

## TITLE 19 – TAXES

### CHAPTER 1 – MUNICIPAL INCOME TAX

#### Sec. 1901.01 Purpose of Levy

To provide funds for the purposes of general municipal operations, procurement of fixed assets or permanent improvements, payment of debt charges, the elimination of deficits in Municipal funds and for all other lawful purposes, there shall be, and is hereby levied a tax on salaries, wages, commissions and other compensation and on net profits, as hereinafter provided.

#### Sec. 1901.02 Definitions

##### (A) Definitions Generally

For the purposes of this chapter, the terms, phrases, words and their derivatives shall have the meanings given in the next succeeding sections. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

##### (B) Administrator

“Administrator” means the individual charged with direct responsibility for administration of the provisions of the municipal income tax and includes:

- 1) Any regional income tax agency and any other entity organized to perform functions similar to those performed by regional income tax agencies;
- 2) A municipal corporation acting as the agent of this municipal corporation.

##### (C) Association

“Association” means any partnership, limited partnership, Chapter S Corporation as defined in the federal tax code, 26 U.S.C. 1361, or any other form of unincorporated enterprise owned by two or more persons.

##### (D) Board of Review

“Board of Review” means the Board created by, and constituted as provided in Section 1901.20.

(E) Business

“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 non-profit corporations which are exempt from the payment of Federal Income Tax.

(F) Corporation

“Corporation” means a corporation or joint stock association organized under the laws of the United States, the State or any other state, territory, or foreign country or dependency, but not a Chapter S Corporation.

(G) Employee

“Employee” means one who works for wages, salary, commission or other types of compensation in the service of an employer.

(H) Employer

“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 basis of compensation.

(I) Fiscal Year

“Fiscal Year” means an accounting period of 12 months or less ending on any day other than December 31.

(J) Gross Receipts

“Gross Receipts” means the total income from any source whatever and also including winnings from lotteries and other games of chance.

(K) Joint Economic Development District

“Joint Economic Development District” means a JEDD created under the Ohio Revised Code 715.70, 715.71, and 715.72 as amended from time to time.

(L) Municipality

“Municipality” means the Village of Dunkirk, Ohio.

(M) Net Profits

“Net Profits” means a net gain from the operation of a business, profession, enterprise or other activity after provisions for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal Income Tax purposes, but subject to adjustment in accordance with the regulations and rules adopted by the Administrator and without deductions of taxes imposed by this chapter, Federal, State and other taxes based on income, and in the case of an association, without deduction of salaries paid to partners and other owners.

(N) Nonresident

“Nonresident” means an individual domiciled outside the municipal corporation.

(O) Nonresident Unincorporated Business Entity

“Nonresident Unincorporated Business Entity” means an unincorporated business entity not having an office or place of business within the municipal corporation.

(P) Person

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

(Q) Place of Business

“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.

(R) Resident

“Resident” means an individual domiciled in the municipal corporation.

(S) Resident Unincorporated Business Entity

“Resident Unincorporated Business Entity” means an unincorporated business entity having an office or place of business within the municipal corporation.

(T) Taxable Income

“Taxable Income” means wages, salaries and other compensation paid by an employer before any deductions 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.

(U) Taxable Year

“Taxable Year” means the calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this chapter, and in the case of a return for a fractional part of a year, the period for which such return is required to be made.

(V) Taxpayer

“Taxpayer” means a person, whether an individual, partnership, association or any corporation or other entity, required to hereunder to file a return or pay a tax.

**Sec. 1901.03 Imposition of Income Tax**

For the purposes specified in Section 1901.01 on and after January 1, 1996, an annual tax of 1% per annum shall be imposed upon the hereinafter specified income. Such income tax shall be imposed upon the following income:

(A) All salaries, wages, commissions and other compensation and other income earned on and after January 1, 1996, by residents of the Municipality;

(B) All salaries, wages, commissions and other compensation and other income earned on and after January 1, 1996, by nonresidents of the Municipality for work done or other services performed or rendered within the Municipality;

(C) (1) The portion attributable to the Municipality on the net profits earned on and after January 1, 1996, of all resident unincorporated business entities or professions or other activities, derived from sales made, work done or other services performed or rendered and business or other activities conducted in the Municipality;

(2) The portion of the distributive share of the net profits earned on or after January 1, 1996, of all nonresident unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered and business and other activities conducted in the Municipality, whether or not such unincorporated business entity has an officer or place of business in the Municipality;

(D) (1) On the portion attributable to the Municipality of the net profits earned on or after January 1, 1996, of all nonresident unincorporated business entities, professions or other activities, derived from sales made, work done, services performed

or rendered and business and other activities conducted in the Municipality, whether or not such unincorporated business entity has an office or place of business in the Municipality;

(2) On the portion of the distributive share of the net profits earned on or before January 1, 1996, of a resident partner or owner of a nonresident unincorporated business entity not attributable to the Municipality and not levied against such unincorporated business entity;

(E) On the portion attributable to the Municipality of the net profits earned on and after January 1, 1996, of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the Municipality, whether or not such corporations have an office or place of business in the Municipality.

(F) On all third party sick pay earned or received on and after January 1, 2011, be resident individuals on the Municipality or by nonresident individuals who receive such payments as a result of their employment within the corporation limits of the Municipality.

(G) On the gross lottery winnings received by resident individuals on and after January 1, 2011, from a lottery commissioned, conducted or administered by, but not limited to, the State of Ohio, any other state, United States Territory, government-benefit multi-state lottery association or other similar agency.

#### **Sec. 1901.04 Allocation of Funds**

The funds collected under the provisions of this chapter shall be deposited in the General Fund and said funds shall be disbursed in accordance with the provisions contained in the annual "Appropriations Ordinance."

#### **Sec. 1901.05 Effective Date**

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 business, professions or other activities earned on or after January 1, 1996.

#### **Sec. 1901.06 Determination of Tax Allocation**

(A) Method of Determination

(1) In the taxation of income which is subject to Municipality income taxes, if the books and records of a taxpayer conducting a business or profession both

within and without the boundaries of the Municipality disclose with reasonable accuracy what portion of its net profit is attributable to that part of business or profession conducted within the boundaries of the Municipality, then only such portion shall be considered as having a taxable status in the Municipality for the purposes of Municipal income taxation. In the absence of such records, the portion of the entire net profits of a taxpayer to be allocated as having been derived from within the municipality shall be determined by multiplying the entire net profits by a business allocation percentage to be determined by a three-factor formula of property, payroll and sales, each of which shall be given equal weight and computed by adding together the percentages determined in accordance with subsections (A)(1)(a), (A)(1)(b) and (A)(1)(c) below or such percentages as are applicable to the particular taxpayer, then dividing the total so obtained by the number of percentages used. A factor is applicable even though it may be allocable entirely in or outside the municipality.

(a) 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 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 this subsection, real property means property rented or leased by the taxpayer. The value of such property shall be determined by multiplying the annual rental thereof by eight.

(b) 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.

(c) 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.

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

### **Sec. 1901.07 Sales Made in the Municipality**

As used in section 1901.06, sales made in the Municipality means:

(A) 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;

(B) 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;

(C) All sales of tangible personal property which is shipped from a place within the Municipality to purchasers outside of 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.

### **Sec. 1901.08 Total Allocation**

(A) Add together the percentages determined in accordance with section 1901.06, 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 section 1901.06.

(B) A factor is applicable even though it may be allocable entirely in or outside the Municipality.

### **Sec. 1901.09 Rentals**

(A) Rental income received by a taxpayer shall be included in the computation of net profits from business activities under section 1901.03, only if and to the extent that the rental, ownership, management or operations of the real estate from which such rentals are derived, whether so rented, managed or operated by a taxpayer individually or through agents or other representatives, constitutes a business activity of the taxpayer in whole or in part.

(B) Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates in excess of \$125.00 per month, it shall be prime-facie evidence that the rental, ownership, management or operation of such properties, is a business activity of such taxpayer, and the net income of such rental property shall be subject to tax. However, in the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits, of the lessee, whether or not such rental exceeds \$125.00 per month; provided further that in the case of arm property, the owner shall be considered engaged in a business activity when he or she shares in crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds \$125.00 per month. It is provided further that the person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds \$125.00 per month.

### **Sec. 1901.10 Operating Loss; Carry Forward**

(A) The portion of a net operating loss sustained in any taxable year subsequent to January 1, 1996, 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 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.

(B) The portion of net operating loss sustained shall be allocated to the Municipality in the same manner as provided herein for allocation net profits to the Municipality.

(C) The Administrator shall provide by rules and regulations the manner in which such net operating loss carry forward shall be determined.

### **Sec. 1901.11 Exemptions**

#### **(A) Sources of Income Not Taxed**

The tax provided for in this chapter shall not be levied on the following:

(1) Pay or allowance of active members of the armed forces of the United States or 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 education 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, amusement, 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 18 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 subject to the Ohio Intangible Property Tax or specifically exempted therefrom;

(9) Gains from involuntary conversion, cancellation of indebtedness, interest of Federal obligations, items of income already taxed by the State which the Municipality is specifically prohibited from taxing, and income of a decedents 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 and 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 Municipality to impose net income tax.

## **Sec. 1901.12 Returns**

### **(A) Date for Filing Returns**

Each taxpayer, except as herein provided, shall, whether or not a tax is due thereon, make and file a return on or before April 30 of the year following January 1, 1996, and on or before April 30 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or period. The Administrator is hereby authorized to provide by regulation that the return of an employer, showing the amount of tax deducted by the employer from the salaries, wages, commissions or other compensation of an employee, and paid by him or her to the Administrator 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) Form and Content of Return**

The return shall be filed with the Administrator on a form 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 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) Extension of Time for Filing Returns

The Administrator may extend the time for filing of the annual return upon the request of the taxpayer for a period not to exceed 6 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.

(D) Consolidated Returns

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

(2) In the case of a corporation that carries on transactions with its stockholders or with other corporations with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the Municipality constitutes a portion only of its total business, the Administrator shall require such additional information as he or she may deem necessary to ascertain whether net profits are properly allocated to the Municipality. If the Administrator finds that net profits are not properly allocated to the Municipality by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he or she shall make such allocation as he or she deems appropriate to produce a fair and proper allocation of net profits to the Municipality.

(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, limitations, or both, contained in sections 1901-06(A) to 1901.08, 1901.16(A) and 1901.16(B). Such amended return shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of the 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 taxpayers Municipality tax liability, such taxpayer shall make and file an amended Municipality return showing income subject to the Municipality tax based upon such final determination for Federal Tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.

### **Sec. 1901.13 Payment of Tax**

#### **(A) Payment of Tax on Filing of Return**

(1) The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes show as due thereon. However, where any portion of the tax so due has been deducted at the source pursuant to the provisions of section 1901.13(B), or where any portion of the tax has been paid by the taxpayer pursuant to the provisions of section 1901.13(C), or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with section 1901.16(A), 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 \$1.00 shall be collected or refunded.

(3) With the prior approval of the Administrator, and notwithstanding any other provision of this chapter, a taxpayer may make an annual payment of taxes in a lump sum if the tax does not exceed \$200.00 by the end of the fourth month after the tax year for which payments are made, without interest or penalty.

#### **(B) Collection at Source**

(1) In accordance with rules and regulations prescribed by the Administrator, each employer within or doing business within the Municipality shall deduct at the time of the payment of such salary, wage, commission or other compensation, the amount of tax imposed by section 1901.03 on gross salaries, wages, commissions, or other compensation due by the employer to the employee and except as otherwise provided in section 1901.13(B)(6)(A), and 1901.13(B)(6)(B) hereof shall, on or before the twentieth day of the month following the close of each calendar quarter make a return and pay to the Administrator the amount of taxes so deducted, subject to the provisions of subsections 1901.13(B)(3) to 1901.13(B)(5) hereof. Returns shall be on a form 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 had in fact been withheld.

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

(3) Such employer who deducts the tax of \$100.00 or more per month shall pay to the Administrator before the twentieth of the following month the amount of taxes so deducted on a monthly basis beginning with the first month the employer exceeds \$100.00 in taxes withheld.

(4) Payments shall be on a form furnished by or obtainable upon request from the Administrator.

(5) No person shall be required to withhold the tax on wages or other compensation paid domestic servants employed by him or her exclusively in or about such persons residence, even though such residence is in the Municipality. But such employee shall be subject to all of the requirements of this chapter.

(6) (a) Any person who shall employ or contract for the services of any entertainer, entertainment act, sports event, promotional booth, special event, band, orchestra, rock group, theatrical performance, or

(b) Any person who, acting as a promoter, booking agent or employer, engages the services of or arranges the appearance of any entertainer, entertainment act, sports event, band, orchestra, rock group, theatrical performance in the Municipality of Dunkirk, and who makes any payment arising from said appearance shall be deemed to be an employer and shall, for purposes of the collection of the income tax, be required to withhold, report and pay over to the Tax Administrator the tax at the rate provided in section 1901.03 hereof, on the gross amount so paid on completion of the engagement, said reports to be on forms provided by the Tax Administrator.

(7) Any person, as defined in section 1901.02(O), who rent facilities to any entertainer, entertainment act, sport event, promotional booth, special event, band, orchestra, rock group, theatrical performance for use in performing services in the Municipality of Dunkirk, and who makes any payment arising from said use of facilities shall be deemed to be an employer and shall, for purposes of the collection of the income tax, be required to withhold, report and pay over to the Tax Administrator the tax at the rate provided in section 1901.03 hereof based on the gross amount so paid on completion of the engagement, said reports to be on forms provided by the Tax Administrator.

#### (C) Declaration of Income Not Collected at Source

Every person who anticipates any taxable income which is not subject to section 1901.13(B), or who engages in any business, profession, enterprise or activity

subject to the tax imposed by section 1901.03 shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any. However, if a persons income is wholly from wages from which the tax will be withheld and remitted to the Municipality in accordance with section 1901.13(B), such person need not file a declaration.

(D) Filing of Declaration

(1) The declaration required by section 1901.13(C) shall be filed on or before April 30 of each year during the effective period set forth in section 1901.05 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.

(3) Every person engaged in any transient business, profession, enterprise or activity subject to the tax imposed by section 1901.03 of this chapter may be required to immediately file an estimate and pay the estimated tax due thereon prior to an issuance of any permits or licenses or the execution of any rental agreement of the use of municipally-owned property of the Municipality of Dunkirk for the event giving rise to income tax liability.

(E) Form of Declaration

(1) The declaration required by section 1901.13(C) shall be filed upon a form furnished by or obtainable from the Administrator. However, credit shall be taken for Municipality tax to be withheld from any portion of such income. In accordance with the provisions of section 1901.16, credit with may be taken for tax to be paid to or to be withheld and remitted to another taxiing municipality.

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

(F) Payment to Accompany Declaration

Such declaration of estimated tax to be paid to the Municipality shall be accompanied by a payment of at least one-fourth of the estimated annual tax. At least a similar amount shall be paid on or before the last day of the sixth (and) ninth month after the beginning of the taxable year. However, in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(G) Annual Return

On or before the last day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed, and any balance which may be due the Municipality shall be paid therewith in accordance with the provisions of section 1901.13(A).

**Sec. 1901.14 Interest and Penalties**

(A) Interest on Unpaid Tax

All taxes imposed and all monies withheld or required to be withheld by employers under the provision of this chapter and remaining unpaid after they become due shall bear interest at rate of one and one-half percent per month or fraction thereof.

(B) Penalties Unpaid Tax

In addition to interest as provided in section 1901.14, penalties based on the unpaid tax are hereby imposed as follows:

(1) For failure to pay taxes due other than taxes withheld: one and one-half percent per month or fraction thereof;

(2) For failure to file an annual return: a minimum of \$25.00; and

(3) For failure to pay taxes withheld from employees: ten percent per month or fraction thereof.

(C) Exceptions to Penalties

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 an amended return is filed and the additional tax is paid within three months after a final determination of the Federal tax liability.

(D) Abatement of Interest and Penalty

Upon recommendation of the Administrator, the Board of Review may abate penalty or interest or both or upon an appeal from the refusal of the Administrator to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest, or both for good cause shown.

(E) Violations

No person shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (2) Make any incomplete, false, or fraudulent return;
- (3) Fail, neglect or refuse to pay the tax, penalties, or interest imposed by this chapter;
- (4) Fail, neglect or refuse to withhold the tax from his or her employees or remit such withholding to the Administrator;
- (5) Refuse to permit the Administrator or any duly authorized agent or employee to examine his or her books, records, papers and Federal income tax returns relating to the income or net profits of a taxpayer;
- (6) Fail to appear before the Administrator and to produce his or her books, records, papers or Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator;
- (7) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer;
- (8) Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby;
- (9) Give to an employer false information as to his or her true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof;
- (10) Fail to use ordinary diligence in maintaining proper records of employees residence addresses, total wages paid and Municipality tax withheld, or to knowingly give the Administrator false information; or
- (11) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

(F) Limitation of Prosecution

All prosecutions under this section must be commenced within three years from the time of the offense complained of except in the case of failure to file a return, or in the case of filing a false or fraudulent return, in which event the limitation of time

within which prosecution must be commenced shall be 6 years from the date the return was due or the date the false or fraudulent return was filed.

(G) Failure to Procure Tax Forms

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

**Sec. 1901.15 Unpaid Taxes and Refunds**

(A) Unpaid Taxes Recoverable as Other Debts

All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of a substantial portion of income subject to this tax, or 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 limitation, 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.

(B) Refund of Taxes Erroneously Paid

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

(C) Amounts of Less than One Dollar

Amounts of less than \$1.00 shall not be collected or refunded.

**Sec. 1901.16 Tax Credit**

(A) Dunkirk residents Subject to Income Tax in Other Municipality

(1) When a resident of Dunkirk is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such Dunkirk resident may claim a credit of the amount of income tax paid to the other municipality, up to, but not in excess of, one half (50%) of the tax assessed by this chapter.

(2) In the event a Dunkirk resident is entitled to credit for taxes paid another municipality, such Dunkirk resident is required to file a return on a form in such a manner as the Administrator designated by the Municipality may prescribe.

(3) In the event such Dunkirk resident fails, neglects or refuses to file such return or form as is prescribed by the Administrator, he or she shall not be entitled to such credit and shall be considered in violation of this chapter for failure to file a return and make payment of taxes due hereunder.

(B) Claim for Credit

Any claim for credit for income taxes paid another municipality on the same income taxable hereunder, must be filed within three years from the due date of the return. Failure to file such claim for refund or credit within the time prescribed herein shall render such credit, claim for refund, or assignment null and void.

(C) School District Income Taxes

No credit shall be allowed for payment of school district income taxes.

**Sec. 1901.17 Allocation of Funds**

All funds collected under this chapter shall be deposited in the General Fund.

**Sec. 1901.18 Duties and Authority of Administrator**

(A) Receipt and Records of Tax

The Administrator shall receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, keep an accurate record thereof, and report all moneys so received.

(B) Enforcement of Collection

The Administrator shall enforce payment of all taxes owing to the Municipality, keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and make any return, or both, including taxes withheld and show the date and amounts of payments thereof.

(C) Authority to Make and Enforce Regulations

The Administrator is hereby charged with the enforcement of the provisions of this chapter and may, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations in relation to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.

(D) Authority to Arrange Installment Payments

(1) 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 or she 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.

(2) Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand, and the provisions of sections 1901-15(A) and 1901.14(E) shall apply.

(E) Authority to Determine Amount of Tax Due

In any case where a taxpayer has failed to file a return or has filed a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax 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 thereon, if any.

(F) Investigations

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

(G) Authority to Compel Production of Records

The Administrator may order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and Federal income tax returns and the attendance of all persons before him or

her, whether as parties or witnesses, whenever he or she believes such persons have knowledge of such income or information pertinent to such inquiry.

(H) Refusal to Produce Records

The refusal to produce books, papers, records and Federal income tax returns, or the refusal to submit to such examination by any employer or persons 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 chapter or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of this chapter.

(I) Confidential Nature of Information; Disclosure of Returns and Return Information

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

(J) Taxpayer Required to Retain Records

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

**Sec. 1901.19 Authority to Contract for Central Collection of Tax**

- 1) The Mayor of the Municipality may enter into an agreement with the Central Collection Agency or any regional income tax agency or any other entity organized to perform functions similar to those performed by regional income tax agencies. for the central collection of the Municipal Income Tax for the Municipality.
- 2) The Mayor of the Municipality may enter into an agreement with another municipal corporation for the central collection of the Municipal Income Tax for the Municipality.

**Sec. 1901.20 Board of Review**

(A) Board of Review Established

A Board of Review, consisting of the Mayor, the Chairman of the Finance Committee, the Solicitor for the Municipality, and one member of Council to be elected

by that body, is hereby created. The Board shall select, each year for a 1-year term, one of its members to serve as Chairman and one to serve as Secretary. 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 1901.18(H) with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

(B) Board to Approve Regulations and Hear Appeals

All rules and regulations and amendments or charges thereto, which are adopted by the Administrator under the authority conferred by this chapter, must be approved by the Board of Review before the same become effective. The board shall hear and pass on appeals from any ruling or decision of the Administrator, and at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.

(C) Right of Appeal

Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter may appeal there from to the Board of Review within thirty days from the announcement of such ruling or decision by the Administrator. The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.

**Sec. 1901.21 Intent and Tax Continuation**

(A) Declaration of Legislative Intent

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

(B) Collection of Tax after Termination of Chapter.

(1) 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 and proceedings for collecting and tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of the taxes levied in the

aforesaid period are fully paid and any and all suits and prosecutions for the collection of taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in sections 1901.15(A) to 1901.15(C) and 1901.14(E) to 1901.14(G).

(2) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in sections 1901.12(A) and 1901.13(B), as though the same were continuing.

### **Sec.1901.99 Penalty**

#### (A) Penalty

(1) Whoever violates sections 1901.14(E) or 1901.18(H) shall be deemed guilty of a third-degree misdemeanor and fined not more than \$500.00 or imprisoned not more than sixty days, or both.

(2) Whoever violates sections 1901.18(I) shall be deemed guilty of a first-degree misdemeanor and fined not more than \$1,000 or imprisoned for not more than one hundred and eighty days, or both. Each disclosure shall constitute a separate offense. In addition, any employee of the Municipality who violates section 1901.18(I) shall be guilty of an offense punishable by immediate dismissal.