

BARNESVILLE INCOME TAX ORDINANCE

TITLE NINE – TAXATION

CHAPTER. 181. Income Tax.

CHAPTER 181
Income Tax

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CROSS REFERENCES

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

181.01 DEFINITIONS.

- (a) As used in this chapter, the following works shall have the meaning ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning:
- (1) “Taxpayer” means a person, whether an individual, partnership, limited partnership, limited partnership, corporation, association or other entity, required hereunder to file a return or to pay a tax hereunder.
 - (2) “Association” means a partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
 - (3) “Business” means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, limited partnership, corporation, association or any other entity.
 - (4) “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, foreign country or dependency.
 - (5) “Employee” means an individual whose earnings are subject to the withholding of federal income tax or social security tax.
 - (6) “Employer” means an individual, partnership, limited 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.

- 7) "Net profits" means the net gain from the operation of a business, profession or enterprise after provision for all cost and expense incurred in the conduct thereof, including reasonable allowance for depreciation, depletion, amortization and reasonable additions to reserve for bad debts, either paid or accrued in accordance with recognized principles of accounting applicable to the method of accounting regularly employed and without deduction of federal taxes based on income, and without deducting taxes imposed by this chapter.
- (8) "Nonresident" means an individual, partnership, limited partnership, corporation, association or other entity domiciled outside the Municipality.
- (9) "Person" means every natural person, partnership, limited partnership, corporation, fiduciary or association. Whenever used in any clause prescribing an imposing a penalty, term "person" as applied to any association, shall mean the partners or members thereof, and as applied to corporation, the officers thereof.
- (10) "Resident" means an individual, partnership, limited partnership, corporation, association or other entity domiciled in the Municipality.
- (11) "Other entity" means any person or unincorporated body not previously named or defined and includes interalia, fiduciaries located within the Municipality.
- (12) The singular shall include the plural and the masculine shall include the feminine and the neuter. (Ord. 1400. Passed 11-24-75.)

181.02 IMPOSITION OF TAX

- (a) To provide funds for the purpose of general Municipal operations, maintenance of equipment, new equipment, extension, enlargement and improvement of Municipal services and facilities and capital improvements of the Municipality, there is hereby levied a tax at the rate of one percent upon the following:
 - (1) On all salaries, wages, commissions and other compensation earned on and after January 1, 1976, by resident individuals of the Municipality.
 - (2) On all salaries, wages, commissions and other compensation earned on and after January 1, 1976, by nonresident individuals for work done or services performed or rendered in the municipality.
 - (3) On the net profits attributable to the Municipality, earned on and after January 1, 1976, of all Resident unincorporated businesses, professions and other activities derived from work done or services rendered or performed and business or other activities conducted in the Municipality.
 - (4) On the portion of the distributive share of the net profits earned on and after January 1, 1976, of a resident unincorporated business entity attributed to the Municipality and not levied against such unincorporated business entity.
 - (5) On the net profits attributed to the Municipality earned on and after January 1, 1976, of all Nonresident unincorporated businesses, professions or other activities derived from work done or services performed or rendered and business or other activities conducted in the Municipality.
 - (6) On the portion of the distributive share of the net profits earned on and after January 1, 1976 of A resident individual, partner or owner of a nonresident unincorporated business entity not attributed to the Municipality and not levied against such unincorporated business entity.
 - (7) On the net profits earned on and after January 1, 1976, of all corporations derived from work done or services or services performed or rendered and business or other activities conducted in the Municipality.
 - (8) The portion of the net profits attributable to the Municipality of a taxpayer conducting a Business, profession or other activity both within and without the boundaries of the Municipality shall be determined as provided in Ohio R.C. 718.02 and in accordance with the rules and regulations adopted herein.
 - A. In the taxation of income which is subject to taxation by the provisions of this chapter, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of the Municipality shall disclose the reasonable accuracy what

portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the Municipality, then only such portion shall be considered as having a taxable situs in the Municipality for purposes of income taxation. In the absence of such records, net profit from a business or profession conducted both within and without the boundaries of the Municipality shall be considered as having a taxable situs in the Municipality for purposes of income taxation in the same proportion as the average ratio of:

1. The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in the Municipality during the taxable period to the average net book value of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period wherever situated.

As used in the preceding paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.

2. Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the Municipality to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed.
3. Gross receipts of the business or profession from sales made and services performed during the taxable period in the Municipality to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

In the event that the foregoing allocation formula does not produce an equitable result, another basis may, under uniform regulations be substituted so as to produce such result.

- B. As used in paragraph A. of this subsection, "sales made in the Municipality" means:

1. All sales of tangible personal property which is delivered within the Municipality Regardless of where title passes if shipped or delivered from a stock of goods within the Municipality.
2. All sales of tangible personal property which is delivered within the Municipality Regardless of where title passes even though transported from a point outside the Municipality if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Municipality and the sales result from such solicitation or promotion.
3. All sales of tangible personal property which is shipped from a place within the Municipality to purchasers outside the Municipality, regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(Ord. 1400. Passed 11-24-75.)

181.03 EFFECTIVE PERIOD.

The tax shall be levied, collected and paid with respect to salaries, wages, commissions and other compensation earned on and after January 1, 1976 and with respect to the net profit of businesses, professions and other activities earned on and after January 1, 1976. However, where the fiscal year of the business, profession or other activity differs from the calendar year, the tax shall be applied to that part of the net profit for the fiscal year as shall be earned on and after January 1, 1976, to the close of the taxpayer's fiscal years; thereafter the taxpayer shall report on its fiscal year basis.

(Ord. 1400. Passed 11-24-75.)

181.04 RECIPROCITY.

Every individual taxpayer who resides in the Municipality but who receives net profits, salaries, wages, commissions or other personal services compensation, work done, or services performed or rendered outside of the Municipality, who has paid a municipal income tax on such net profits, salaries, wages commissions or other compensation 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 net profit, salary wages, commissions or compensation earned in such other municipality or municipalities where such tax is paid. (Ord. 1400. Passed 11-24-75.)

181.05 DUTIES OF THE CLERK-TREASURER.

- (a) The Clerk-Treasurer shall receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers: shall keep an accurate record thereof: and shall report all moneys so received. All cashiers handling tax moneys shall be subject directly to the Clerk-Treasurer and shall give daily accountings to the Clerk-Treasurer.
- (b) The Clerk-Treasurer shall enforce payment of all taxes owing the Municipality, shall keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and shall show the dates and amounts of payments thereof.
- (c) The Clerk-Treasurer is hereby charged with the enforcement of the provisions of this chapter and shall enforce the rules and regulations of Council relating to any matter or thing pertaining to the collection of Municipal income taxes and the administration and enforcement of the provisions of this chapter, including provisions for the examination and correction of returns and payments.
- (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 Clerk-Treasurer may determine the amount of tax appearing to be due the Municipality from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties, if any.
- (e) Subject to the consent of the Board of Review or pursuant to regulations approved by Council, the Clerk-Treasurer shall have the power to compromise any interest or penalty, or both, imposed by this chapter.
- (f) A Department of Taxation is hereby created within the office of the Clerk-Treasurer. Such Department of Taxation shall have such deputies, clerks and other employees as may from time to time be determined by Council, and shall receive such salary as may be determined by Council. The Clerk-Treasurer shall recommend all appointments of personnel and purchase all equipment, supplies and material for the Department of Taxation subject to the approval of Council. The Department of Taxation shall be charged with the administration and operation of this chapter, under the direction of the Clerk-Treasurer. The Clerk-Treasurer shall prescribe the form and method of accounts and reports for such Department, as well as the forms for taxpayer's returns and declarations, shall be charged with the internal examination and audit of all such accounts, and shall exhibit accurate records showing the amount received from each taxpayer, and the date of such receipt. The Clerk-Treasurer shall also make written report to Council annually of all moneys collected hereunder during the preceding year. (Ord. 1400. Passed 11-24-75.)

181.06 INVESTIGATIVE POWERS OF THE CLERK-TREASURER.

- (a) The Clerk-Treasurer or his duly authorized agent or employee, is hereby authorized to examine the books, papers and records of any employer, or of any taxpayer or person subject to the tax or believed to be 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. Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish to the Clerk-Treasurer or his duly authorized agent or employee, within thirty days following a written request by the Clerk-Treasurer or his duly authorized agent or employee, the means, facilities and opportunity for making such examination and investigations as are hereby authorized,
- (b) The Clerk-Treasurer, or his duly authorized agent or employee, is hereby authorized to Examine any person, employer or employee under oath, concerning any income which was or should have been returned for taxation, and for this purpose may compel the production of

books, federal tax records, papers and records and the attendance of all persons before him, whether as parties or witnesses, wherever he believes such persons have knowledge of such income.

- (c) The refusal to produce books, papers, records and federal income tax returns, or the refusal to Submit to such examination employer or person subject or presumed to be subject to the tax 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 any order or subpoena of the Clerk-Treasurer authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 181.99.
- (d) Tax returns, investigations, hearings and all audit papers and formation connected therewith are confidential and shall be carefully preserved so that they shall not be available for inspection by anyone other than the proper agents of the Municipality for official purposes. (Ord. 1400. Passed 11-24-75.)

181.07 INTEREST AND PENALTIES ON UNPAID TAX

All taxes imposed by this chapter, including taxes withheld or required to be withheld from wages by an employer and remaining unpaid after they have become due, shall bear interest on the amount of the unpaid tax at the rate of six percent (6%) per annum. And the taxpayers upon whom such taxes are imposed, and the employers required by this chapter to deduct, withhold and pay taxes imposed by the chapter shall be liable, in addition thereto, to a penalty of one-half of one percent (0.5%) of the amount of the unpaid tax for each month or fraction of a month for the first six months of nonpayment, or five dollars (\$5.00), whichever is the greater. Upon recommendation of the Clerk-Treasurer, the Board of Review may abate interest or penalties, or both, and upon appeal from the refusal of the Clerk-Treasurer to so recommend, the Board of Review may nevertheless abate interest or penalty, or both. (Ord.1400. Passed 11-24-75.)

181.08 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be deposited in the General Fund and such funds shall be disbursed in the following order:

- (a) Such part thereof as shall be necessary to defray all costs of collecting the taxes and the cost of administering and enforcing the provisions thereof.
- (b) Not more than eighty percent (80%) of the net available income tax receipts in 1987 may be used to defray operating expenses of the Municipality.
- (c) At least twenty percent (20%) of net available income tax receipts received in 1987 shall be set aside and used for capital improvements for the Municipality including, but not limited to, development and construction of storm sewers and street improvements; for public buildings, parks and playgrounds; and for equipment necessary for the Police, fire, Street, Traffic and Safety Departments. (Ord. 1748. Passed 6-15-87.)

181.09 BOARD OF REVIEW.

- (a) A Board of Review, consisting of three electors of the Municipality, one to be appointed by the Mayor, one to be appointed by the Clerk-Treasurer, and the third to be selected by the two so appointed, is hereby created. No member shall be appointed to the Board of Review who holds any other public office or appointment. The members of the Board of Review shall serve without pay.
- (b) A majority of the members of the Board of Review shall constitute a quorum. The Board of Review shall adopt its own procedural rules and shall keep a record of its transactions.
- (c) All hearings of the Board shall be conducted privately and the provisions of Section 181.06 with reference to the confidential character of information required to be disclosed shall apply to such matters as may be heard before the Board of Review on appeal.

- (d) Any person dissatisfied with any ruling or decision of the Clerk-Treasurer which is made

under the authority conferred by this chapter and the rules and regulations related thereto may appeal therefrom to the Board of Review within thirty days from announcement of such ruling or decision by the Clerk-Treasurer, and the Board of Review shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.

- (e) Any person dissatisfied with any ruling or decision of the Board of Review may appeal the therefrom to a court of competent jurisdiction within the time limits set forth in Ohio R.C. 2505.07.
- (f) The Board of Review, as created, shall serve during the life of this chapter. (Ord. 1400 Passed 11-24-75.)

181.10 EXEMPTIONS.

- (a) This chapter shall not apply to any person, firm, corporation or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for.
- (b) The provisions of this chapter shall not be construed as levying a tax upon the following:
 - (1) Funds received from local, state or Federal governments because of service in the Armed Forces of the United States by the person rendering such service, or a result of another person rendering such service.
 - (2) Poor relief, pensions, social security, unemployment compensation, and disability benefits received from private industry or local, state or federal governments, or from charitable, religious or educational organizations.
 - (3) Dues, contributions and similar payments received by charitable, religious, educational or educational or literary organizations or labor unions, lodges and similar organizations.
 - (4) Receipts from casual entertainment, amusements, sports events and health and welfare activities conducted by bona fide charitable, religious and educational organizations and associations.
 - (5) Any association, organization, corporation, club or trust, which is exempt from federal taxes on income by reason of its charitable, religious, educational, literary, scientific, etc., purposes.
 - (6) Gains from involuntary conversions, cancellation of indebtedness, interest on federal obligations, and income of a decedent's estate during the period of administration, except such income from the operation of a business.
 - (7) Earnings and income of all persons under eighteen years of age, whether residents or nonresidents. (Ord. 1400. Passed 11-24-75.)

181.11 REFUNDS.

- (a) If any taxpayer has paid more than the amount of the tax to which the Municipality is entitled under the provisions of this chapter, a refund of the amount so overpaid shall be made, provided a proper claim for refund of such overpayment of tax has been filed by the taxpayer, or the overpayment may be applied toward the declaration of tax due from the ensuing year. Claims for refunds shall be made on forms prescribed by and obtainable from the Clerk-Treasurer.
- (b) All applications for refund shall be made within six months of the due date of a final return or shall be forever barred thereafter. However, an extension may be granted by the Clerk-Treasurer on written application. (Ord. 1400 Passed 11-24-75.)

181.99 VIOLATIONS AND PENALTIES.

- (a) The following shall be considered violations of this chapter;
- (1) Failing, neglecting or refusing to make any return or declaration required by this chapter;
or
 - (2) Making any incomplete, false or fraudulent return; or
 - (3) Failing, neglecting or refusing to pay the tax, penalties or interest imposed by this chapter;
or
 - (4) Failing, neglecting or refusing to withhold the tax from employees or to remit such withholding to the Clerk-Treasurer; or
 - (5) Refusing to permit the Clerk-Treasurer or any duly authorized agent or employee to examine books, records and papers and federal income tax returns relating to the income or net profits of a taxpayers; or
 - (6) Failing to appear before the Clerk-Treasurer and to produce books, records, federal income tax returns and papers relating to the income or net profits of a taxpayer under order or subpoena of the Clerk-Treasurer; or
 - (7) Refusing to disclose to the Clerk-Treasurer any information with respect to the income or net profit of a taxpayer; or
 - (8) Failing to comply with the provisions of this chapter or any order or subpoena of the Clerk-Treasurer authorized hereby; or
 - (9) Attempting to do any thing whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.
- (b) Whoever violates any provision of subsection (a) hereof shall be fined not more than five hundred dollars (\$500.00) for each offense.
- (c) The failure of any employer or taxpayer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return or declaration, from filing such form, from paying the tax.
- (d) Any information gained as the result of the filing of any tax return, investigation, hearing or verification required or authorized by this chapter shall be confidential, except for official purposes and except in accordance with proper judicial order. Any person divulging such information shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both. Each disclosure shall constitute a separate offense. In addition to such penalties, any employee of the Municipality who violates any provision of this section relative to disclosures of confidential information shall be immediately dismissed from the service of the Municipality. (Ord. 1400. Passed 11-24-75.)