits earned or received during the effective period of this chapter of a resident partner or owner of a resident unincorporated business entity not attributable to the Municipality and not levied against such unincorporated business entity.
- (d) (1) On the portion attributable to the Municipality of the net profits earned during the effective period of this chapter of all nonresident unincorporated business, professions or other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in the Municipality whether or not such unincorporated business entity has an office or place of business in the Municipality.
 - (2) On the portion of the distributive share of the net profits earned or received during the effective period of the chapter of a resident partner or owner of a nonresident unincorporated business entity not attributable to the Municipality and not levied against such unincorporated business entity.
 - (e) (1) On the portion attributable to the Municipality of the net profits earned during the effective period of this chapter of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the Municipality whether or not such corporations have an office or place of business in the Municipality.
 - (2) The portion of the net profits attributable to the Municipality of a taxpayer conducting a business, profession or other activity both within and without boundaries of the Municipality shall be determined as provided in Ohio R.C. 718.02 in accordance with the rules and regulations adopted by the Administrator pursuant to this chapter.
 - (3) **EFFECTIVE FOR TAX YEARS 2004 AND LATER, THE DISTRIBUTIVE SHARE OF INCOME PAID TO AN S CORPORATION SHAREHOLDER SHALL BE TAXABLE IN THE FOLLOWING MANNER:**
 - A. IF NO PORTION OF THE NET PROFITS OF THE S CORPORATION ARE ALLOCATED OR APPORTIONED TO THE STATE OF OHIO, THE DISTRIBUTIVE SHARE IS TAXABLE ONLY TO THE EXTENT THAT IT REPRESENTS WAGES OR NET EARNINGS FROM SELF-EMPLOYMENT.**
 - B. IF ANY PORTION OF THE NET PROFITS OF THE S CORPORATION ARE ALLOCATED OR APPORTIONED TO THE STATE OF OHIO, THE FULL AMOUNT OF THE DISTRIBUTIVE SHARE IS TAXABLE.**
 - (34) Operating loss carry-forward
 - A. The portion of a net operating loss sustained in any taxable year subsequent to January 1, 1983, allocable to the Municipality may be applied against the portion of the profit of succeeding year (s) allocable to the Municipality 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, or applied against salaries or wages in any year.

- B. The portion of a net operating loss sustained shall be allocated to the Municipality in the same manner as provided herein for allocating net profits to the Municipality.
- C. The Administrator shall provide by rules and regulations the manner in which such Net operating carry-forward shall be determined.

(45) Consolidated Returns

- A. Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the Municipality of Sebring. However, once the affiliated group has elected to file a consolidated return or a separate return with the Municipality, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the Municipality of Sebring.
- B. 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 Municipality constituting a portion only of its total business, the Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the Municipality . If the Administrator finds that the net profits are not properly allocated to the Municipality by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity, or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the Municipality.

(f) The tax provided for herein shall not be levied on:

- (1) Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard;
- (2) The gross income and gross receipts of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property, or tax exempt activities;
- (3) Unemployment insurance benefits, welfare benefits, and pensions paid as a result of retirement;
- (4) Proceeds of insurance paid by reason of death of the insured; retirement disability benefits, annuities, or gratuities not in the nature of compensation for services rendered from whatever source derived;

(5) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation; **THE MINISTER MUST BE DULY ORDAINED, COMMISSIONED, OR LICENSED BY A RELIGIOUS BODY CONSTITUTING A CHURCH OR CHURCH DENOMINATION, AND HAVE AUTHORITY TO PERFORM ALL SACRAMENTS OF THE CHURCH.**

(6) Receipts **BY BONA FIDE CHARITABLE, RELIGIOUS AND EDUCATIONAL ORGANIZATIONS AND ASSOCIATIONS, WHEN THOSE RECEIPTS ARE** from seasonal or casual entertainment, amusements, fund raising, sports events, and health and welfare activities when conducted by bona fide charitable, religious, or educational organizations and associations;

(7) The income of individuals under 18 years of age;

(8) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, items of income already taxed by the state from which the city is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business);

(9) Expenses deductible in accordance with federal guidelines on federal form 2106, subject to audit and approval by the Tax Administrator;

(10) Compensation paid under Section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually;

(11) Salaries, income, wages, commissions, other compensation, other income and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce; and

(12) Salaries, wages, commissions, other compensation, other income and net profits, including interest and dividends as provided in 718.01 R.C., the taxation of which is prohibited by the Constitution of the State or any act of the Ohio General Assembly limiting the power of the city to impose net income taxes.

171.04 EFFECTIVE PERIOD

The tax shall be levied, collected and paid with respect to the income, salaries, wages, commissions, and other compensation and with respect to the net profits of businesses, professions or other activities earned from January 1, 1966, until repealed.

171.05 RETURN AND PAYMENT OF TAX.

(a) Each taxpayer shall, **FOR YEARS PRIOR TO TAXABLE YEAR 2004**, whether or not a tax is due thereon, make and file a return on or before April 30 of each year, following the effective date of this chapter, **AND ON OR BEFORE APRIL 15TH FOR TAXABLE YEARS 2004 AND LATER**. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or period **FOR YEARS PRIOR TO TAXABLE YEAR 2004, AND WITHIN 105 DAYS FOR TAXABLE YEARS 2004 AND LATER**. Each resident of the Municipality who has no income subject to the Municipality's income tax shall so indicate this fact on their income tax return, including the reason(s) their income is not taxable, and shall be relieved of filing future returns unless and until such time the taxpayer receives income taxable to the Municipality.

(b) The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from such Administrator or on other forms deemed acceptable by the Administrator setting forth:

- (1) The aggregate amounts of **INCOME**, salaries, wages, commissions, other compensation and other income **EARNED OR** received and gross receipts from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross receipts received during the preceding year and subject to the tax.
- (2) The amount of the tax imposed by this chapter on such receipts and profits; and
- (3) Such other pertinent statements, information returns or other information as the Administrator may require, **INCLUDING BUT NOT LIMITED TO COPIES OF ALL W-2 FORMS, 1099 MISCELLANEOUS INCOME FORMS, AND ALL APPLICABLE FEDERAL SCHEDULES**.

(c) The Administrator may grant an extension for filing of the annual return upon the request of the taxpayer for a period not to exceed six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the federal income tax return **FOR TAXABLE YEARS PRIOR TO 2004. FOR TAXABLE YEAR 2004 THE EXTENDED DUE DATE SHALL BE THE LAST DAY OF THE MONTH FOLLOWING THE MONTH TO WHICH THE DUE DATE OF THE FEDERAL INCOME TAX RETURN HAS BEEN EXTENDED. FOR TAXABLE YEARS SUBSEQUENT TO 2004 THE EXTENDED DUE DATE SHALL BE THE LAST DAY OF THE MONTH TO WHICH THE DUE DATE OF THE FEDERAL INCOME TAX RETURN HAS BEEN EXTENDED**. The Administrator may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended. The Administrator may deny the extension if the taxpayer's income tax account with the Municipality of Sebring is delinquent in any way.

- (d) (1) The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown as due thereon, provided, however, that where any portion of the tax so due has been deducted at the source pursuant to the provisions of Section 171.06, or where any portion of such tax has been paid by the taxpayer pursuant to the provisions of Section 171.07, or where an income tax has been paid to another Municipality,

credit for the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing the return.

(2) A taxpayer who has overpaid the amount of tax to which the Municipality is entitled under the provisions of this chapter may have such overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

(e) (1) Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 171.11 and 171.15. Such amended returns shall be on a form obtainable upon request from the Administrator. A taxpayer may not change the method of accounting (**I.E., CASH OR ACCRUAL**) or apportionment of net profits after the due date for filing the original return.

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

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

171.06 COLLECTION AT SOURCE

(a) In accordance with rules and regulations prescribed by the Administrator, each employer within or doing business within the Municipality shall deduct at the time of payment of such salary, wages, commissions or other compensation or other income, the tax of two percent (2%) of the gross salaries, wages, commissions or other compensation or other income due by the employer to the employee.

(b) Each such employer withholding tax in accordance with subsection (a) hereof, shall make a return and pay to the Administrator the amount of taxes so withheld as follows: ~~If the amount of taxes so withheld is five hundred dollars (\$500.00) or more in any calendar month, a return shall be made and the taxes so withheld shall be paid to the Administrator on or before the tenth day of the succeeding calendar month; but if the amount of taxes so withheld is less than five hundred dollars (\$500.00) for any calendar month, a return shall be made and the taxes so withheld paid to the Administrator on or before the last day of the month following the close of each calendar quarter~~ **IF THE TAXES WITHHELD DURING THE PREVIOUS TAX YEAR AVERAGED FIVE HUNDRED DOLLARS (\$500.00) OR MORE PER MONTH, THEN MONTHLY PAYMENTS OF TAXES WITHHELD SHALL BE PAID BY AN EMPLOYER TO THE ADMINISTRATOR WITHIN TEN CALENDAR DAYS AFTER THE CLOSE OF EACH CALENDAR MONTH; EMPLOYERS WHO AVERAGED LESS THAN FIVE HUNDRED DOLLARS (\$500.00) PER MONTH SHALL MAKE PAYMENT OF THE WITHHELD TAXES ON OR BEFORE THE**

LAST DAY OF THE MONTH FOLLOWING THE CLOSE OF EACH CALENDAR QUARTER.

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

(d) Such employer in collecting the tax shall be deemed to hold the same, until payment is made by such employer to the Municipality, as a trustee for the benefit of the Municipality and any such tax collected by such employer from his employees shall, until the same is paid to the Municipality be deemed a trust fund in the hands of such employer.

(e) The employer of a domestic worker shall be required to withhold income tax on wages, salaries, commissions, other compensation and other income paid by the employer to the domestic worker, and remit such withheld tax to the municipality of Sebring in accordance with (a) and (b) of this Section.

(f) All employers that provide any contractual service within the Municipality, and who employ subcontractors in conjunction with that service, shall provide the Municipality the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax withholding requirements under this chapter.

171.07 DECLARATIONS.

(a) Every person who anticipates any taxable income which is not subject to Section 171.06, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 171.03 shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity, together with the estimated tax due thereon, if any, provided, however, that if a person's income is wholly from wages from which the tax will be withheld and remitted to the Municipality in accordance with Section 171.06, such person need not file a declaration.

(b) (1) Such declaration shall be filed on or before April 30 of each year, **AND ON OR BEFORE APRIL 15TH FOR TAXABLE YEARS 2005 AND LATER**, during the life of this chapter, except that no penalties or interest shall be assessed, for not filing a declaration, on any resident taxpayer who was not domiciled in the Municipality on the first day of January of the year in which they became subject to estimated payments, nor shall penalties or interest be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period **AND THE TAXPAYER FILED A RETURN FOR THAT YEAR.**

(2) Those taxpayers reporting on a fiscal year basis shall file a declaration within four months after the beginning of each fiscal year period, **AND WITHIN 105 DAYS FOR TAXABLE YEARS 2005 AND LATER.**

(c) (1) Such declaration shall be filed upon a form furnished by, or obtainable from, the Administrator, **OR ON OTHER FORMS DEEMED ACCEPTABLE BY THE ADMINISTRATOR** ~~provided, however, that~~

Credit shall be taken for the Municipal tax to be withheld from any portion of such **ESTIMATED** income. In accordance with the provisions of Section 171.15, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality.

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

(d) Such declaration of estimated tax to be paid to the Municipality by taxpayers who are individuals shall be accompanied by a payment of at least one-fourth of 90% of the estimated annual tax and at least a similar amount shall be paid on or before July 31, October 31 and January 31 next following. However, in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(e) Such declaration of estimated tax to be paid to the Municipality by corporations and associations shall be accompanied by a payment of at least one-fourth of 90% of the estimated annual tax and at least a similar amount shall be paid on or before June 15, September 15 and December 15. In the case of a fiscal year taxpayer the second, third, and fourth quarterly payments shall be due on the fifteenth day of the sixth, ninth, and twelfth months of the taxable year, respectively.

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

171.08 DUTIES OF THE ADMINISTRATOR.

(a) It shall be the duty of the Administrator to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, to keep an accurate record thereof and to report all moneys so received.

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

(c) The Administrator is hereby charged with the enforcement of the provisions of this chapter and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns. **TAXPAYERS ARE HEREBY REQUIRED TO COMPLY WITH SAID RULES AND REGULATIONS.**

(d) In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax so determined, together with interest and penalties if any, and shall in writing inform the taxpayer of the total assessed amount so due. Such assessment shall be collected in accordance with the rules and regulations as set forth by the Tax Administrator and approved by the Board of Review.

(e) Subject to the consent of the Board of Review or pursuant to regulation approved by such Board, the Administrator shall have the power to compromise any interest and penalty, or both, imposed by Section 171.10.

**171.09 INVESTIGATIVE POWERS OF THE ADMINISTRATOR;
DIVULGING CONFIDENTIAL INFORMATION**

(a) The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and federal **AND STATE** income tax returns of any employer or of any taxpayer or person subject to, or whom the Administrator believes is subject to the provisions of this chapter, for the purpose of verifying the accuracy of any return made or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request by the Administrator, or his duly authorized agent or employee, the means, facilities and opportunity for making such examination and investigations as hereby authorized.

(b) The Administrator or his duly authorized agent is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and federal **AND STATE** income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

(c) The refusal to produce books, papers, records and federal income tax returns or the refusal to submit to such examination by any employer or person subject to 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 Administrator authorized hereby shall be deemed a violation of this chapter punishable as provided in Section 171.99.

(d) Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential except for official tax purposes, or except in accordance with proper judicial order. No person shall divulge such information.

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

171.10 INTEREST AND PENALTIES

(a) All taxes imposed and all moneys withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid after they become due shall bear interest at the rate of two percent (2%) per month ~~or fraction thereof~~.

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

(1) For failure to pay **ANY** taxes, **INCLUDING ESTIMATED PAYMENTS, WHEN** due, other than taxes withheld, two percent (2%)

per month ~~or fraction thereof~~; or twenty dollars (\$20.00) whichever is greater.

(2) For failure to remit taxes withheld from employees five percent (5%) per month ~~or fraction thereof~~; or twenty dollars (\$20.00) whichever is greater.

(c) The minimum penalty for failure to file a complete and timely return as specified in Section 171.05 shall be twenty dollars (\$20.00) whether or not a tax is due.

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

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

171.11 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

(a) All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of a substantial portion of income subject to this tax, or failure to file a return, additional assessment shall not be made after three years from the time the return was due or filed, whichever is later. In the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all civil actions to recover municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later. In those cases which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations, the period within which an additional assessment may be made by the Administrator shall be one year from the time the final determination of the federal tax liability.

(b) Those officers or employees having control or supervision of, or charged with, the responsibility of filing the return and making payments for a corporation or association and otherwise complying shall be personally liable for failure to file the return or pay the taxes and penalties and interest due as required. The dissolution, bankruptcy, or reorganization of any employer does not discharge the officers' or employees' liability for a prior failure of such business to file a return or pay the taxes due.

(c) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date upon which such payment was made or the return was due, or within three months after final determination of the federal tax liability, whichever is later. **HOWEVER, THE FOLLOWING SHALL APPLY REGARDING REFUNDS OF TAX WITHHELD FROM NON-QUALIFIED DEFERRED COMPENSATION PLANS (NDCP):**

- (1) A TAXPAYER MAY BE ELIGIBLE FOR A REFUND IF THE TAXPAYER HAS SUFFERED A LOSS FROM A NDCP. THE LOSS WILL BE CONSIDERED SUSTAINED ONLY IN THE TAXABLE YEAR IN WHICH THE TAXPAYER RECEIVES THE FINAL DISTRIBUTION OF MONEY AND PROPERTY PURSUANT TO THE NDCP. FULL LOSS IS SUSTAINED IF NO DISTRIBUTION OF MONEY AND PROPERTY WILL BE MADE BY THE NDCP.
- (2) A TAXPAYER WHO RECEIVES INCOME AS A RESULT OF PAYMENTS FROM A NDCP, AND THAT INCOME IS LESS THAN THE AMOUNT OF INCOME DEFERRED TO THE NDCP AND UPON WHICH MUNICIPAL TAX WAS WITHHELD, THEN A REFUND WILL BE ISSUED ON THE AMOUNT REPRESENTING THE DIFFERENCE BETWEEN THE DEFERRED INCOME THAT WAS TAXED AND THE INCOME RECEIVED FROM THE NDCP. IF DIFFERENT TAX RATES APPLIED TO THE TAX YEARS IN WHICH DEFERRALS, A WEIGHTED AVERAGE OF THE DIFFERENT TAX RATES WILL BE USED TO COMPUTE THE REFUND AMOUNT.
- (3) REFUNDS SHALL BE ALLOWED ONLY IF THE LOSS IS ATTRIBUTABLE TO THE BANKRUPTCY OF THE EMPLOYER WHO HAD ESTABLISHED THE NDCP, OR THE EMPLOYEE'S FAILURE OR INABILITY TO SATISFY ALL OF THE EMPLOYER'S TERMS AND CONDITIONS NECESSARY TO RECEIVE THE NONQUALIFIED COMPENSATION.

(d) INCOME TAX THAT HAS BEEN DEPOSITED WITH THE MUNICIPALITY OF SEBRING, BUT SHOULD HAVE BEEN DEPOSITED WITH ANOTHER MUNICIPALITY, IS ALLOWABLE BY THE MUNICIPALITY OF SEBRING AS A REFUND BUT IS SUBJECT TO THE THREE-YEAR LIMITATION ON REFUNDS. INCOME TAX THAT SHOULD HAVE BEEN DEPOSITED WITH THE MUNICIPALITY OF SEBRING, BUT WAS DEPOSITED WITH ANOTHER MUNICIPALITY, SHALL BE SUBJECT TO RECOVERY BY THE MUNICIPALITY OF SEBRING. THE MUNICIPALITY OF SEBRING WILL ALLOW A NON-REFUNDABLE CREDIT FOR ANY AMOUNT OWED THE MUNICIPALITY OF SEBRING THAT IS IN EXCESS OF THE AMOUNT TO BE REFUNDED BY THE OTHER MUNICIPALITY, AS LONG AS THE TAX RATE OF THE OTHER MUNICIPALITY IS THE SAME OR HIGHER THAN THE MUNICIPALITY OF SEBRING'S TAX RATE. IF THE MUNICIPALITY OF SEBRING'S TAX RATE IS HIGHER, THE TAX REPRESENTING THE NET DIFFERENCE OF THE RATES IS ALSO SUBJECT TO COLLECTION BY THE MUNICIPALITY OF SEBRING.

(de) Amounts of less than one dollar (\$1.00) shall not be collected or refunded.

171.12 VIOLATIONS

- (a) No person shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter; or
 - (2) Make any incomplete, false or fraudulent return; or
 - (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
 - (4) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
 - (5) Refuse to permit the Administrator or any duly authorized agent to employee to examine his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or
 - (6) Fail to appear before the Administrator and to produce his books, records, papers or federal income tax returns relating to the income of net profits of a taxpayer upon order or subpoena of the Administrator; or
 - (7) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
 - (8) Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby; or
 - (9) Give to an employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or
 - (10) Fail to use ordinary diligence in maintaining proper records of employees, residence addresses, total wages paid and the Municipal tax withheld, or knowingly give the Administrator false information; or
 - (11) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.
- (b) All prosecutions under this section must be commenced within the period stipulated in Ohio R.C. 718.06.
- (c) The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return, return or declaration, from filing such form, or from paying the tax.

171.13 BOARD OF REVIEW

(a) A Board of Review, consisting of the Mayor-President of Council, the President Pro Tempore of Council, and the Finance Director is hereby created. In the event of the inability of one of the above-named persons to serve on the Board, whether due to illness, vacancy in office, conflict of interest or any other cause, the remaining two members of the Board shall designate another Council member to service as the third member of the Board until the reason for the inability to serve is removed or cured. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board shall be conducted privately and the provisions of Section 171.09 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

(b) All rules and regulations and amendments or changes thereto, which are adopted by the Administrator 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 Administrator and, at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation, and the decision of the Board of Review shall be final.

(c) Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter, and who has filed with the Municipality of Sebring the required returns or other documents pertaining to the municipal income tax obligation at issue, may appeal therefrom to the Board of Review within thirty days from the announcement of such ruling or decision by the Administrator. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. Such hearing shall be scheduled within 45 days from the date of appeal. The Board's ruling must be made within 30 days from the date of the closing of the record on the appeal shall be in writing and filed with the Tax Administrator, and within 15 days of its decision shall send notice of its decision by ordinary mail to the taxpayer making the appeal.

(d) Any person dissatisfied with any ruling or decision of the Board may appeal therefrom to a court of competent jurisdiction by perfecting the appeal as required by state law within 30 days from the filing of such ruling or decision. **FOR MATTERS RELATING TO TAX YEARS BEGINNING ON OR AFTER JANUARY 1, 2004, ANY RULING OR DECISION OF THE BOARD OF APPEAL MAY BE APPEALED TO A COURT OF COMPETENT JURISDICTION OR TO THE STATE BOARD OF TAX APPEALS.**

171.14 ALLOCATION OF FUNDS

(a) Seventy percent (70%) of all monies received by the Municipality of Sebring Income Tax be deposited in the Municipal General Fund.

(b) Seven percent (7%) of all monies received by the Municipality of Sebring Income Tax be deposited in the Municipal Special Revenue Fund.

(c) Sixteen percent (16%) of all monies received by the Municipality of Sebring Income Tax be deposited in the Municipal Capital Projects Fund.

(d) Seven percent (7%) of all monies received by the Municipality of Sebring Income Tax be deposited in the Municipal Income Tax Fund.

171.15 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY

(a) Where a resident of the Municipality is subject to a municipal income tax in another municipality he 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 Municipality who receives net profits, **INCOME**, salaries, **QUALIFYING** wages, commission or other personal service

compensation or other income for work done or services performed or rendered outside of the Municipality, if it is made to appear that he has paid a municipal income tax on the same income taxable under this chapter to another municipality, shall be allowed a credit against the tax imposed by this chapter of the amount so paid by him or in his behalf to such other municipality. The credit shall not exceed the tax assessed by this chapter on such income earned in such other municipality or municipalities where such tax is paid.

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

171.16 SEVERABILITY

If any sentence, clause, section or part of this chapter, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

171.17 COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE

(a) This chapter shall continue effective insofar as the levy of taxes is concerned until repealed and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of such taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in Sections 171.11 and 171.12.

(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 Sections 171.05 and 171.06 as though the same were continuing.

171.18 DUTIES OF OWNERS OF RENTAL OR LEASED PROPERTY

(a) For the purposes on this section, “tenant” means:

- (1) If there is a written lease or rental agreement, the person or persons who signs the written lease or rental agreement with the owner.
- (2) If there is an oral lease or rental agreement, the person or persons with whom the owner enters into the oral lease or rental agreement.

(b) All property owners of rental or lease property who rent to tenants of residential, commercial or industrial premises shall file with the Administrator a report showing the names

and address of each such tenant who occupies residential, commercial or industrial premises within the corporation limits of the Municipality.

(c) Within thirty days after a new tenant occupies residential, commercial or industrial rental property of any kind within the Municipality, all property owners of rental or leased residential, commercial or industrial property who rent to tenants, shall file with the Administrator, a report showing the names and addresses of each such tenant who occupies residential, commercial or industrial premises within the corporation limits of the Municipality.

(d) Within thirty days after a tenant vacates a rental or leased residential, commercial or industrial property located within the Municipality, the property owner of such vacated rental or lease property shall file with the Administrator a report showing the date of vacating from the rental or leased residential, commercial or industrial property and identifying such vacating tenant.

171.99 PENALTY

(a) Whoever violates any of the provisions of this chapter for which no penalty is otherwise provided shall be guilty of a misdemeanor of the first degree.

(b) Whoever violates Section 171.09(d) shall be guilty of a misdemeanor of the first degree. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the Municipality who violates Section 171.09(d) shall be guilty of an offense punishable by immediate dismissal.

(c) Whoever violates Section 171.18 is guilty of a minor misdemeanor for a first offense and a misdemeanor of the fourth degree for a subsequent offense.

Ordinance No. 1778-01

Last Passed by Council: December 27, 2001