

**CHAPTER 35: INCOME TAX**

Section

**GENERAL PROVISIONS**

***General Provisions***

- 35.01 Purpose; exemptions
- 35.02 Definitions

***Taxation Procedures***

- 35.15 Imposition of tax
- 35.16 Effective period
- 35.17 Return and payment of tax
- 35.18 Collection at source
- 35.19 Declarations
- 35.20 Interest and penalties on unpaid tax
- 35.21 Collection of unpaid taxes and refunds of overpayments
- 35.22 Allocation of funds
- 35.23 Credit for tax paid to another municipality

***Administration and Enforcement***

- 35.35 Income Tax Bureau; authority
- 35.36 Investigative powers of Commissioner; information confidential
- 35.37 Board of Review
- 35.38 Violations
  
- 35.99 Penalty

***Statutory reference:***

*Municipal income taxes, see R.C. Chapter 718*  
*Payroll deductions, see R.C. § 9.42*

**§ 35.01 PURPOSE; EXEMPTIONS.**

(A) To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities, and capital improvements of the village, there is hereby levied a tax on salaries, wages, commissions and other compensation, and on net profits as hereinafter provided. ('78 Code, § 171.01)

(B) This chapter shall not apply to any person, firm or corporation, or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for. ('78 Code, § 171.16) (Ord. 556-74, passed 12-9-74)

**§ 35.02 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 neuter.

**ASSOCIATION.** A partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.

**BOARD OF REVIEW.** The Board created by and constituted as provided for in § 35.37.

**BUSINESS.** An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity.

**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.

**EMPLOYEE.** One who works for wages, salary, commission, or other type of compensation in the services of any employer.

**EMPLOYER.** 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.

**FISCAL YEAR.** An accounting period of 12 months ending on any day other than December 31.

**GROSS RECEIPTS.** Total income of taxpayers from whatever source derived.

**MUNICIPALITY.** The Village of Batavia.

**NET PROFITS.** The net gain from all operations including those pertaining to capital gains and losses of a business, profession or enterprise after provision for all ordinary and necessary expense, except taxes imposed by this chapter, and federal and other taxes based on income, paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, and, in the case of an association, without deduction of salaries paid to partners or the owners.

**NONRESIDENT.** A person, whether an individual, association, corporation or other entity, domiciled outside the village.

**PERSON.** Every person, partnership, fiduciary, association, corporation or other entity. Whenever used in any clause prescribed and imposing a penalty, the term "person," as applied to any association, includes 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 employees, regularly in attendance.

**RESIDENT.** A person, whether an individual, association, corporation or other entity, domiciled in the village.

**TAX YEAR.** The calendar year or the fiscal year upon the basis of which net profits are to be computed under this chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

**TAX COMMISSIONER.** The Tax Commissioner of the village or the person executing the duties of the aforesaid Commissioner.

**TAXPAYER.** A person, whether an individual, partnership, association, corporation or other entity, required by this chapter to file a return or pay a tax.

**VILLAGE.** The Village of Batavia.  
(78 Code, § 171.02) (Ord. 556-74, passed 12-9-74)

## **TAXATION PROCEDURES**

### **§ 35.15 IMPOSITION OF TAX.**

(A) *Basis of imposition.* Subject to the provisions of § 35.01(B), an annual tax, for the purposes specified in § 35.01(A) is hereby levied on and after January 1, 1975, at the rate of .5% per annum, and effective July 1, 1991, the income tax is increased to 1% per annum, upon the following:

(1) On all salaries, wages, including sick and vacation pay, commissions and other compensation earned during the effective period of this chapter by residents.

(2) On all salaries, wages, including sick and vacation pay, commissions and other compensation earned during the effective period of this chapter by nonresidents for work done or service performed in the municipality.

(3) (a) On the portion attributable to the municipality of the net profits earned during the effective period of this chapter of all resident associations, unincorporated businesses, professions or other entities derived from sales made, work done or services performed or rendered, or business or other activities conducted in the municipality.

(b) On a resident partner's or owner's share of the net profits earned during the effective period of this chapter of a resident association or other unincorporated entity not attributable to the municipality and not levied against such association or other unincorporated entity.

(4) (a) On the portion attributable to the municipality of the net profits earned during the effective period of this chapter, of all nonresident associations, unincorporated businesses, professions or other entities, derived from sales made, work done or services performed or rendered or business ties conducted in the municipality, whether or not such association or other unincorporated entity has an office or place of business in the municipality.

(b) On a resident partner's or owner's share of the net profits earned during the effective period of this chapter of a nonresident association or other unincorporated entity not attributable to the municipality and not levied against such association or other entity.

(5) On the net profits earned during the effective period of this chapter of all corporations derived from sales made, work done or services performed or rendered, and business or other activities conducted in the municipality whether or not such corporation has an office or place of business in the municipality.

(B) *Allocation of net profits.* Where a person conducts a business both within and outside the municipality, the portion of the entire net profits of such business to be allocated as having been made within the municipality may be determined from the records of such business, if such business has bona fide records which disclose with reasonable accuracy what portion of its net profits is attributable to that part of its activities conducted within the municipality or at the option of the taxpayer may be determined

by the following formula, which shall be used if taxpayer has no bona fide records showing net profits from Batavia business activities, subject, however, to the provisions of subparagraph (D)(2). hereof.

(1) Multiply the entire net profits of the business by a business allocation percentage to be determined by:

(a) Ascertaining the percentage with the average net book value of the real and tangible personal property owned or used in the business and situated within the municipality, during the period covered by the return is of the average net book value of all the real and tangible personal property owned or used in the business, wherever situated, during such period.

(b) Ascertaining the percentage which the gross receipts of the business from sales made and services performed in the municipality, during the period covered by the return, are of the total gross receipts from all sales and services, wherever made or performed, during such period.

(c) Ascertaining the percentage which the total wages, salaries, commissions and other compensation paid, during the period covered by the return, to employees for services performed in the municipality is of the total wages, salaries, commissions and other compensation paid during such period to all employees within and outside the municipality.

(d) Adding together the percentages determined in accordance with divisions (a), (b), and (c) above, or such of the aforesaid percentages as are applicable to the particular taxpayer, and dividing the total so obtained by the number of percentages used in deriving that total.

1. A factor is applicable even though it may be allocable entirely in or outside the municipality.

2. In the event a just and equitable result cannot be obtained under the formulas provided for herein, the Board of Review, upon application of the taxpayer or the Tax Commissioner, shall, under uniform regulations adopted by the

Board, have the authority to substitute other factors or methods calculated to effect a fair and proper allocation.

(C) *Operating loss carry-forward.*

(1) The portion of a net operating loss sustained in any taxable year, beginning with January 1, 1975, allocable to the municipality, may be applied against the portion of the profit of succeeding tax years, allocable to the municipality, until exhausted, but in no event for more than the five taxable years immediately following the year in which the loss occurred. 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 municipality in the same manner as provided herein for allocating net profits to the municipality.

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

(D) *Consolidated returns.*

(1) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Tax Commissioner.

(2) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, the Tax Commissioner shall require such information, in addition to the return hereinafter provided for, as he or she may deem necessary to ascertain whether net profits are properly allocated to the municipality. If the Tax Commissioner finds net profits are not properly allocated to the municipality by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, he or she may require the filing of a consolidated return or adjust such transactions so as to produce a fair and proper allocation of net profits to the municipality.

(E) *Exception.* The tax provided for herein shall not be levied upon the military pay or allowances of members of the armed forces of the United States, or upon the net profits of any civic, charitable, religious, fraternal or other organization specified in R.C. Chapter 718 to the extent that such net profits are exempted from municipal income taxes under such chapter.

('78 Code, § 171.03) (Ord. 556-74, passed 12-9-74; Ord. 822-91, passed 3-11-91)

**§ 35.16 EFFECTIVE PERIOD.**

The tax imposed by this chapter shall be levied, collected and paid with respect to all income and net profits, subject to the tax, earned on or after January 1, 1975.

('78 Code, § 171.04) (Ord. 556-74, passed 12-9-74)

**§ 35.17 RETURN AND PAYMENT OF TAX.**

(A) *Date and exemptions.* Each person who engaged in business, or whose salary, wages, commissions or other compensation are subject to the tax imposed by this chapter shall, whether or not a tax is due thereon, make and file, on or before April 30 in each year beginning with the year 1976, a return with the Tax Commissioner. A taxpayer on a fiscal year accounting basis for federal income tax purposes shall, beginning with his or her first fiscal year, any part of which falls within the effective period of this chapter, file his or her return within four months from the end of such fiscal year or period. The Tax Commissioner is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by the employer or employers from the salaries, wages, commissions or other compensation of an employee, and paid by the employer or employers to the Tax Commissioner shall be accepted as the return required of any employee whose sole income, subject to tax under this chapter, is such salary, wages, commissions or other compensation.

(B) *Returns and contents thereof.* The return shall be filed with the Tax Commissioner on a form or forms furnished by or obtainable upon request from the Tax Commissioner setting forth:

(1) The aggregate amounts of salaries, wages, commissions and other compensation earned, and gross income from any business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income, earned during the preceding year and subject to such tax;

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

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

(C) *Extensions.* The Tax Commissioner may extend the time for filing of the annual return upon the request of the taxpayer for a period of not more than six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for filing of the federal income tax return. 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. 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.

(D) *Payment with returns.*

(1) The taxpayer making a return shall at the time of the filing thereof pay to the Tax Commissioner the amount of taxes shown as due thereon; however, where the source, pursuant to the provisions of § 35.18 or where any portion of such tax has been paid by the taxpayer pursuant to the provisions of § 35.19, or where an income tax, creditable against the Batavia tax pursuant to § 35.23 has been paid to another municipality, credit for the amount so paid 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 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 or her election indicated on the return, such overpayment or part thereof, shall be refunded, provided that no additional taxes or refunds of less than \$1 shall be collected or refunded.

(E) *Amended returns.*

(1) Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and limitations contained in §§ 35.21 and 35.23, such amended returns shall be on a form obtainable on request from the Tax Commissioner.

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

('78 Code, § 171.05) (Ord. 556-74, passed 12-9-74)

### § 35.18 COLLECTION AT SOURCE.

(A) *Withholding by employer.* Each employer within, or doing business within, the municipality, who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct at the time of the payment of such salary, wage, commission or other compensation due by the employer to each employee, and shall, on or before the last day of April, July, October and January of each year, beginning with April 1975, make a return and pay to the Tax Commissioner the amount of taxes so deducted during the preceding calendar quarter. The return 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.

(B) *Employer considered as trustee.* Each employer in collecting such 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 or her employees shall,

until the same is paid to the municipality be deemed a trust fund in the hands of such employer. Each employee shall be liable for the payment of the tax required to be deducted and withheld, whether or not such tax, in fact, has been withheld.

(C) *Corporate officers personal liability.* It shall be the responsibility, jointly and severally, of the president and treasurer of each corporation required to withhold the tax from wages of its employees under this section to see that all such taxes so withheld are paid to the municipality in accordance with the provisions of this section. In the event taxes withheld by a corporation from the salaries of its employees are not paid to the municipality in accordance with the provisions of this section, the president and treasurer of the corporation shall each be criminally liable under the provisions of § 35.99.

(D) *Employees' listings.* On or before April 30 of each year, beginning with the year 1976, 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.

(E) *Domestic servants.* No person shall be required to withhold the tax on the wages or other compensation paid domestic servants employed exclusively in or about such person's residence. However, such domestic servants shall be responsible for filing and paying their own returns and taxes. ('78 Code, § 171.06) (Ord. 556-74, passed 12-9-74)

### § 35.19 DECLARATIONS.

(A) *Requirement for filing.* Every person who anticipates any taxable income which is not subject to § 35.18, or engages in any business, profession, enterprise or activity, 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.

#### (B) *Dates for filing.*

(1) Such declaration shall be filed on or before April 30 of each year, beginning with the year 1975 during the life of this chapter, or within four months of the date the taxpayer first becomes subject to the provisions of this section.

(2) Those taxpayers reporting on a fiscal year basis shall file a declaration within four months after the start of each fiscal year or period.

#### (C) *Credit for tax withheld or paid another community.*

(1) Such declaration shall be filed upon a form furnished by or obtainable from the Tax Commissioner. Credit shall be taken in such declaration for Batavia tax to be withheld from any portion of such income and for income taxes to be paid to another taxing municipality for which credit is allowed against the Batavia tax under § 35.23.

(2) On or before January 31, 1976, calendar year taxpayers shall pay the balance of their estimated tax for 1975; by such date fiscal year taxpayers shall pay another three months' estimated tax and shall pay the balance of such estimated tax for their fiscal year within 30 days of the close of such fiscal year.

(3) Beginning with the year 1975, a declaration of estimated tax to be paid the municipality shall be accompanied by a payment of at least one-fourth of the estimated tax, less credit for taxes withheld or paid to another municipality, and at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the tax year.

(4) A declaration may be amended at any time, provided that if an amended declaration is filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(d) *Amended declaration.* An amended declaration may be filed with the filing of any quarterly return. If it appears that the original declaration and payments made for such year

underestimated the taxpayer's income by 30% or more the difference between 70% of such taxpayer's tax liability and the amount of estimated tax he or she actually paid on or before December 31 or the date fixed by regulation, whichever is applicable, shall be subject to the interest and penalty provisions of 35.20.

(E) *Annual return required.* On or before the last day of the fourth month of the calendar or fiscal year following that for which the 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 § 35.17. ('78 Code, § 171.07) (Ord. 556-74, passed 12-9-74)

### **§ 35.20 INTEREST AND PENALTIES ON UNPAID TAX.**

(A) *Interest.* All taxes imposed and moneys withheld or required to be withheld by employers under the provisions of this chapter remaining unpaid after they became due, shall bear interest at the rate of .5% per month.

(B) *Penalties.* In addition to interest as provided in division (A) hereof, penalties for failure to pay taxes and to withhold and remit taxes pursuant to the provisions of this chapter are hereby imposed as follows:

(1) In case of taxpayers failing to pay the full amount of tax due, a penalty of the higher of:

(a) \$25; or

(b) One percent per month, or fraction thereof, of the amount of the unpaid tax, if the tax is paid during the first six months after the tax became due; a penalty of 2% per month, or fraction thereof, of the unpaid tax, if the tax is paid between the seventh and twelfth months after the tax became due; and a penalty of 4% per month, or fraction thereof, of the amount of the unpaid tax, if the tax is paid later than 12 months after it became due. The percentages herein specified, when used, shall apply from the first month of delinquency.

(2) In the case of employers who fail to withhold and remit to the Tax Commissioner the taxes to be withheld from employees, a penalty of the higher of:

(a) \$50; or

(b) Two percent per month, or fraction thereof, of the unpaid withholding, if paid during the first three months after it was due; a penalty of 4% per month or fraction thereof, of the unpaid withholding, if paid during the fourth to sixth month, inclusive, after it was due; and a penalty of 5% per month or fraction thereof, of the unpaid withholding, if paid later than six months after it was due. The percentages herein specified, when used, shall apply from the first month of delinquency.

(C) *Exceptions.* A penalty shall not be assessed or 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 in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after final determination of the federal tax liability.

(D) *Abatement by Board of Review.* Upon an appeal from the refusal of the Tax Commissioner to recommend abatement of penalty and interest, the Board of Review may abate such penalty or interest, or both. ('78 Code, § 171.10) (Ord. 556-74, passed 12-9-74)

### **§ 35.21 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.**

(A) *Time limitation on suits.* 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. No additional assessment shall be made after three years from the time of payment of any tax due hereunder. However, there shall be no period of limitation on an additional assessment in the case of a return that omits gross income in excess of 25% of that required to be

reported or in the case of filing a false or fraudulent return with intent to evade the tax, or in the case of a failure to file a return. In those cases in 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 Tax Commissioner shall be extended one year from the time of the final determination of the federal tax liability.

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

('78 Code, § 171.11) (Ord. 556-74, passed 12-9-74)

### § 35.22 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be deposited in the Income Tax Fund and such funds collected from the imposition date of the tax under this chapter shall be disbursed in the following manner:

(A) Such part thereof as is necessary to defray all cost of collecting the taxes and the cost of administering and enforcing the provisions thereof.

(B) The balance of any moneys collected shall be allocated as follows:

(1) Thirty-one percent to the General Fund for the purpose of general municipal operations;

(2) Twelve percent for street maintenance;

(3) Fifteen percent for street improvement;

(4) Forty-two percent for capital improvement for streets.

('78 Code, § 171.14) (Ord. 556-74, passed 12-9-74; Ord. 817-90, passed 12-10-90; Ord. 822-91, passed 3-11-91)

### § 35.23 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

(A) *Limitation on amount paid.* Every individual taxpayer who resides in the municipality and who receives salaries, wages, commissions or other compensation or net profits from sales made, work done or services performed or rendered outside of the municipality, if it be made to appear that he or she has paid a municipal income tax on such income, taxable under this chapter, to another municipality, shall be allowed a credit for such tax paid, against the tax imposed by this chapter in an amount not to exceed the tax due the village under this chapter.

(B) *Procedure.* Notwithstanding the provisions contained in § 35.21 or any other provisions inconsistent herewith, a claim for refund or credit under this section shall be made in such a 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 such taxpayer's employer files with the Tax Commissioner a list showing the tax withheld from taxpayer's wages, salaries or commissions for other municipalities.

('78 Code, § 171.15) (Ord. 556-74, passed 12-9-74)

### ADMINISTRATION AND ENFORCEMENT

### § 35.35 INCOME TAX BUREAU; AUTHORITY.

(A) *Collection and maintenance responsibility.*

(1) There is hereby created an Income Tax Bureau for the administration of the provisions of this chapter. Such Bureau shall consist of a Tax Commissioner, Deputy Tax Commissioner and such clerical and secretarial personnel as may be determined to be necessary for the administration of this chapter. All such personnel shall be appointed by the Mayor, except that the Tax Commissioner shall be appointed by the Mayor annually on a calendar year basis with the approval of Council. The Tax Commissioner's salary shall be determined by Council on a calendar year basis.

(2) It shall be the duty of the Tax Commissioner to collect and receive the tax imposed by this chapter in the manner prescribed therein, and to keep an accurate record thereof, and to report all moneys so received.

(3) It shall be the duty of the Tax Commissioner to enforce payment of all income taxes owing the municipality, to keep accurate records for a minimum of five years, showing the amount due from each taxpayer required to file a declaration or make any return including a return of taxes withheld, and to show the dates and amounts of payments thereof.

(B) *Enforcement authority.* 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 authorized or required by this chapter, relating to any matter or thing pertaining to the collection and payment of taxes and the administration and enforcement of the provisions of this chapter including provisions for the re-examination and correction of returns.

(C) *Determination of taxes.* In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Commissioner may determine the amount of tax appearing to be due the municipality from the taxpayer and may send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

(D) *Compromise authority.* 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.  
(78 Code, § 171.08) (Ord. 556-74, passed 12-9-74; Ord. 594-77, passed 12-12-77)

### **§ 35.36 INVESTIGATIVE POWERS OF COMMISSIONER; INFORMATION CONFIDENTIAL.**

(A) *Examination of taxpayers records.* The Tax Commissioner, or any of his or her authorized agents, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or taxpayer, or any person subject to, or whom the Tax Commissioner believes subject to, the provisions of this chapter for the purpose of verifying the accuracy of any withholdings due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish, upon written request of the Tax Commissioner or his or her duly authorized agent or employees, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(B) *Appearance orders to taxpayers.* The Tax Commissioner 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 such person, under oath, concerning any income which was or should have been returned for taxation, or withheld, or any transaction tending to affect such 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, whether as parties or witnesses, whenever he or she believes such persons have knowledge of such income or information pertinent to such inquiry.

(C) *Result of refusal to submit information.* 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 section and punishable as provided in § 35.99.

(D) *Retention of records by taxpayer.* Every taxpayer shall retain all records necessary to compute his or her tax liability for a period of five years from the date the return is filed or the taxes required to be withheld are paid.

(E) *Confidential nature of information.* Any information gained as a result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential and no disclosure thereof shall be made except to municipal, county, state or federal taxing agencies, or, except for official purposes as the Director of Law determines or except in accordance with proper judicial order. Punishment for violation of this provision is provided in § 35.99.

('78 Code, § 171.09) (Ord. 556-74, passed 12-9-74)

### § 35.37 BOARD OF REVIEW.

(A) *Composition.* A Board of Review consisting of three persons, appointed by the Mayor, with the consent of Council, is hereby created. The individual acting as the local administrator of the tax shall act as secretary of the Board. Board members shall receive such compensation as Council may determine.

(B) *Procedure.* 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. All hearings by the Board shall be conducted privately unless the taxpayer requests a public hearing, and the provisions of § 35.36 hereof with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

(C) *Appeals.* 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 such ruling or decision by the Tax Commissioner, and the Board

shall, on hearing, have jurisdiction to affirm, reverse, or modify any such ruling or decision, or any part thereof. ('78 Code, § 171.13) (Ord. 556-74, passed 12-9-74)

### § 35.38 VIOLATIONS.

(A) *Prohibited acts.* No person shall:

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

(2) Make an 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 and remit such withholding tax to the Tax Commissioner;

(5) Refuse to permit the Tax Commissioner or any duly authorized agent or employee to examine his/her or his/her employer's books, records, papers and federal income tax returns;

(6) Fail to appear before the Tax Commissioner and to produce his/her or his/her employer's books, records, papers or federal income tax returns upon order or subpoena of the Tax Commissioner;

(7) Refuse to disclose to the Tax Commissioner any information with respect to such person's or such person's employer's income or net profits;

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

(9) Fail, neglect, or refuse to make any payment on the estimated tax for any year as required by § 35.19;

(10) Fail, as president or treasurer of a corporation, to cause the tax withheld from the wages of the employees of such corporation pursuant to this

chapter to be paid to the municipality in accordance with the provisions of § 35.18; 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) *Failure to obtain forms no excuse.* The failure of any employer, 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, or declaration, from filing such form, or from paying the tax.

(C) *Responsibility of corporation employees.* The term **PERSON** as used in this section shall, in addition to the meaning prescribed in § 35.02, include in the case of an association or corporation not having any partner, member or officer within the municipality, any employee or agent of such association or corporation who can be found within the corporate limits of the municipality.

('78 Code, § 171.12) (Ord. 556-74, passed 12-9-74)

### **§ 35.99 PENALTY.**

(A) Whoever violates any provision of this chapter is guilty of a misdemeanor of the third degree and shall be punished as provided in § 130.99.

(B) All civil and civil prosecutions and claims for refund must be commenced within the time specified by R.C. § 718.06.

(C) In addition, for violation of § 35.36(E), each disclosure of confidential information shall constitute a separate offense. Any employee of the municipality who violates the provisions of § 35.36(E) relative to the disclosure of confidential information shall be immediately dismissed.

('78 Code, § 171.99)