

CHAPTER 183
Income Tax

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CROSS REFERENCES

Payroll deductions - see Ohio R.C. 9.42
Municipal income taxes - see Ohio R.C. Ch. 718
State income tax - see Ohio R.C. Ch. 5747

183.01 PURPOSE.

To provide funds for the purposes of general operations, maintenance, new equipment, extension and enlargement of Municipal services and facilities and capital improvement of the Village there shall be, and is hereby levied a tax on all salaries, wages, commissions and other compensation, and on net profits as hereinafter provided. This tax is levied to insure that the Village will be able in the future to pay all of the Municipal employees a fair wage taking into consideration the status of the economy, and the effects inflation may have on earnings. (Ord. 4-1982. Passed 2-10-82.)

183.02 DEFINITIONS.

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

- (a) "Administrator" means the Clerk-Treasurer, who shall administer and supervise the income tax code for the Village. (Ord. 11-1998. Passed 6-10-98.)
- (b) "Association" means a partnership, limited partnership, or any other form of unincorporated enterprise, owned by two or more persons.
- (c) "Board of Review" The Board created by and constituted as provided in Section 183.12.

- (d) "Business" means any 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, excluding, however, all nonprofit corporations which are exempt from the payment of Federal Income Tax.
- (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.
- (f) "Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.
- (g) "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.
- (h) "Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31.
(Ord. 4-1982. Passed 2-10-82.)
- (i) "Fundamental change" means any substantial alteration by an employer including liquidation, dissolution, bankruptcy and reorganizations such as merger, consolidation, acquisition, transfer or change in identity, form or organization.
(Ord. 37-1984. Passed 10-10-84.)
- (j) "Gross receipts" means the total income from any source whatsoever. (Ord. 4-1982. Passed 2-10-84.)
- (k) "Manager" means any of the employer's officers, responsible employees having control or supervision, and employees charged with the responsibility of filing the return, paying taxes, and otherwise complying with this chapter.
(Ord. 37-1984. Passed 10-10-84.)
- (l) A. For taxable years prior to 2004, "net profits" means net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinance, reasonable 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 association, without deduction of salaries to partners, and other owners; and otherwise adjusted to the requirements of this Chapter. For taxable years 2004 and later, see "adjusted federal taxable income".
B. "Adjusted Federal Taxable Income" - 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. The definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) Section 5745.03 or to the net profits from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.
(Ord. 4-2005. Passed 1-12-05.)
- (m) "Nonresident" means an individual domiciled outside of the Village.
- (n) "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.

- (o) "Place of business" means any bona fide office, other than a mere statutory office, factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance.
- (p) "Resident" means an individual domiciled in the Village.
- (q) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the Village.
(Ord. 4-1982. Passed 2-10-82.)
- (r) A. For taxable years prior to 2004, "taxable income" means wages, salaries and other compensation paid by an employer or employers before any deduction and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this Chapter. For taxable years 2004 and later see "Qualifying Wages".
B. "Qualifying Wages": These are 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, including non-qualified deferred compensation and stock options, from which municipal tax should be deducted by the employer, and any wages not considered a part of "qualifying wages", shall not be taxed by the Village of Boston Heights. This definition is effective January 1, 2004, for taxable years 2004 and later. (Ord. 4-2005. Passed 1-12-05.)
- (s) "Taxable year" means the calendar year, or the fiscal year upon the basis of which net profits are to be computed under this chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.
- (t) "Taxpayer" means a person, whether an individual, partnership, association or any corporation or other entity, required hereunder to file a return or pay a tax.
- (u) The singular shall include the plural, and the masculine shall include the feminine and the neuter. (Ord. 4-1982. Passed 2-10-82.)
- (v) "Generic form" means an electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or requests for refunds which contain all the information required on a Village of Boston Heights regular tax return, estimated payment forms, and request for refund forms, and are in a similar format that will allow the processing of the generic forms without altering the Village of Boston Heights procedure for processing forms.
(Ord. 4-2005. Passed 1-12-05.)

183.03 IMPOSITION OF TAX.

- (a) Subject to the provisions of Section 183.15, an annual tax for the purposes specified in Sections 183.01 shall be imposed on and after January 1, 2005 at the rate of two percent (2%) upon the following: (Ord. 15-2004. Passed 8-11-04.)
 - (1) On all salaries, wages, commissions and other compensation earned during the effective period of this chapter by the residents of the Village.
 - (2) On all salaries, wages, commissions and other compensation earned during the effective period of this chapter by nonresidents for work done or services performed or rendered within the Village.

- (3) A. On the portion attributable to the Village 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 Village.
- B. On the portion of the distribution share of the net profits earned during the effective period of this chapter of a resident partner or owner of a resident unincorporated business entity not attributable to the Village, and not levied against such unincorporated business entity by the Village.
- (4) A. On the portion attributable to the village of the net profits earned during the effective period of this chapter of all nonresident unincorporated businesses, professions or other entities, derived from sales made, work done, or services performed or rendered and business or other activities conducted in the Village, whether or not such unincorporated business entity has an office or place of business in the Village.
- B. On the portion of the distributive share of the net profits earned during the effective period of this chapter of a resident partner or owner of a nonresident unincorporated business entity not attributable to the Village and not levied against such unincorporated business entity by the Village.
- (5) On the portion attributable to the Village, of 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 Village; whether or not such corporations have an office or place of business in the Village.
(Ord. 23-1985. Passed 5-8-85.)
- (6) On the portion attributable to this Municipality pursuant to the terms of this chapter and including:
- A. Income earned by a taxpayer from a royalty interest in the production of an oil or gas well whether managed, extracted or operated by the taxpayer individually or through an agent or other representative, shall be included in the computation of net profits from a business activity to the extent that such royalty interest constitutes a business activity of the taxpayer.
Where the gross income received by a taxpayer from a royalty interest in the production of an oil or gas well in a taxable year exceeds three thousand dollars (\$3,000), it shall be prima facie evidence that the income was derived from a business activity of such taxpayer and the net income from such royalty interest shall be subject to a tax.
- B. The employer's income derived from finance and carrying charges associated with their consumer's accounts receivable.
(Ord. 37-1984. Passed 10-10-84.)
- (7) On all gains from any lottery and/or gambling winnings received by an individual.
(Ord. 18-2006. Passed 8-9-06.)

(b) If the Tax Administrator approves the use of books and records as a substitute method, the following shall apply:

- (1) The net profits allocable to the Village of Boston Heights from business, professional or other activities conducted in the Village of Boston Heights by corporations or unincorporated entities (whether resident or non-resident) may be determined from the records of the taxpayer only if the taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within the Village of Boston Heights.
- (2) If the books and records of the taxpayer are used as the basis for apportioning net profits, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Tax Administrator to determine whether the net profits attributable to the Village of Boston Heights are apportioned with reasonable accuracy.
- (3) In determining the income allocable to the Village of Boston Heights from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without the Village of Boston Heights. (Ord. 4-2005. Passed 1-12-05.)

(c) As used in this chapter, "sales made in the Village" means:

- (1) All sales of tangible personal property delivered within the Village, regardless of where title passes, if shipped or delivered from a stock of goods within the Village.
- (2) All sales of tangible personal property 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 his own employees in the solicitation of promotion of sales within the Village and the sales result from such solicitation or promotion.
- (3) All sales of tangible personal property which is shipped from a place within the Village to purchasers outside of the Village, regardless of where title passes, if the taxpayer is not through his own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(d) Add together the percentages determined in accordance with subsections (b)(1), (2) and (3) or such of the aforesaid percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving the total in order to obtain the business allocation percentage referred to in subsection (b) hereof.

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

- (e) (1) The portion of a net operating loss sustained in any taxable year subsequent to the effective date of the "first" income tax ordinance permitting loss carry-forwards allocable to this Municipality may be applied against the portion of the profit of succeeding year(s) allocable to this Municipality, until exhausted but in no event for more than three taxable years. No portion of a net operating loss shall be carried back against the net profits of any prior year.

- (2) The portion of a net operating loss sustained shall be allocated to the Village in the same manner as provided herein for allocating net profits to the Village.
 - (3) The Administrator shall provide by Rules and Regulations the manner in which such net operating loss carry-forward shall be determined.
(Ord. 4-2005. Passed 1-12-05.)
- (f)
- (1) Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the Village of Boston Heights. However, once the affiliated group has elected to file a consolidated return or a separate return with the Village of Boston Heights, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the Village of Boston Heights.
(Ord. 4-2005. Passed 1-12-05.)
 - (2) In the case of a corporation that carries on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within this 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 this Municipality. If the Administrator finds net profits are not properly allocated to this 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 this Municipality. However, the Administrator shall have the authority to require any taxpayer to file on the basis of income and expenditures of this Municipality alone when he deems such filing necessary to secure an adequate payment of taxes for this Municipality; and further, the Administrator shall have the authority to determine what is an equitable allocation of national or international administrator expenses which may be allowed.
- (g) The tax provided for herein shall not be levied on the following:
- (1) Pay or allowance of active members of the Armed Forces of the United States or the income of religious, fraternal, charitable, scientific, literary or educational institutions, to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.
 - (2) Poor relief, unemployment insurance benefits, old age pensions or similar payments, including disability benefits received from local, State or Federal governments or charitable, religious or educational organizations.

- (3) Proceeds of insurance paid by reason of the death of the insured; pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
 - (4) Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations.
 - (5) Alimony received.
 - (6) Personal earnings of any natural person under eighteen years of age.
 - (7) Compensation for personal injuries or for damages to property by way of insurance or otherwise.
 - (8) Interest, dividends and other revenue from intangible property.
 - (9) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State from which the Village 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.
 - (10) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any Act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce.
 - (11) Salaries, wages, commissions or other compensation and net profits, 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 Village to impose net income taxes. (Ord. 4-1982. Passed 2-10-82.)
 - (12) 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 ordained minister must be duly ordained, commissioned or licensed by a religious body constituting a church or church denomination, and must have authority to perform all sacraments of the church.
- (h)
- (1) A non-resident individual who works in the Village of Boston Heights twelve or fewer days per year shall be considered an occasional entrant, and shall not be subject to the Village of Boston Heights municipal income tax for those twelve days. For purposes of the 12-day calculation, any portion of a day worked in the Village of Boston Heights shall be counted as one day worked in the Village of Boston Heights.
 - (2) Beginning with the thirteenth day, the employer of said individual shall begin withholding the Village of Boston Heights income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to the Village of Boston Heights in accordance with the requirements of this Chapter. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in the Village of Boston Heights by the individual for the first twelve days.
 - (3) If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the Village of Boston Heights.
 - (4) The 12-day occasional entry rule does not apply to entertainers or professional athletes, their employees or individuals who perform services on their behalf, or to promoters and booking agents of such entertainment events and sporting events. (Ord. 4-2005. Passed 1-12-05.)

183.04 EFFECTIVE PERIOD.

The tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of businesses, professions or other activities earned on or after the effective date of this chapter.

(Ord. 4-1982. Passed 2-10-82.)

183.05 RETURN AND PAYMENT OF TAX.

- (a) (1) Each taxpayer shall, whether or not a tax be due thereon, make and file a return on or before April 15 of the year following the effective date of this chapter, and on or before April 15 of each year thereafter. When a 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.

(Ord. 37-1984. Passed 10-10-84; Ord. 4-2005. Passed 1-12-05.)

- (2) Any person who has no income need not file an annual return. Any person who has exempt income must file a return and declare to the Administrator the nature of his exemption. Any person who has taxable income must file a tax return with the Tax Administrator.

(Ord. 58-1984. Passed 12-12-84.)

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

- (1) The aggregate amounts of salaries, wages, commissions and other compensation earned and gross income from business, profession or other activity, less allowable ordinary, reasonable, and necessary expenses incurred in the acquisition of such gross income earned during the preceding year and subject to the 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 Administrator may require.

(c) The Administrator may extend the time for filing of the annual return upon request of the taxpayer for a period of 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. 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 shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

The extension request may be made by filing a copy of the taxpayer's request for a federal filing extension, or by filing a written request. The Village of Boston Heights Tax Administrator may deny the extension if the taxpayer's income tax account with the Village of Boston Heights 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 shall have been deducted at the course pursuant to the provisions of Section 183.06 or where any portion of the tax shall have been paid by the taxpayer pursuant to the provisions of Section 183.07, or where an income tax has been paid to another municipality, credit for the amount so deducted or paid or credit to the extent provided for in Section 183.14, 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 filing the return.
- (2) A taxpayer who has overpaid the amount of tax to which the Village 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 a tax overpaid, subject to the requirements and/or limitations contained in Sections 183.11 and 183.14. Such amended returns shall be on a form obtainable on request from the Administrator. 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 tax liability to the Village, such taxpayer shall make and file an amended return showing income subject to the income tax of the Village 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.
- (Ord. 4-1982. Passed 2-10-82; Ord. 4-2005. Passed 1-12-05.)

183.06 COLLECTION AT SOURCE.

(a) In accordance with rules and regulations prescribed by the Administrator, each employer with or doing business within the Village shall deduct, at the time of payment of such salary, wages, commissions, or other compensation, the tax of two percent (2%) per year of the gross salaries, wages, commissions, or other compensation due by such employer to such employee, and shall on or before the last day of each month, make a return and pay to the Administrator the amount of taxes so deducted during the previous month. However, if the amount of tax so deducted by any employer in any one month is less than one hundred dollars (\$100.00), the employer may defer the filing of a return and payment of the amount deducted until the last day of the month following the end of the calendar quarter in which such month occurred. 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. (Ord. 15-2004. Passed 8-11-04.)

(b) If any employer which is liable for tax obligations imposed by this chapter undergoes a fundamental change, then the employer and its manager shall be liable for taxes due up to the date of the fundamental change. Taxes and final tax returns shall be due immediately after the fundamental change. Any successor employer shall withhold from any purchase price that the successor owes to the predecessor an amount sufficient to pay all unpaid taxes, interest and penalty which the predecessor employer owes pursuant to this chapter. The successor employer shall make such withholding until such time that the predecessor employer has paid such taxes, interest and penalties. If the successor fails to withhold such amount, then the successor and, in a personal manner, the successor's manager shall be jointly and severally liable for the payment of the taxes, interest and penalty.

- (c) (1) Every manager is deemed to be a trustee of this Municipality in collecting and holding the tax required under this chapter to be withheld, and the funds so collected by such withholding are deemed to be trust funds. Every manager is liable directly to this Municipality for payment of such trust, whether actually collected by such employer or not. Any tax deducted and withheld is to be considered paid to this Municipality, whether or not the employer actually remits the tax to this Municipality, for purposes of determining employee payments or credits.
- (2) All managers shall be personally liable to the extent of the tax, interest and penalty, jointly and severally, for failure to file the employer's return or to pay the employer's tax, interest and penalty as required under this chapter.
- (3) No change in structure by an employer, including a fundamental change, discharges its managers from liability for the employees' or manager's failure to remit funds held in trust, to file a tax return or to pay taxes.
(Ord. 37-1984. Passed 10-10-84.)

(d) No person shall be required to withhold the tax on wages or other compensation paid to domestic servants employed by him exclusively in or about such person's residence, even though such residence is in the Village, but such employee shall be subject to all of the requirements of this chapter.

(e) On or before February 28 of each year beginning with the year 1983, each employer shall file a withholding return setting forth the names and addresses of all employees from whose compensation the tax withheld during the preceding calendar year and the amount of tax withheld from his employees and such other information as may be required by the Administrator. All payments not subject to withholding shall be reported on a form required by the Administrator.

(f) The Tax Administrator for good cause may require any late returns and payments to be submitted to his office.
(Ord. 4-1982. Passed 2-10-82.)

183.07 DECLARATIONS OF INCOME NOT COLLECTED AT SOURCE.

(a) Any person whose income is not fully withheld in the Village or in another municipality in which taxes are withheld at a rate the same as or higher than the rate provided in Section 183.03 shall file a declaration setting forth taxable estimated income, including distributive shares of net profits of unincorporated business entities estimated to be earned by the taxpayer during the current tax year, together with the estimated tax year due thereon less:

- (1) Tax withheld within Village, and
- (2) The tax credit allowed in Section 183.14.

If the estimated tax for the current year, less the tax to be withheld and less such tax credit, amounts to not more than ten dollars (\$10.00) no declaration or payment of estimated tax is required.

- (b) (1) Such declaration shall be filed on or before April 15 of each year during the life of this chapter, or within four months of the date the taxpayer becomes subject to tax for the first time.
- (2) Those taxpayers reporting on a fiscal year basis shall file a declaration within four months after the beginning of each fiscal year or period.
- (c) (1) Such declaration shall be filed upon a form furnished by, or obtainable from, the Administrator, provided, however, credit shall be taken for the Village income tax to be withheld from any portion of such income. In accordance with the provisions of Section 183.14 hereof, 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 and provided for herein. (Ord. 4-1982. Passed 2-10-82.)
- (d) Effective January 1, 2003, the Declaration of Estimated Tax to be paid to the Village of Boston Heights by taxpayers who are individuals shall be accompanied by a payment of at least one-fourth (1/4) of the Declaration amount and at least a similar amount shall be paid on or before July 31st, and October 31st of the taxable year, and January 31st of the following year. Effective January 1, 2003, such Declaration of Estimated Tax to be paid to the Village of Boston Heights by corporations and associations shall be accompanied by a payment of at least one-fourth of the Declaration amount and at least a similar amount shall be paid on or before June 15th, September 14, and December 15th. In the case of a fiscal year taxpayer the second, third, and fourth quarterly estimated payments shall be due on the fifteenth day of the sixth, ninth and twelfth months of the taxable year, respectively. (Ord. 4-2005. Passed 1-12-05.)
- (e) On or before April 15 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 Village shall be paid therewith in accordance with the provisions of Section 183.05. However, any taxpayer may file, on or before the last day of the first month of the year following that for which such declaration or amended declaration was filed, an annual return and pay any balance due at such time, in lieu of filing a declaration or an amended declaration, and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax. (Ord. 4-1982. Passed 2-10-82; Ord. 4-2005. Passed 1-12-05.)

183.08 DUTIES OF THE ADMINISTRATOR.

- (a) (1) The Administrator shall receive money due to the Village and receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; to keep an accurate record thereof; and to report all moneys so received.
- (2) The Administrator shall enforce payment of all taxes owing the Village, shall keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration an/or to make any return, including taxes withheld, and to show the dates and amounts of payments thereof.
(Ord. 4-1982. Passed 2-10-82.)

- (3) If any taxpayer fails to file a tax return which is required by this chapter within the time prescribed therefore but consents to disclose all information necessary to the preparation thereof, then the Administrator may prepare such return which, after being signed by such person, may be received by the Administrator as the return of such person.
 - (4) If any taxpayer fails to file a tax return which is required by this chapter within the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, then the Administrator shall make in a reasonable manner such return from his own knowledge and from such information as he can obtain through testimony or otherwise.
 - (5) The Administrator may calculate and assess any taxpayer for the amount of tax, penalty and interest which is imposed by this chapter and which is due and owing. Such assessment shall be made by the Administrator's issuing summary records to the last known address of the taxpayer of the assessment. This summary shall include the identification of the taxpayer, the character of the liability assessed, the taxation period, and the amount of the assessment.
 - (6) Any return executed by or any assessment made by the Administrator pursuant to this chapter shall be prima facie good and sufficient for all legal purposes. The Administrator may execute supplemental tax returns and may issue supplemental assessments whenever the Administrator has knowledge derived from any source including the taxpayer's financial data that any executed tax return or assessment is imperfect or incomplete in any material respect.
 - (7) Neither the Tax Administrator's execution of a return nor the Tax Administrator's assessment of a taxpayer shall start the running of the period of limitations on prosecutions set forth elsewhere in this chapter. (Ord. 37-1984. Passed 10-10-84.)
- (b)
- (1) 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 corrections of returns.
 - (2) The Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Administrator that due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under this chapter.
 - (3) Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 183.11 and 183.99 shall apply.
- (c) In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator shall determine the amount of tax appearing to be due the Village from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

(d) Subject to the consent of the Board of Review or pursuant to regulation by the Board, the Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 183.10.

- (e) (1) The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer 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 examinations and investigations as are hereby authorized.
- (2) The Administrator 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 reported for taxation or any transaction tending to affect such income and for this purpose may compel the production of books, papers, records, and federal 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.
- (3) 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 Administrator authorized hereby shall be deemed in violation of this chapter, punishable as provided in Section 183.99.
- (4) Any information gained as a result of any returns, investigations, verifications or hearing before the Administrator, required by this chapter or authorized by these Rules and Regulations shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00) or imprisonment for not more than six months, or both. Each disclosure shall constitute a separate offense. In addition to the above penalty, 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.
- (5) Every taxpayer shall retain all records necessary to compute his tax liability for a period of five years from the date his return is filed, or the withholding taxes are paid.
(Ord. 4-1982. Passed 2-10-82.)

183.09 INTEREST AND PENALTIES.

(a) All taxes imposed and all moneys withheld or required to be withheld by employers and all installments or estimated taxes required to be paid under the provisions of this chapter and remaining unpaid after they become due shall bear interest at the rate of one-half percent (1/2%) per month or fraction thereof.

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

- (1) For failure to pay taxes or estimated taxes due - other than taxes withheld; one and one-half percent (1 1/2%) per month or fraction thereof, but not less than twenty-five dollars (\$25.00).
- (2) For failure to remit taxes withheld from employees, ten percent (10%) per month or fraction thereof, but accumulated penalty shall not exceed fifty percent (50%) upon any unpaid amount and shall not be less than twenty-five dollars (\$25.00).

(c) 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; and provided, further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing any 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 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/or interest, the Board may nevertheless abate penalty or interest, or both. (Ord. 4-1982. Passed 2-10-82.)

(e) No penalties or interest shall 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, or if 90% of the actual liability has been received. (Ord. 4-2005. Passed 1-12-05.)

183.10 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.

(a) All taxes imposed by this chapter shall be collectable, together with any interest and penalties in the case of fraud, or omission of a substantial portion of income subject to this tax or of failure to file a return, an additional assessment shall not be made after three years from the time the return was due or filed, whichever is later. However, in those cases in which a Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which an additional assessment may be made by the Administrator shall be one year from the time of the final determination of the Federal tax liability, whichever is later.

(b) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three months after the final determination of the Federal tax liability, whichever is later.

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

(d) The Administrator hereunder shall act to start collection procedures against any individual who has failed to pay taxes or has made an underpayment and the amount of taxes due exceeds twenty-five dollars (\$25.00) for any given tax year.
(Ord. 4-1982. Passed 2-10-82.)

183.11 BOARD OF REVIEW.

(a) A Board of Review, consisting of a chairman and two other individuals to be appointed by the Mayor with the approval of Council is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 183.09 hereof with reference to the confidential character of information required to be disclosed shall apply to such matters as may be heard before the Board on appeal. Terms for the Board of Review shall be for six years, except that the initial appointments to the Board of Review in 1998 shall be staggered with the first appointment being a six year term, the second appointment being a four year term, and the third appointment being a two year term. (Ord. 4-1982. Passed 2-10-82; Ord. 12-1998. Passed 6-10-98.)

(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 becomes 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. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Review may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.
(Ord. 4-1982. Passed 2-10-82; Ord. 4-2005. Passed 1-12-05.)

- (c) (1) Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this Ordinance may appeal therefrom to the Board of Review/Appeal within thirty (30) days from the announcement of such ruling or decision by the Tax Administrator, provided the taxpayer making the appeal has filed with the Village of Boston Heights the required return or other documents concerning the obligation at issue. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful.
- (2) 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, shall be in writing and filed with the Administrator, and within 15 days of its decision shall send notice of its decision by ordinary mail to the taxpayer making the appeal. (Ord. 4-2005. Passed 1-12-05.)

183.12 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be disbursed in the following manner:

- (a) First, such part thereof as shall be necessary to defray all expenses of collecting the tax and of administering and enforcing the provisions of this chapter shall be paid.
- (b) The balance remaining after payment of the expenses referred to in subsection (a) hereof shall be deposited in the General Fund to be used according to the applicable appropriations made by Council.
(Ord. 4-1982. Passed 2-10-82.)

183.13 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

(a) When the taxable income of a resident of the Village is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall be allowed a credit of the amount of income tax paid on such taxable income to such other municipality, equal to one hundred percent (100%) of the amount obtained by multiplying the lower of the tax rate of such other municipality or of the Village by the taxable income earned in or attributable to the municipality of employment or business activity. For the purpose of this section, taxable income shall include the distributive share of net profits of a resident partner or owner of an unincorporated business entity.

(b) A claim for credit or refund under this section shall be made in such manner as the Administrator may by regulation provide. In the event such Village resident fails, neglects or refuses to file an annual return or declaration on the form prescribed by the Administrator, he shall not be entitled to such credit or refund and shall be considered in violation of this chapter for failure to file a return.

(Ord. 4-1982. Passed 2-10-82.)

183.14 SAVING CLAUSE.

If any sentence, clause, section or part of this chapter, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall 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 for the Village that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

(Ord. 4-1982. Passed 2-10-82.)

183.15 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(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 of collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of such taxes hereunder 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 Sections 183.11 and 183.99 hereof.

(b) Annual returns due for all or any part of the last effective year of this chapter will be due on the date provided in Sections 183.05 and 183.06 as though the same were continuing.

(Ord. 4-1982. Passed 2-10-82.)

183.99 PENALTY.

(a) Any person who 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
(Ord. 4-1982. Passed 2-10-83.)
- (3) Intentionally or willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
(Ord. 37-1984. Passed 10-10-84.)

- (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 or 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 or 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 Village income tax withheld, or to knowingly give the Administrator false information ; or
- (11) 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 shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months or both for each offense.

(b) Prosecutions for an offense made punishable under this section or any other provision of this chapter shall be commenced within three years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced six years after the commission of the offense.

(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 a form, or from paying the tax.
(Ord. 4-1982. Passed 2-10-82.)